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CHARITY DISCLOSURE LEGISLATION

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON

L PERSONNEL AND MODERNIZATION

OF THE

COMMITTEE ON

OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 41

A BILL TO AMEND TITLE 39, UNITED STATES CODE, TO REQUIRE THE FURNISHING OF CERTAIN INFORMATION IN CONNECTION WITH THE SOLICITATION OF CHARITABLE CONTRIBUTIONS BY MAIL, AND FOR OTHER PURPOSES

MARCH 24, 29, AND 30, 1977

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(George B. Gould, Subcommittee Staff Director, Room 219 Cannon Building—Ext. 53718)

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CHARITY DISCLOSURE LEGISLATION

THURSDAY, MARCH 24, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON POSTAL PERSONNEL AND MODERNIZATION,
Washington, D.C.

The subcommittee met at 10:05 a.m. in room 311 of the Cannon House Office Building; Hon. Charles H. Wilson (chairman of the subcommittee), presiding.

Mr. WILSON. This morning the subcommittee begins hearings on a bill which is truly one of the most important consumer protection concepts before the Congress.

H.R. 41, which I have sponsored, would for the first time require organizations soliciting charitable contributions from the public to disclose at the time of solicitation some basic information about what the charitable purpose actually is, and how the money received in the previous year was really spent. This will protect the American public and responsible charities from dishonest moneymaking schemes and grossly inefficient operations which can now flourish under a cloak of virtual secrecy.

Last year Americans gave nearly \$29 billion to charitable organizations. While most of this money was spent efficiently by reputable groups, we all know of abuses such as the Pallottines which divert millions of dollars every year from worthwhile causes.

H.R. 41 will protect against such abuses through public disclosure, not the massive Government regulation which some have proposed.

I believe that undue Government interference in charitable fundraising would be most unwise.

I would like to publicly commend our first witnesses because their organizations have been genuine leaders in the fight to bring responsible charitable disclosure to the public.

The first group we will have will come as a panel: Mr. Richard Taylor of the American Heart Association, Mr. Bernard Koplow of the American Lung Association, Mr. Jack Kent of the National Kidney Foundation, and Mr. Kenneth H. Phillips, Save the Children Federation.

Now, each of you I believe has a statement.

Mr. Taylor?

TESTIMONY OF RICHARD H. C. TAYLOR, THE AMERICAN HEART ASSOCIATION; BERNARD G. KOPLOW, THE AMERICAN LUNG ASSOCIATION; JACK KENT, THE NATIONAL KIDNEY FOUNDATION; AND KENNETH H. PHILLIPS, SAVE THE CHILDREN FEDERATION

Mr. TAYLOR. Thank you, Mr. Chairman.

I am Dick Taylor, from Hanover, Va., a volunteer for the American Heart Association for the past 14 years at local and national levels.

In the Virginia affiliate I have served as the State heart fund chairman as well as president and chairman of the board. At the national level I have been a vice president of the American Heart Association, served on the executive committee for two terms and on the board of directors for six terms, and I am presently serving on the Fund Raising Advisory and Policy Committee for the past 2 years.

As you may well know, the American Heart Association evolved from a marriage of science and citizen volunteers over 28 years ago. Today it is a voluntary organization composed of 55 affiliates and over 1,000 chapters and has some 40,000 scientists and physicians, 65,000 other key members, and over 2 million volunteers who are dedicated to the reduction of death and disability due to cardiovascular disease.

In 1976 over 75 percent of the contributions to the American Heart Association provided research funding, professional and public education, and community services across the Nation. The progress—in human terms—is a continuing decline in the death rates from heart attack, stroke, high blood pressure, and rheumatic diseases.

I appear here today on behalf of the American Heart Association. It is an honor to appear before you today on behalf of the American Health Association to testify on legislation that we at the association feel is of the utmost importance if the integrity of charitable organizations is to be maintained in this country. We have been honored to have been able to work so closely with the chairman and his staff on this legislation, and we are extremely pleased with the openness and consideration given us. I would like to note that it is only through this cooperation that the bill, which will effectively protect not only the public but responsible charities as well, has been developed.

We are pleased to endorse H.R. 41, a bill we believe will curtail the fraud and abuse carried out by some charitable organizations in this country. As you are well aware, there are no Federal requirements that an organization provide information at the time of solicitation to explain how much of that solicitation actually goes into charitable purposes. The legislation before you today will insure that the donor will have information which will help him to exercise his judgment at the time of the solicitation.

When the bill was first introduced during the 94th Congress we were concerned that overburdensome accounting procedures would result that would severely limit the flexibility of our association. But, after working closely with the staff of this subcommittee, we are pleased to say that the system whereby the charitable organization "who solicits funds in any manner for remittance by mail and who must state at the time of the solicitation the organization's legal name, principal business address, the purpose of the contribution, its intended use, and

the percentage of the previous year's contribution that actually went into charitable purposes," is acceptable. We would like to point out that we already operate under a similar accounting and reporting system.

Some of our affiliates now provide this information with their solicitation materials. I would like to call your attention to two examples which are provided as exhibits with this testimony. I might say the first of the exhibits is the Chicago Heart Association's "We Are Fighting for Your Life" pamphlet, was mailed in the U.S. Postal Service system on the 17th and has not yet been received.

Also, I have the New York State affiliate's annual report and a copy of my testimony which I will leave for you.

Despite added costs, the American Heart Association is voluntarily complying with the bill. The National Center is now designing disclosure materials which will meet the requirements of this proposed legislation for our 1978 Heart Fund campaign. An example of this is also included as an exhibit to this testimony. Copies of our annual report, which further demonstrates our activities as a charitable organization in the prevention, control, and reduction of cardiovascular disease, are attached for your reference.

We would hope that this subcommittee would consider two proposals that we believe would enhance the effectiveness of H.R. 41. The first is that States be encouraged to conform with the intent of this national legislation. We believe it a necessity for smooth and effective operation both from an administrative and financial perspective that there be uniform rules and regulations for all the States. Our second concern is with the development and implementation of rules and regulations by the Post Office. We would hope that this subcommittee would review any regulations developed by the Post Office so as to insure that congressional intent is maintained.

This legislation is effective because it protects those organizations which truly do operate in an efficient and honest manner while at the same time it does not put excessive restrictions on the activities of charitable organizations. In this regard, it is essential that all charitable organizations soliciting the public be included in this legislation.

Mr. Chairman, again I would like to thank you for allowing us to testify before this subcommittee today and especially for your leadership in the development of this legislation.

Thank you, sir.

Mr. WILSON. Thank you very much, Mr. Taylor. I appreciate your statement.

It is very heartening to have the organizations, the reputable groups that have come forward, such as those that are represented at the table this morning, who understand the purpose and intent of this legislation and recognize it is not a form of harassment or anything of the sort.

The bill when it was first introduced in the last Congress was really the result of a similar law which has been operating in the city of Los Angeles. I assume there may be some other States or other municipalities that have some type of law which they use to try and eliminate abuses that take place. We have tried to be as fair as possible in writing this new bill to protect organizations that solicit only from their own membership, such as universities that solicit from parents or alumni.

We have exempted them from it. This is intended for the charitable organizations that solicit from the public generally and the use of the mail for their solicitation purposes.

I do not think we will ask questions until each of you have made your statement, So. Mr. Koplow, will you proceed now?

Mr. KOPLOW. Thank you, Mr. Chairman.

I am Bernard Koplow. I appear here today in my capacity as a national board member of the American Lung Association. I am a resident of Sioux Falls, S. Dak., where my business interests include mortgage brokerage, farming, and cattle raising. I have been a Lung Association volunteer for over 25 years.

I want to emphasize that I am a volunteer with the American Lung Association. Our association appreciates this opportunity to testify on H.R. 41. On February 18, 1977, the board of directors adopted the following resolution:

ALA endorses the principles incorporated in H.R. 41 as introduced in the 95th Congress, a bill which intends to provide increased information to the public on charities' program expenditures.

We appreciate the reasons why this legislation has come into being and hope that it will attain its worthy objective of controlling fraudulent fundraising. We do have several questions about the effects of the bill which we address later.

Throughout its long history, ALA has been committed to ready disclosure of the use of its funds. Our published annual reports have always included financial data on our program activities. ALA played an active role in bringing about improved accounting procedures for voluntary agencies through the National Health Council so that there could be consistency in reporting and agencies would be motivated to follow guidelines that would improve accountability.

Through the years, the respiratory disease problem has changed and the problems of lung associations have broadened beyond the control of tuberculosis—which is still a major disease, with 34,000 cases reported in 1975.

Additional serious respiratory diseases, such as emphysema and asthma, are now prevalent in significant numbers. The hazards of air pollution, cigarette smoke, and certain occupational irritants are recognized as grave problems which have to be taken into account in respiratory disease control today, as well as infectious agents such as those which cause tuberculosis, pneumonia, and influenza.

ALA is active in many aspects of these respiratory disease programs through its national office and its State and local lung associations. These efforts take the form of health education programs, support of medical education, demonstration programs of quality medical care, et cetera.

Enlistment of interested volunteers is essential to the success of these efforts; among voluntary health agencies, there is none that has more grassroots strength. Ninety percent of the money raised in the Christmas seal campaign is kept in the State and local areas, and volunteers have responsibility for directing these local programs. The attached recent issue of the ALA Bulletin, which you have, illustrates our concern about air pollution and how one community with lung association leadership fought deterioration of air quality.

Lung associations and similar agencies are important not only because they perform services the Government would otherwise have to assume were voluntary associations to disappear; they also have a watchdog role which is very much needed in a society where Government plays a larger and larger role. As our Nation has grown, it is more difficult but even more important for citizens to be heard.

Without the active interest and urging of lung associations, many Government resources would have been delayed or not have been made available at all to our citizens. From the TB sanatorium movement to the expansion of the National Heart Institute in 1969 to become the National Heart and Lung Institute, lung associations have played an important role as catalysts.

The bulk of the funds which support program activities of the American Lung Association are raised through the Christmas Seal mail campaign—the oldest health appeal among the voluntary agencies. This method of raising money was begun in 1907 by a single concerned citizen who sold especially designed seals in her community to take care of persons ill with tuberculosis. The character of the Christmas Seal mail campaign has changed very little. It is a campaign addressed to the general population, and the average contribution is small: \$3.40 per contributor last year.

One of the unfortunate trends our association has witnessed is an inability to keep fundraising costs from rising because of the steady increase in uncontrollable expenses, including postage and materials. In comparison to 10 years ago, lung associations are spending nearly twice as much money on postage for the same volume of mail. Our problem is also compounded by time-consuming requirements already imposed by State and local governments which add to administrative costs of associations. Many governmental units require charitable agencies to file extensive reports on their operations which are in addition to the filing of annual reports. Some others require disclosure of information on solicitations similar to that required by this bill; in these cases agencies may have to contend with two different sets of requirements should H.R. 41 be passed, since it is our understanding that Federal law will not preempt State law in this matter.

Please note the ALA has no objection whatsoever to the various reasons for accountability, but asks you to be sensitive to the fact that extensive accounting and reporting do raise our costs.

We appreciate that the authors of this legislation endeavored to keep the costs imposed by the bill to a minimum. However, it is impossible to estimate what these costs may be for our organization. Production of solicitation materials used by lung associations is largely centralized. It is difficult for us to estimate costs with precision until we know how many affiliates wish to include on their solicitation the proportion of funds they themselves spend on program rather than the nationwide percent. This would require a variety of imprints and reduce the substantial cost savings effected by standardization.

Persons not familiar with fundraising operations are not aware, nor can they appreciate the significance, of the effects of escalating costs on charities' programs. To those inexperienced in the operations of charitable agencies, fundraising and program activities of lung associations should be cost-free. Such persons are under the impression

that all operations of charities can be successfully accomplished by volunteers. Obviously, in our society, it is impossible to have worthwhile programs without highly-trained and competent staff who devote full time to the task. Our volunteers number in the many thousands, whereas professional staffs are well under 1,000.

We have these comments about H.R. 41:

First, we agree with the bill's universal coverage of fundraising organizations. In our opinion, there is no justifiable exclusion from this bill of any organization which receives contributions through the mail from the general public. Should exception be made, our board would have to reconsider its position.

Second, in reference to section (a) (4), we wish to be certain that the bill provides for the alternative of using a nationwide percentage for program expenditures in the event the affiliate does not wish to accept the added cost of imprinting its own. This nationwide figure is readily available for our organization from a consolidated report which includes a total of expenditures of all lung associations, including the national headquarters, broken down by fundraising, administrative, and program activities. We request that there be clarification on this point either in the bill or in your report.

Third, in reference to mail campaigns, we request that section (a) (4) apply only to an organization's initial annual campaign appeal. To require this information for followups will result in considerable production adjustments which will add to our fundraising costs.

Fourth, in reference to federated fundraising organizations, section (a) (5) requires that the "portion" of funds remaining for application to charitable purposes be included on the solicitation. We request that this be changed to "percentage" to make it consistent with the requirement in (a) (4).

Fifth, during the conducting of some fundraising campaigns, business firms "loan" an executive and/or other personnel. Many of these firms deduct the salary of the "loaned" personnel as a legitimate charitable deduction when reporting to the IRS. We feel quite strongly that when such charitable deductions are taken, it should be required that the amount of the deduction be counted as an administrative or fundraising "cost" item by the organization for whom the funds have been raised and be removed from the percent of funds shown on the solicitation as remaining for program purposes. This is only fair.

In fact, we hope that the accounting system will require the reporting of all "in-kind" activities and show whether such resources are used for "overhead" purposes such as fundraising and/or administration or for program activities. If that can be accomplished, the public will be better able to see where an organization places its collective resources and, in turn, have a better knowledge of the efficacy and impact upon the community of the reporting organization.

In conclusion, if the Lung Association did not exist, one would have to be formed, for the work to be done is staggering. Our resources are limited and we know that in many ways we are only scratching the surface.

However, we also believe that unless we do what we can, many more people will suffer and die from the diseases in which we have an interest and a commitment to fight. Ours is an aggressive organization, for we are advocates for millions of people in this country who have

respiratory and lung conditions and who look to us to give leadership in getting services and facilities provided, in assuring that quality care will be received, in continuing to lead in the area of research for the cure of all lung diseases, and resisting the assault of pollution of the air which all citizens must breathe in order to survive.

We are delighted to have this opportunity to express our concerns. The proposed legislation has received widespread comment from the various echelons of the American Lung Association. As stated before, we agree with the principles of H.R. 41; however, if significant changes in the bill are made, our national board of directors reserves the right to reconsider its position.

We are extremely pleased to experience the openness and consideration by your committee of legislation enacted through due process, which represents the finest democratic tradition, and we in the ALA are happy to be a part of that process.

Mr. WILSON. Thank you very much, Mr. Koplow.

We will proceed now with Mr. Jack Kent of the National Kidney Foundation.

Mr. KENT. Thank you very much, Mr. Chairman.

My name is Jack Kent. I am from Denver, Colo., and I am chairman of the National Kidney Foundation.

Our foundation is the leading health agency concerned with kidney and genito-urinary-related diseases. We have 55 affiliates serving 44 States, and have more than 1 million consumer and professional volunteers.

Our ultimate goal is the eradication of kidney and genito-urinary diseases that affect more than 8 million Americans. To accomplish this, we are working with government, business, educational institutions, and individuals.

The foundation's total support and revenue from all sources for the fiscal year ended last June 30, 1976, amounted to \$6,143,983. Our fundraising, administrative, and operational costs for that year totaled \$1,227,950, or about 21 percent of gross income—its says 21 in my report. Our bookkeeper made a slight mistake. Actually, it is 19.99. Therefore, I think we would be a little closer if we said 20 percent.

Further, it is 23 percent of our total expenditures of \$5,530,965 for that year.

This means that more than three-quarters of every dollar spent was spent in support of the programs of the foundation.

The problems we are trying to deal with are enormous. More than 54,000 Americans die each year because of kidney disease. More than 28,000 suffer from chronic renal disease and need an artificial kidney machine to stay alive. More than 9,000 patients are waiting for kidney transplants, but only approximately 2,000 will receive one this year because of a shortage of suitable organ donors.

We must interject that we are not yet certain of these figures. There is reason to believe, for example, that the number of patients who could benefit from a transplant is considerably higher than our conservative estimate of 9,000.

Kidney and genito-urinary-related diseases are the major cause of work loss among women in this country, the second cause of absenteeism among men under 25, the fourth cause among men over 25.

The statistics are dramatic, but not nearly as dramatic as watching someone being dialyzed on an artificial kidney machine or knowing someone who has literally been given the "gift of life" by receiving a transplant of a kidney.

The National Kidney Foundation and its 55 affiliates are dedicated to finding the answers to kidney disease while at the same time insuring that those people who do have kidney problems receive the finest possible care.

Treatment, cure, prevention—all three represent major objectives of our foundation, the only voluntary health agency in the Nation embracing the total cause of kidney disease.

The National Kidney Foundation has a number of programs that are designed to aid victims of kidney disease.

The organ donor program, as it suggests, is a program to solicit donors through distribution of the uniform donor card, and the development and dissemination of public and professional education materials. The National Kidney Foundation is working to give the gift of life to patients who can be helped by transplantation.

To date, more than 15 million donor cards have been distributed throughout the Nation. Also, 35 States and the District of Columbia (the number is continually increasing) now have some type of legislation that allows drivers to indicate on their licenses that they wish to be organ donors.

I would like to add at this time that over 3,000 kidney transplants have been accomplished. Kidney transplants are no longer in the donor stage. Many more could be transplanted if available.

Historically, one of our most important problems and our program to overcome the problem is the program on research, because we feel that the answer, the final answer, lies in research and the eradication of the disease itself.

In 1975, the National Kidney Foundation and its affiliates awarded almost \$1 million to postdoctoral research fellows working on the causes, cures and prevention of kidney disease.

The National Kidney Foundation contributed \$210,000 of that total to 20 fellowships while the rest was contributed directly by affiliates, and in some cases, affiliates in conjunction with the national organization.

Our program is supporting research into the development of new treatments of the nephrotic syndrome; pioneering the development of a better understanding of nephritis; supporting basic research into the problems of transplant rejection, which is one of the most disappointing aspects of transplantation; and the development of new drugs which may prevent transplant rejection.

The problems of hypertension, which are incidentally very closely connected to kidney disease, kidney failure, and polycystic diseases, are being investigated by many of the researchers we support throughout the United States.

Our patient and community services, headed by a kidney patient who is on the kidney machine three days a week and who is a very vibrant individual that has certainly the patient in mind, support a wide variety of programs in treatment, service, education and prevention designed to aid the patient in the community.

Examples of the types of programs carried out by some affiliates include conducting "early warning" detection and screening programs, including urinalysis and high blood pressure testing; distributing medic alert emblems for dialysis and transplant patients; conducting information and referral programs for patients and their families; operation of blood banks for dialysis patients; operation of drug banks to provide medication at a reduced cost to kidney patients; working for the passage of enlightened Federal and State legislation that will aid kidney patients; and providing counseling programs, both individual and group, for patients and the families of patients with end stage renal disease.

The National Kidney Foundation and its affiliates sponsor symposia, conferences and meetings to encourage dialog about kidney disease among the medical profession and all the allied health sciences.

Leadership in professional education is provided by four councils of the Foundation: Council on Dialysis and Transplantation; Council of Nephrology Social Workers; Council on Renal Nutrition; Council on Urology.

We are publishing "The Kidney," a bimonthly scientific publication with a circulation of more than 32,000. It is distributed to those who are interested in keeping up with the research and clinical developments involving all aspects of kidney disease. In addition, the Council of Nephrology Social Workers publishes a quarterly newsletter featuring editorials, information on legislation and other interesting data.

It is our honor and privilege to come before you and the committee in support of H.R. 41, which will provide for disclosure by charitable organizations of their cost of administration and fundraising.

The National Kidney Foundation does so for many reasons, but none so compelling as our commitment to assure that the American tradition of giving—and I think the Americans are probably the best of the givers in the world—is not undermined by unscrupulous individuals or organizations.

This bill places on notice those who would threaten this tradition.

Frankly, it is tragic that we need such a bill as yours. The fact is, however, that we do need it in order to protect the integrity of those who believe in the people's rights to know what they gave for.

To show our support for this legislation, we have already voluntarily complied with the disclosure intent of this bill. I enclose for the subcommittee a copy of one of our pamphlets, which was printed last November, with a disclosure statement.

This is on the back cover of this pamphlet which we find, in our minds, is a very visible location.

If I may, it reads:

The National Kidney Foundation is a participating member of the American Blood Commission, Combined Federal Campaign, National Health Council, National High Blood Pressure Education Program.

In fiscal year 1975, the National Kidney Foundation and its affiliates spent 77 percent of its contributions received on the programs described above, while 23 percent of the funds raised went to administrative, operational and fundraising costs. A detailed annual report with a full explanation of income and expenditures is available upon written request.

Mr. Wilson, we do have a few concerns. First, while we realize this legislation does not attempt to preempt the right of State and local

governments to develop disclosure rules, we hope you and members of your committee will discourage such actions.

A proliferation of local laws would greatly increase the costs to organizations like ours, thereby reducing our ability to support essential programs. A thoughtful, consistent policy of enforcement by the Postal Service would help to further discourage laws which would require a heavy commitment of time, money and personnel by all voluntary health agencies.

Second, we urge this committee to monitor carefully the development of rules and regulations by the Postal Service to assure that the intent of Congress is respected.

We feel rather strongly about this suggestion. All of us, on some occasion, have had to struggle with the rulemakers and their interpretations of statutes and congressional records.

Third, we cannot support any change in this bill designed to give separate consideration to particular groups. We feel the success of H.R. 41 in large measure will be based on its effectiveness in establishing uniformity in reporting procedures.

Lastly, I do not want to let this opportunity pass without complimenting you, your staff—Mr. Gould and Mr. Cavanagh in particular—for your cooperative spirit in developing this legislation during the past year.

Your willingness to listen to our suggestions and, when appropriate, incorporate them into the bill has been very gratifying. These, in the words of another previous Mr. Wilson, these have been truly “open covenants openly arrived at.”

We continue to stand ready to assist you, and we thank you.

MR. WILSON. Thank you, Mr. Kent. We appreciate your statement very much.

Now, Mr. Kenneth Phillips.

MR. PHILLIPS. Thank you very much.

My name is Kenneth Phillips, and I have been the director of development at the Save the Children Federation for the past 5 years.

My responsibilities there are mainly to manage the fundraising for this well-known national organization.

The Save the Children Federation strongly supports and endorses H.R. 41, a bill to require disclosure at the time of charitable solicitation.

At Save the Children, we have long been concerned about the integrity of the charitable field and the problems of public skepticism toward large institutions, including charities. Donors are the purchasers of our services and programs; children are the beneficiaries. In the opinion of Save the Children Federation it is essential to tell the donor exactly what his or her funds are purchasing.

I should say, Mr. Chairman, that Save the Children Federation is a nonprofit, tax-exempt charitable organization dedicated to improving the welfare of needy children without regard to race, religion, or national origin.

I am honored to sit here with the others who represent agencies doing such important work in the field of health.

In our view, one of the worst diseases to afflict children is poverty. At Save the Children Federation, we serve children and their families through community uplift programs in more than 350 communities in 14 nations overseas and in the United States. At this very

moment, Mr. Chairman, hundreds of thousands of children and adults are being aided by the Federation's activities.

Our organization has adopted several fundamental practices and principles designed to protect the public interest, preserve the reputation of Save the Children as a legitimate charity, and maintain public confidence and support for the field of child assistance.

Virtually since its beginning in 1932, Save the Children Federation provided comprehensive information on plans and accomplishments to its donors.

We have always made the results of our audits available to the public.

Since 1937 Save the Children has prepared annual or quarterly reports which include financial information. For the past 10 years at least, Save the Children has routinely sent, without request, its annual report with financial information to all donors of \$5 or more.

In 1972, Save the Children began to send quarterly reports to sponsors and selected other donors covering the specific accomplishments in the country and communities to which their contributions were allocated.

In 1973, Save the Children reaffirmed its practice of truth in advertising so that every photograph, every story and every example that appears in its solicitations is true and factual.

In 1974, Save the Children's annual report began to present as separate figures the percentages of fundraising, administration, and program services as reflected in the audit figures.

In 1976, with the support of four other leading child assistance agencies, Save the Children formulated a code of fundraising ethics with tenets requiring full financial disclosure, uniform accounting methods, minimization of overhead costs, truth in advertising, donor confidentiality, rejection of dubious fundraising methods, and respect for the people served.

In 1976, Save the Children began to include in promotional materials, at the point of solicitation, information on overhead costs.

Currently, the copy in Save the Children's jumbo coupon includes the following information:

(1) Name and address:

Save the Children Federation, 48 Wilton Road, Westport, Conn. 06880.

(2) Purpose of the solicitation and intended use of the contribution:

Your money, combined with that of other sponsors, can breathe new life into an impoverished village * * * help hard-working people in their fight for dignity * * * turn despair into hope for a child who has known only disaster. Several times a year you can receive detailed reports on the activities and projects being undertaken in the community to benefit your sponsored child. These community reports show how your money is being used most efficiently for permanent improvements to the child's environment—for health care, education, food production, nutrition, and community training. Would you like to receive such information? Yes —. No —.

(3) Financial disclosure:

Save the Children is indeed proud of the handling of its funds. An exceptionally large percentage (78.1 percent) of each tax deductible dollar you donate is used for direct aid and supporting program services. Due to volunteered time, labor and materials, your donation provides your sponsored child with benefits worth many times your total gift. An informative annual report and audit statement are available upon request.

The donor can indicate which he or she wants.

I might add, historically when we have offered these materials, fewer than 1 percent of the people making inquiries have, in fact, requested them. On the other hand, when given the opportunity to indicate whether they wanted such financial information or not by checking off a box, we find that 77 percent of the people do want to see the annual report and/or the audit.

To me, this indicates a tremendous interest on the part of the public in these figures and information.

This agency developed the disclosure approach outlined above because we believed the public had a right to know, and because we believed the public would positively respond to open and frank disclosure. We have not been disappointed.

Our new promotional material, which includes financial disclosure, is generating contributions support at a rate $2\frac{1}{2}$ times the result of our historic promotional material. While disclosure itself cannot be credited with improving the results, it does show this—disclosure *per se* does not necessarily have a negative effect on fundraising. We intend to continue and expand this type of disclosure because our results indicate the public understands the need for reasonable overhead costs and, in fact, responds positively to the candor that disclosure represents.

Our next advertisement, and I have a copy to show you, will ask as a headline "Who gets the money from an ad like this? Before you send your \$16 to Save the Children, you should know what the children really will get out of it." The ad also provides detailed answers, in fact and in percentages.

The favorable result of our recent scientific testing should eliminate fears about disclosure of reasonable fund raising and management and general costs at the point of solicitation.

I would like to add, we are doing this disclosure not in collaboration with the committee, but as part of our own efforts to share with the public our contributions and income information.

Mr. Chairman, as you can see, it is simple for Save the Children to support the Federal legislation embodied in H.R. 41 because we are already doing essentially what the bill would require. We feel, however, that the legislation is urgently needed at the Federal level to reduce the need for State and local regulation requirements.

Our own experience is that it is extremely burdensome and, therefore, costly for an agency such as ours to file with some 37 State and half a dozen counties and cities. Our hope would be that Federal legislation would, to the maximum extent possible, render unnecessary individual State and local filing. This would, on a national basis, result in a substantial savings of administrative costs for the Nation's charitable organizations and, thereby contribute more effectively to the fulfillment of their charitable purposes.

An example of State regulations is New York, which requires a statement in appeals that a copy of the report filed with the New York State Board of Social Welfare is available from the agency or the New York board. While supportive of the intentions of this regulation, we are troubled by the possibility that 50 States could eventually have such requirements, thereby mandating a list of 50 complete State bureaus on each solicitation, but having no real disclosure at the point of solicitation as would be provided by the Wilson bill.

Our own experience with the New York State regulations is that the public is not responsive to going through the procedure of making a request for more information.

In the past 4 years, Save the Children itself has received only 11 requests from the public for this information and the State bureau reports they have received only 58, representing a total of 69 inquiries for this kind of detailed information through the route prescribed by the New York State requirements.

I do not think this is effective disclosure.

The extent to which H.R. 41 renders unnecessary State and local requirements will be the primary measure of its success. I urge you to do whatever is possible to accomplish this objective.

Concerning specific requirements of H.R. 41, we are very pleased that it takes the route of public disclosure. This agency feels that the public should be given the information about a charity's use of its contributed income and should be able to make up its own mind as to the merits of the charitable activities. This approach is far better, in our opinion, than establishing arbitrary fund raising and administration ratios.

The second aspect of the bill which we are most pleased with is its broad scope. It is imperative not to discriminate against one type of public fund raising and to protect others.

The proposed bill is even handed in requiring all public appeals by all charitable organizations to meet the same requirements. No one is exempted for special purposes or because of special techniques. We feel that the integrity of the bill rests largely on this broad scope.

The third aspect we strongly endorse is reliance in the Uniform Standards of Accounting. This will avoid the pitfalls of a new method of accounting yet to be established.

Mr. Chairman, if there is need for Federal legislation as indeed we feel there is, then let us not remain inactive for 3 years as the bill now provides. Based on the experience of Save the Children, the public is now ready for disclosure and the charitable world could be ready in 1 year from the date of passage.

From a similar point of view, I also suggest that it would be preferable to have the disclosure requirements apply to public service radio and television spots of 60 seconds as well as to longer ones. Telethons and other larger fund raising programs could repeat the disclosure at regular and prescribed intervals.

In summary, Mr. Chairman, I can report that Save the Children strongly supports H.R. 41 to protect and preserve the good name of reputable charitable agencies. I only urge you to consider the following changes which would in our view strengthen the bill:

(1) Speed up the bill's implementation date and broaden its coverage where possible.

(2) Take steps to guarantee fair, impartial, unbiased, and nonpolitical enforcement of the bill.

(3) Resist all efforts to erode the bill's effect through exemptions.

(4) Maximize the bill's impact by doing whatever can be done to reduce the crazy quilt of State and local requirements.

On this last point, Mr. Chairman, let me add that in our view this single comprehensive disclosure bill is infinitely preferable to the spectre of more and more local regulations—each one different from the other and requiring complicated and costly efforts on our part.

Giving is a personal and emotional act. The giver should have all pertinent information in his or her hands at the moment of that act.

In our view, H.R. 41 will provide the donor with the information he or she needs to perform that act with the assurance that his or her money is being used in a manner desired.

Mr. Chairman, thank you.

Mr. WILSON. Thank you very much, Mr. Kent.

I am going to ask Mr. Myers to start the questioning. He may want to go over to the floor shortly.

Mr. MYERS. Thank you, Mr. Chairman.

I would like to first thank these gentlemen for taking the time from their schedules to be here and thank them for their excellent testimony which I appreciate very much.

I have a couple of questions that need some clarification.

First, Mr. Taylor, I would like to know—you said that 75 percent of your contributions provide research and education benefits to people.

My question is: If this bill were enacted into law, would it change that percentage?

What would the cost be to your foundation to meet the requirements of the bill?

In other words, would it reduce the amount that would be put back into the reserve and so forth?

Mr. TAYLOR. It is bound to be some cost, but I think the cost would be very slight unless the rules and regulations would be more strict than we interpret the legislation here to encourage.

I think a simple statement such as the exhibit we gave to you with the presentation, that could be very easily reproduced on all of our materials.

Mr. MYERS. But the cost would be—

Mr. TAYLOR. The cost would be nominal.

Mr. MYERS. I noticed several of the gentlemen brought up the point that the regulations you are quite concerned about, when they are drafted—what could we do in the bill? Could we set up some kind of a congressional review?

Do you think that would force the Postal Service to come up with regulations that we could understand and could live with?

Mr. TAYLOR. I think the important thing is the staff has been so helpful to us in bringing the bill to this point. Maybe there is some way the staff could continue to work with the people making the rules and regulations. Review by this subcommittee after completion would be very helpful.

Mr. MYERS. Thank you, Mr. Chairman.

I have no other questions.

Mr. WILSON. Thank you, Mr. Myers.

Mr. Taylor, you said that H.R. 41 is important if the integrity of the charitable organizations are to be maintained in this country.

That really is what we are talking about in this whole thing, in trying to develop legislation, because there has been countless charity frauds which are being brought to the public's attention, and they are eroding confidence in charitable organizations.

Mr. TAYLOR. Very much so. I think it is the old problem of getting two rotten apples in the basket and it affects all of us.

Mr. WILSON. I think it is unfortunate about the Pallotines as far as the Catholic Church is concerned. That was the exceptional thing rather than the common thing within the church.

It seems to be the thing we keep referring to.

I am sure there are other fraudulent types of things that haven't been quite so dramatic that have not been brought to national attention that has taken place.

Would that be true?

Mr. TAYLOR. I think so, sir.

There are certainly local things that occur from time to time that don't get spread across the Nation that will affect an organization such as these represented here today in that local area.

Mr. WILSON. The opposition we seem to be getting is coming from principally religious organizations and from the people who do the mailing, the professional mailers, who are involved in having the mailing lists and so forth, who actually send the solicitations out.

I can appreciate their concern. This might curtail some of the business that comes to them, but do any of you feel that there is justification for the fear that they have, or that that should be used as a major deterrent to proceeding with this legislation?

Mr. PHILLIPS. I think the experience of save the children in the marketplace indicates that the public will not respond negatively to reasonable fund raising and administration costs.

This is a very tangible example, that the public is responsive to such disclosure.

I think it is important to emphasize also that the cases of the bad apple, the bad organizations, are really very very few in number. Far fewer than 1 percent. Fewer than one-tenth of 1 percent.

We in the field know that. I am sure you know that.

My concern is that the public does not know, and they read the stories about this one case or that other case, and they read about it for months and months and they come to generalize that, hey, there must be a lot of them.

But until we get a kind of broad based disclosure, the public won't know this. They will be misled by the coverage.

Mr. KENT. Mr. Chairman, if I can comment. In principle there is absolutely no reason why anyone should oppose this bill.

The bill, by its nature, has not restricted anybody, including those people that are drastically out of line with expenses, from soliciting funds.

They can solicit funds at will.

It simply means that they have to tell the public from whom they are soliciting, what they are spending to do so and in terms of fund-raising costs and what they are spending their money for.

I can't imagine the principle of objection being applicable to any religious or nonreligious group—and for that matter, perhaps, schools.

I think the bill is designed to let the public know what is happening. That is the reason. There is just no other way of stating it.

I don't see any objection on anybody's part that could be reasonable.

Mr. KOPLOW. There is another dimension to this, too, perhaps.

I think that most charitable organizations are within the control of a volunteer board. I served on other volunteer boards, and I think

as volunteers are forced to see some of these disclosures, I think it can force the organizations to clean up their act.

I think that dimension should not be lightly looked at.

From the mailer's standpoint, sure, there are private entrepreneurs and this could even accrue to a benefit to them if the various organizations take it upon themselves to get their costs within agreeable limits, for their donors, I think that will be good for the mailers.

I think that is an important aspect of the bill.

Mr. WILSON. I appreciate that.

I have become conscious of the solicitations that come off my desk since we have been working on this, and I have been very pleasantly surprised at the large number of charitable organizations that are doing exactly what we are asking for here.

I keep turning them over to Mr. Cavanagh. He has developed quite a file on them. There must be 15 or 20 this year already.

It is pleasing to see that just about every one of the organizations, the reputable and well-known groups, that they are doing what we hope everyone will do and that it will become law.

Mr. KOPLOW. I would like to amplify something Mr. Taylor said relative to getting the problems down to the operating level.

One of the problems we experience is the different interpretations of rules and regulations at the local post office level sometime.

Something permitted in one post office merely 60 miles away in another post office, the postmaster said "No, that is a no-no."

I think it is very important that these regulations be thoroughly explained in some manner so that they would be consistent in interpretation.

Mr. WILSON. I notice two or three of you mention that point in your statement, the importance of our oversight on the Postal Service, that proper regulations are put down and set forth, that they are practiced evenly throughout the country.

Certainly we do that and we found in our oversight hearings on the Postal Service itself, there are different interpretations of the postal law in different areas of the country.

This is important.

We certainly would be sure that we kept a close hand on this.

The Postal Service has indicated that they have no problem in administering it, and even to the point they don't feel there is any great cost to them as a result of this.

They think it can be done with the inspection service section they have now, and through their present resources they could establish regulations to police it properly.

I guess as a result of some of the organizations which we would say are disreputable or who are not truly true charitable organizations, have you been responsible for any of your organizations losing funds, through their reputations?

For example, there is some group called the American Kidney Fund that is not related to your organization, but has been prosecuted in various States for their fund-raising.

Are there other examples?

Mr. KENT. The American Kidney Fund is something to which I would address myself in retrospect. They have in the past been in the

practice of having a very, very small percentage go to the cause for which they were collecting.

Their accounting was different from the standard practices of accounting.

Someone has recently told me they are coming in line, having changed their management, and so on. But, yes, it has certainly caused confusion.

I personally have had people come up and say, "Well, if you are part of this organization, we are not going to give you any money."

It takes a while to explain the difference between the two; and that we are not connected.

I don't know to what extent other organizations are similarly affected by new groups, but we do know that in the past that organization did not spend the money where it was intended, at least in my opinion.

Mr. WILSON. A basic purpose of the philosophy behind this bill is, of course, that the disclosure will provide the public basic information about the charity.

I don't personally believe the Government should become massively involved in regulating charities or telling these organizations what to do.

This is not our purpose.

I imagine you agree with me, that disclosure itself is what we are looking for.

By proper disclosure, the public then is given the opportunity to determine if the charity is being run properly and in a business-like way.

Mr. KENT. The principle of the bill is excellent.

Mr. PHILLIPS. The possibility of doing this by regulation has boggled my mind.

The bureaucracy doesn't have to be created to do that.

Mr. WILSON. We don't need another agency involved. We are pleased the Postal Service feels they can do it without adding to their own personnel, or without any great increase in cost to themselves.

Again, as you are probably aware, a number of organizations which solicit the public through the mails have appealed to us for exemption from the bill and I think in each case you have all indicated that you would oppose such exemptions, that you feel that this applies to everyone equally, and there is really no reason why one group should be exempt as long as your own group is complying and so forth.

This is generally the opinion of each one of the groups here?

Mr. TAYLOR. I think it has to be that way in order to allow the public to make an intelligent choice.

If you exempt certain groups and require other groups to do things, then the public makes the choice of where it is going to be putting its charitable dollars, it really doesn't have the necessary information to make that choice.

I think the whole basic philosophy that you have written into this bill is to help the public.

I think everybody has got to comply, in order to give the public that choice.

Mr. PHILLIPS. Mr. Chairman, I think if any group or any agency did persuade the committee that they should be exempted, whether it

is religious, medical, or any other, I assure you that "Save the Children" will be knocking on your door saying that the children's charities should be exempted as well. Because who is more important to the world than children?

I think the whole integrity of the bill rests on its comprehensiveness.

Mr. KENT. The Kidney Foundation feels the same way.

The premise you spoke just a few minutes ago is exactly the way we feel about the matter of exemption. It should not exist.

Mr. KOPLOW. We feel we don't mind competing in a race for the charitable dollars, but we are darned if we want to give somebody else a headstart.

Mr. WILSON. Well, we have had the question of the educational and hospital groups that solicit funds from the general public for exemptions. We don't like to be—to have a lack of understanding for any peculiar problems which they may have.

But we have already, of course, in connection with education, exempted them for fundraising among faculty or alumni, parents and so forth, which is a restricted group of people.

But when they go to the general public, it should be pretty much the same.

Wouldn't you agree for all organizations?

Mr. KOPLOW. Yes.

Mr. PHILLIPS. Absolutely.

Mr. KENT. Yes, sir.

Mr. TAYLOR. Yes.

Mr. WILSON. Thank you very much, gentlemen, for being with us today.

We have two or three other witnesses who we hope to be able to get to. I didn't realize the House was going into session at 11 o'clock today. But we will stay and try to finish with those we have scheduled.

[The following information was furnished:]

AMERICAN HEART ASSOCIATION, VIRGINIA AFFILIATE, INC.—EXPENDITURES FOR THE FISCAL YEAR ENDED
JUNE 30, 1976

	Amount	Percent
Program expenditures:		
Research (local grants and support of national program).....	\$256, 589	19
National program (other than research).....	131, 389	10
Education (professional and public).....	385, 018	28
Community service programs (CPR training, high blood pressure screening) ¹	239, 917	18
Total program expenditures.....	1, 012, 913	75
Support services:		
Fund raising.....	198, 401	15
Management and general.....	140, 178	10
Total support services.....	338, 579	25

¹ Does not include an additional \$16,847 received and expended for the high blood pressure screening program under a grant from the Virginia regional medical program and \$28,157 received and expended for the cardiac rehabilitation program under a grant from the Virginia Division of Vocational Rehabilitation.

Mr. WILSON. Thank you very much for your help and assistance.

Our next witness is Ms. DeLores Tucker, secretary of the Commonwealth of Pennsylvania.

**STATEMENT OF DELORES TUCKER, SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA**

Ms. TUCKER. Thank you very much.

Good morning, Mr. Wilson and members of the committee and our own dear Congressman, Mr. Myers, who we are so proud to see today.

I have with me the director of the Bureau of the Charitable Solicitations from Pennsylvania.

Mr. Chairman and members of the House Subcommittee on Postal Personnel and Modernization, as Pennsylvania's secretary of the Commonwealth, I serve as chairperson on charitable organizations.

Those of us already in the business of regulating charities welcome and enthusiastically support H.R. 41. We know it is needed. The cases of abuse of the public trust are many. We all know of the Pallotine Missions and the Korean Cultural and Freedom Foundation. But what about the New Spirit of '76 Foundation which Pennsylvania found had expended over 96 percent of the funds raised just on raising funds!

What about the American Kidney Fund which has been forced to reorganize by the actions of several States. The examples run on and on.

In the past 2 years the Pennsylvania Commission on Charitable Organizations has had to conduct over 30 formal hearings over alleged violations of our Solicitation of Charitable Funds Act. We have had to take other legal actions too numerous to detail here. Experience has taught us that your proposed law will be a great help; it is both simple and effective.

H.R. 41 creates no new bureaucracy, as you so stated, Mr. Chairman, no extra forms to fill out and no extra fees to pay. The simplicity of this measure is particularly notable in this era of costly Government programs and bloated Government agencies.

It gives the public vital information about a charity's finances when it counts; at the time of solicitation. It requires that this financial information be considered along with all the other normally offered arguments when the request for a contribution is made.

The individual, not the State, makes the final decision about giving. Surely the public has a right to know how its contributions are spent. Since giving to charity is up to the individual, let us allow that individual to make an informed decision at the time of solicitation by requiring public disclosure as this bill specifies.

H.R. 41 will enable the States to focus attention more on fraud and less on cumbersome registration requirements. It will hasten the adoption of uniform financial reporting requirements and forms amongst the States. The trend is already there. We all agree on certain national accepted accounting principles. Pennsylvania along with a number of other States is adopting the New York State financial reporting forms. H.R. 41 will speed up this progress by making it easier and easier to obtain the desired financial information from the charities. Some charities are still fighting against any type of public accountability, as you so noted.

This holding action has consumed an undue amount of our time and efforts by forcing us to fight all the way to the Pennsylvania Supreme Court just to assert our right to obtain financial information from charities domiciled outside of our State who solicit citizens of our Commonwealth.

Critics who argue against this piece of legislation are arguing for a continuation of what can be described only as spotty protection for the public from unscrupulous operators. Pennsylvania, I am sure, has one of the best funded, best staffed State regulatory agencies in the Nation. But with a staff of 9 and a current budget of \$145,000 to regulate the 8,000 organizations in our files, the Commission on Charitable Organizations is hard pressed to handle the enormous volume of paperwork required by our present registration procedures or to fulfill our vital role of actively protecting our citizens through effective law enforcement.

Our goal is to reduce the paperwork as much as possible so that we can more effectively enforce the law. To that end, we are now drafting some amendments to our act. This process would be far simpler if H.R. 41 were already on the books.

Let me give you some examples. Pennsylvania's act, which has been the model used by many States, contains no public disclosure provision. Our files with each charity's registration form and audit are open to the public, but this is not the answer. Few people actually ask for our information. This is not effective consumer protection. We hope to amend our act along the lines suggested by your bill.

Pennsylvania's act excludes from regulation the single largest group of recipients of the charity dollar, religious organizations. As a deeply religious person, I am committed to our constitutional concepts of freedom of religion and separation of church and state. At the same time, I am appalled about revelations concerning groups such as the Pallottine Missions and the Unification Church of Rev. Sun Myung Moon and diverse others. I would oppose any law regulating religion. But I strongly favor requiring any organization, religious or otherwise, that raises funds from the general public to give an accounting of its financial operations.

Public disclosure is a far cry from regulation, and the public has a right to be protected against frauds perpetuated under any guise, including religion. In Pennsylvania, we hope to amend our act to require such public disclosure from all organizations soliciting funds from the general public. Your bill is virtually all inclusive and this broad scope is one of its finest features.

In fact, my only criticism of H.R. 41 is the exclusion of all radio spots and TV spots of 60 seconds or less from the requirements of disclosure. My staff agrees with one position and I happen to agree with another. As stated here today, I think all spots should be included.

This effectively exempts the bulk of all broadcast solicitations. A lot of deception can be practiced in a few short words, and I respectfully urge you to consider amending your bill to limit the exemption from disclosure requirements to all radio and TV spots of less than 45 seconds in duration. This is where I disagree with my staff. But, nevertheless I'm an advocate of it, even in disagreement with my employees.

In short, Mr. Chairman, you have proposed a very reasonable approach to a very serious problem—an approach which will go a long way toward protecting our citizens from charity fraud while actually helping to reduce the burden of widely differing regulations on the many fine and worthwhile charities, and the are fine and worthwhile.

What would we do without those charities such as we heard from this morning and many, many others.

Furthermore, our State regulatory agencies will be better able to achieve their primary goals of protecting the public interest by being better able to focus on enforcement problems instead of being bogged down in bureaucratic paperwork and diversionary legal maneuvers.

Speaking on behalf of the Commonwealth of Pennsylvania and its commission on charitable organizations, I strongly support H.R. 41 and urge its prompt passage.

Thank you very much.

Mr. WILSON. Thank you very much, Ms. Tucker. We appreciate your statement.

Mr. Myers, do you have any questions?

Mr. MYERS. Mr. Chairman, I don't have any questions. However, I want to thank Ms. Tucker for coming down here today. Her statement is well prepared. As usual, her presentation is also good, no matter what she gets involved with.

Thanks again for coming. We will certainly move quickly on your remarks.

Ms. TUCKER. Thank you very much.

Mr. WILSON. I noticed, it's interesting, you made reference to Rev. Sun Myung Moon and his notoriety and the fundraising that has been taking place.

It is true that many of the organizations that are religious in nature, that they are seeking exemption from this legislation. I couldn't agree more with what you said, and that we should not consider such exemptions for these organizations.

I think also the fact that there was a concern expressed by the panel of gentlemen who preceded you as to the multiplicity of State and local regulations in this field. Your statement should be reassuring, I think that if anything, it is going to reduce some of the requirements that you now have in Pennsylvania, if we are able to get a Federal law, that it should simplify rather than make more cumbersome what is done on the local level.

Ms. TUCKER. We are very happy, and applaud you for your foresight and advocacy of this whole charitable area because we have long been saddened that the Federal Government has not been involved in this very big business, and to make certain that this is truth in giving as there is in lending and other areas.

Mr. WILSON. Well, I must confess that here in Washington the pioneer in this field was Vice President Mondale, who started it long before I became involved in it. There were efforts here in the House prior to the time it came to our committee, but they were bogged down in another committee, and they put it on the shelf and didn't give it attention.

When it was determined that, in fact, solicitations made through the mail could properly come to the Post Office and Civil Service Committee, when the mails were used, when we received this in our subcommittee, it immediately became an important item to us, so we have been trying to pursue it.

We intend to give every organization an opportunity. We were accused of not holding hearings last year by some people who appeared before the Rules Committee in an effort to kill any rule to have the bill heard on the floor. That is the principal reason we are starting early this year, so we don't get bogged down in the tail end of the congressional session and also, we will have full hearings, even though we developed a record in the last Congress, we will have full hearings wherever one will have an opportunity, the proponents and opponents and everyone.

We will not put up with the type of criticism that was taken in the Rules Committee in the last Congress. I assure you of that.

Ms. TUCKER. We had the first State conference on charities in 1975. We thought there was a need for the charities to know that we wanted to help them further their dollar and that we were only concerned about making certain that legitimate charities had the right to pursue that charitable dollar and we did have Vice President Mondale as our speaker.

We knew he was very active at that time. We are glad to see the bill. We understand there is great encouragement for its passage.

Mr. WILSON. Well, as you indicated, obviously you found in Pennsylvania that the public does need protection against unscrupulous operations in the charity field. That's one of the reasons you support this legislation. Also, some people have suggested that simply having the information available for anyone who asks for it, in one central location, is adequate disclosure. From your statement, however, you indicated that people won't come to you this way. Not that they have a lack of interest in it, but if we are going to share it with them, and if it is going to be a true consumer measure, it has to be provided to them in the manner in which we will do in this bill.

Ms. TUCKER. That's correct. It is my experience from being very much close to the community, that many people just don't know what is available. They just don't even feel that the information is available and is on file, and is an open record for them to seek.

Very few people know very little about their government and this is one of the advocacy roles the charities can take, themselves. This is what a consumer program is all about.

Mr. WILSON. We thank you very much. We appreciate it very much. Thank you for coming to Washington and I'm sure it will be reassuring to people to know that the attitude of one of the State people who has this responsibility in one of our great States, is interested in this legislation and what their attitude is in connection with their responsibility is in that State.

Thank you very much.

Ms. TUCKER. Thank you again.

I'm delighted again to see a distinguished citizen of the State, a member of your committee.

Mr. WILSON. We now have Mr. Gross, of Price Waterhouse & Co.

**STATEMENT OF MALVERN J. GROSS, JR., CPA, PARTNER,
PRICE WATERHOUSE & CO.**

Mr. GROSS. Thank you very much. Mr. Chairman, and members of the subcommittee, my name is Malvern J. Gross, Jr. I am a partner in the international accounting firm of Price Waterhouse & Co. My

responsibility is to coordinate our practice in the nonprofit field throughout the United States. I am also the author of the 600-page book, "Financial and Accounting Guide for Nonprofit Organizations," and I am a frequent contributor to professional accounting literature.

I was the chairman of the Accounting Advisory Committee to the Commission on Private Philanthropy and Public Needs, and I am currently the chairman of the American Institute of Certified Public Accountants' Subcommittee on Nonprofit Accounting.

I am here, however, in my capacity as a partner of Price Waterhouse. We are pleased to have an opportunity to comment on H.R. 41.

The thrust of this bill is to provide contributors with ready access to financial information in order to allow them to make their own informed judgment on which charities they wish to support. We believe full disclosure and the availability of financial statements are not only appropriate but essential if philanthropic institutions as we know them are to survive.

Our deep concern for full disclosure is best illustrated in an article written for The National Council on Philanthropy. It is titled "Full Financial Disclosure," and I respectfully request that this be made a part of this statement.

While we have a few concerns about specific aspects of this bill, we believe on balance it represents a positive, constructive response to the legitimate demands being expressed for increased financial disclosure by philanthropic organizations.

We also believe that the disclosure approach taken by this bill is less likely to damage the fragile framework of private philanthropy than some of the other regulatory approaches that have been proposed from time to time.

We have several specific concerns which we would briefly like to discuss. We believe these can be handled within the framework of H.R. 41:

1. Subsection (e) provides that "The Postal Service shall adopt rules and regulations which establish the accounting methods and procedures to be used by charitable organizations." While the bill goes on to indicate that such accounting methods and procedures shall conform to "generally accepted accounting principles," we are concerned that the Postal Service may not, in fact, give appropriate consideration to the substantial body of generally accepted accounting principles already in existence for philanthropic and nonprofit organizations.

The Postal Service does not have accounting expertise in the nonprofit area; yet there are many accounting problems that are not susceptible to easy or simplistic answers. Some of us have labored for many years in this area and recognize the problems involved with establishing nonprofit accounting principles.

We worry, therefore, that the Postal Service, even with the best of intentions, will "get in over its head," and in the process will inadvertently come up with rules and regulations that are inconsistent with generally accepted accounting principles.

This could be very harmful to our philanthropic institutions which depend on voluntarism for their survival—both in the form of contributions and in the form of time—and voluntarism, as you know, is very fragile.

We believe the bill should provide for an advisory commission whose function would be to review proposed rules and regulations and to

advise the Postal Service appropriately prior to their adoption. We would suggest that this advisory commission be composed of representatives from the accounting profession, philanthropic organizations and from the general public.

It is our belief that such a commission would insure that the Postal Service did not, inadvertently, adopt arbitrary rules which were inconsistent with the intent of this legislation and would help to eliminate a large number of potential definitional problems in this bill.

2. We are concerned that subsection (c) may be interpreted to give the Postal Service authority to require all organizations to file with the Postal Service "audit reports, accounts, and other information" on a routine basis. We would hope that the intent is to allow the Postal Service to request such information on an individual organization basis, rather than to accumulate massive amounts of data on an across-the-board basis.

If the Postal Service were to interpret this subsection as requiring all organizations to routinely file reports with it, a massive bureaucracy would result, causing a substantial burden to hundreds of thousands of organizations. This would appear to be contrary to the intent of the legislation, and we would suggest the language be modified to insure that a misinterpretation cannot occur.

3. Paragraph 4 of subsection (a) provides for the disclosure of that percentage of all contributions which remains for charitable purposes after deducting all fundraising costs and a pro rata portion of management and general costs. We are not sure that this percentage figure is necessarily meaningful.

The fact that the organization had amounts available for charitable activities does not insure that the organization has or will, in fact, spend this amount for charitable activities. Conceivably, the organization could put all or part of its net contributions aside for spending in a future period, with the result that no amounts were actually spent for the charitable purpose.

We believe consideration should be given to changing the requirement to one of disclosing the percentage of all contributions that were, in fact, actually spent for charitable activities.

There are other areas where we believe the bill may create some minor problems, several of which revolve around definitions. However, we believe that these can be effectively covered in the rules and regulations adopted by the Postal Service, provided the advisory commission which we recommend is adopted. We would be very concerned, however, if some of these definitional matters were left entirely to the Postal Service, because of its limited experience in these areas.

Finally, we believe that there is some risk to philanthropic organizations in the disclosure of the percentage of contributions, provided in subsection (a) (4). This risk results largely from the fact that the public is not aware of the cost of fundraising, and some contributors may be "turned off" to all philanthropic giving by this type of disclosure.

Price Waterhouse & Co. has done a great deal of work trying to determine what fundraising costs are, in part to anticipate the problems this type of disclosure would cause. We have tabulated the financial statements of some 3,000 organizations filing in New York State, the results of which are summarized in an article titled "A New

Study of the Cost of Fundraising in New York." We respectfully request that this article be made a part of this statement.

In summary, it indicates that there are a number of large organizations that have fundraising cost percentages which may appear high to many contributors. Yet, unless one accepts the premise that a substantial number of organizations are terribly inefficient, one must conclude that for some types of organizations the cost of raising funds will be higher than most uneducated contributors believe. This speaks for the need of public education on the costs of fundraising.

We appreciate that the bill recognizes this problem in part by the 3-year delay in the effective date and by giving the organization an opportunity to explain the reasons for their figures directly on their solicitation literature. We believe both are very wise.

Thank you for the opportunity to offer our views on H.R. 41. I would be most pleased to respond to any questions you may have.

Mr. WILSON. Thank you very much, Mr. Gross. Of course, we have no intention of directing or allowing the Postal Service to create a new accounting standard which would be at variance with the generally accepted accounting principles.

The Postal Service in fact has said to us it would not under any circumstances take such action. Isn't it true that the audit guides already developed by the American Institute of Certified Public Accountants clearly provide a basis for compliance with H.R. 41?

Mr. GROSS. Certainly. The guides already in existence, plus another guide which is presently in the process of being finalized, and which will be effective long before the 3-year expiration date in your bill.

Mr. WILSON. I think we can handle this in the record, where we state legislative, rather than to include it in the bill itself, where we instruct the Postal Service as to how they are to proceed. I think also your suggestion that an advisory group work with us prior to the enactment or actual effective date of the bill is very worthwhile, and we will pursue that to see if we can't work out something in that area. It makes good sense. Do you believe this bill should be applicable to religious organizations?

Mr. GROSS. Definitely.

Mr. WILSON. You see no reason why they should be exempt?

Mr. GROSS. No. I am sure you have, and will probably continue to receive many comments from that element of our philanthropic community who feel otherwise, but my experience has been that it is essential to all of philanthropy that religious organizations be included so that some of the problems we have encountered will not occur.

I am convinced most of the problems we have had, that have reached headline proportion, would never have taken place had the organization realized their financial statements were going to be public. So I think this is a preventative bill in that regard.

Mr. WILSON. Then I will ask you about the other groups that have asked for exemptions. Do you believe there should be an exemption for hospitals or universities or colleges? Are there any insurmountable accounting problems for compliance for these groups?

Mr. GROSS. No. There are no insurmountable accounting problems and they should be included.

Mr. WILSON. The IRS, some have suggested the IRS should enforce a financial reporting law. Do you agree?

Mr. GROSS. My concern with the IRS, Mr. Chairman, historically they have been a regulatory-type agency. I think the key to this bill is that it stay in the disclosure environment rather than a regulatory environment. While there are disclosure aspects in the IRS regulations concerning private foundations such as form 980-AR, if the average person gets a hold of these public documents, the effect is that there is no effective disclosure.

I feel much more comfortable with the bill as it is presently written, giving the Postal Service authority.

Mr. WILSON. Do you believe philanthropy organizations are doing an effective job now of disclosing their financial affairs?

Mr. GROSS. I think many are doing a very effective job. I think some could do a lot better job. I think a very small number, are deliberately back in the 19th century and feel it is no one's business but their own. I feel this bill will shake that attitude out very quickly and I think in the process, will result in a lot more of our money going and being used for charitable purposes.

I am as much concerned about the charitable dollar that is unspent as I am about the dollar spent in terms of fundraising and administrative costs, because in the last analysis, the organizations exist to spend their money for program activity, not just to obtain funds.

Mr. WILSON. Do you believe there should be an audit requirement in the law, or do you feel the bill now is sufficient?

Mr. GROSS. As a CPA, I feel eventually there may be a need for audit requirement, but I would not recommend it at this time, Mr. Chairman. I think it is much more important that we do not get a false issue of the cost of auditing in the way of passage of this disclosure bill. I think down the road, if experience shows there are organizations that are not fairly presenting their financial affairs, this committee can certainly consider the audit requirement at that time, but I think the most important thing is that the bill be passed. I would rather not see false issues placed in the roadpath.

Mr. WILSON. Thank you very much, Mr. Gross. You have been extremely helpful and you present a different picture to us, from a different group, and it is certainly worthwhile. We appreciate your giving us your time.

Mr. GROSS. Thank you.

[The two articles referred to by Mr. Gross follow:]

Non-Profit REPORT

THE **PHILANTHROPY**

MONTHLY

April, 1976 Volume 9 Number 4

By Malvern J. Gross, Jr.

Partner, Price Waterhouse & Co.

A new study of the cost of fund raising in New York



For the last three years Price Waterhouse has been abstracting financial data from all organizations filing audited financial statements with the State of New York. These include all organizations with total contributions of \$25,000 or more.¹ The substantial data which has been accumulated for the 3,000 organizations filing these statements has been computerized for analytical purposes. This article discusses fund raising cost data abstracted from reports on file as of August, 1975, which for the most part, would be financial reports for the organization's 1974 fiscal year.

Aggregate Financial Data

Figure 1 summarizes the revenues and expenses for the 3,085 reporting organizations, divided into two categories—those organizations with total contributions of less than \$100,000 and those with contributions of \$100,000 or more. It is interesting to note that 39% of the total number of organizations

raised 94% of all contributions. This is significant because it suggests that regulatory agencies could be using higher cut-off limits to establish reporting requirements and still cover substantially all funds raised. The relatively high cost of complying with requirements for audited financial statements (such as in New York) hardly seems justified when viewed from the perspective of the small aggregate dollars raised by these small organizations.² In the discussion which follows, our data relates to an analysis of the 1,202 organizations with contributions of \$100,000 or more.

Overall Fund Raising Costs

As can be seen from Figure 1, the overall cost of fund raising for this larger group was 11.2% which appears respectable.

Unfortunately this overall figure is suspect because 282 organizations either reported no fund raising cost at all, or costs of less than one half of one percent. While it is certainly possible for an organization to raise \$100,000 without any fund raising cost, it does not seem probable that there would be 282 organizations. For this reason it was concluded that most of these 282 organizations did not properly report their costs of fund raising. The author believes that a more representative figure is obtained by eliminating from the fund raising cost calculation these 282 organizations, and this then raises the overall average for the remaining 920 organizations to a still respectable 13.8%.

Fund Raising by Type Organization

But even this figure has to be looked at very carefully because it is an average, with many different types of nonprofit organizations. Fortunately, the State of New York classifies all organizations by type and while the classifications are not mutually exclusive, they indicate the general nature of activities.

Figure 2 shows the contributions and the fund raising costs for these 920 organizations divided, arbitrarily, into three categories. There is considerable variation in fund raising costs between these three categories. The "voluntary health and social welfare" category had a significantly higher overall fund raising cost than the other two categories. Many of the more visible fund raising appeals are made by organizations that fall into this category, and undoubtedly much of the legislation proposed over the last several years is addressed to these organizations.³ For this reason, it is important to recognize that the overall fund raising cost of this group was 16.5%, rather than the overall 13.8%. But in trying to assess the impact of public attitudes on fund raising costs it is important to remember that this 16.5% is itself an average. Of these 351 voluntary health and social welfare organizations, 110 organizations reported fund raising costs of 21% or

more, with the average for the 110 being 41%.

Obviously, these 110 organizations should be especially concerned about the present tendency of states to regulate through the use of maximum fund raising ratios. At the same time it is important to remember that some of the organizations in the other two categories also had fund raising costs significantly in excess of these overall averages. Of the 569 organizations in the other two categories, 116 had fund raising costs of 21% or more.

Fund Raising Cost Limitations

Figure 3 shows these 110 and 116 organizations summarized to show how many would be adversely affected by varying fund raising cost ratio limitations. For example, from this it can be seen that if the maximum acceptable fund raising cost were 35%, 86 organizations (45+41) would be adversely affected, and that they raised \$53 million.

Before one too quickly concludes that this, or any other arbitrary percent is too high, and that legislation or regulation is needed, it would be well to consider the large amount of aggregate dollars raised by organizations with these higher ranges of fund raising cost. Unless one were to believe that these 226 organizations were grossly inefficient, wasteful, or "rip offs", there must be valid reasons for these higher costs.⁴

Regulators have, of course, a legitimate concern for protecting the public. The author believes the most responsible manner of protecting the contributor is to ensure that the contributor has financial statements readily available that clearly disclose the activities of the organization, including the cost of fund raising. The contributor is the ultimate "stockholder" of a charitable organization, and it should be the contributor who makes the ultimate decision of whether an organization is doing a good job or not. While many contributors may, in fact, not take advantage of the opportunity afforded by the availability of financial statements, enough will do so to ensure that the "bad guys" are exposed.

It is perhaps appropriate to note here that this is the direction taken by New York State last year. Effective January 1, 1976 all fund raising literature distributed in New York must contain a statement that financial statements are available from the organization, or from the State of New York and addresses for both must be given.⁵

Summary

This study of fund raising cost of over 3,000 organizations is the most complete analysis of fund raising costs yet assembled. The overall cost of fund raising appears to be somewhat less than an earlier, more limited study suggested,⁶ but it is still more than

most legislators and the public believe it is. Further, when one looks at types of organizations, and at individual organizations, it is apparent that there is wide variation in fund raising cost.

But while this study disclosed this variation, it did not attempt to analyze the reasons for it. In fact, the author cautioned against making judgments based only on statistical analysis since relationships that might appear to be high could in fact be quite reasonable considering all the facts. Likewise, apparently low fund raising cost relationships might still be too high.

Finally the author observed that the soundest approach to regulating fund raising costs was through the market place — that is letting contributors make informed judgments. This suggests that financial statements should be readily available to the public, and the recent New York disclosure law was cited as a good approach to this problem.

Footnotes

1. Note that the reporting requirements were changed in 1975 and all organizations having total revenue and support from all sources (not just contributions) of \$50,000 or more must now file audited financial statements (Form BSW 497). The effective date for these revised filing requirements are years ending after September 1, 1975.

2. A good argument could be made that even higher limits should be set. For example, if a limit of half a million dollars were used, 404 organizations would be covered, or less than 14% of all organizations, but these 404 organizations accounted for 79% of the total contributions reported. Likewise if a million dollar cut off were used, 230 organizations (8% of the total) would account for 70% of the total contributions.

3. Religious organizations have received some adverse publicity in recent months but are not required to file financial statements with New York.

4. See the author's article in The Philanthropy Monthly, April, 1976 for a more extended discussion about the problem of fund

Figure 1

**3,085 NEW YORK FILING ORGANIZATIONS
CLASSIFIED BY THOSE WITH CONTRIBUTIONS OF LESS THAN \$100,000
AND THOSE WITH \$100,000 OR MORE
AGGREGATE REVENUE, EXPENSES AND CHANGES IN FUND BALANCES**
Based on Reports on File August, 1975

	Contributions	
	Less than \$100,000	\$100,000 or More
Revenue and Support		
Contributions	\$ 64,000,000	\$1,093,000,000
Indirect public support	77,000,000	192,000,000
Program fees and government support	1,251,000,000	2,528,000,000
Investment and other income	88,000,000	314,000,000
	<u>1,480,000,000</u>	<u>4,127,000,000</u>
Expenses		
Program Supporting	1,264,000,000	\$3,252,000,000
Fund Raising	11,000,000	122,000,000
Administrative and other	203,000,000	465,000,000
	<u>1,478,000,000</u>	<u>3,879,000,000</u>
Excess of revenue and support over expenses	2,000,000	248,000,000
Fund balance beginning	<u>1,242,000,000</u>	<u>4,934,000,000</u>
Fund balance ending	<u>\$1,244,000,000</u>	<u>\$5,182,000,000</u>
Number of organizations	<u>1,883</u>	<u>1,202</u>
Fund raising cost as a percent of contributions	<u>17.2%</u>	<u>11.2%</u>

raising cost limitations.

5. While the intent of the New York law is excellent, it has two defects. First is the requirement that both addresses be shown on the literature. This makes it necessary for an organization to have separate literature for New York distribution. It would seem that having either address would be sufficient and presumably most organizations would use their own.

The second defect is the requirement that the financial

statements provided must be the eight page New York State Form BSW 497. It would seem sufficient for an organization to furnish its own annual report containing audited financial statements.

6. See *Philanthropy Monthly*, March, 1975 for a discussion of the cost of fund raising for a number of organizations filing financial statements in Illinois. In that study 127 organizations had an overall fund raising cost of 26%.

REPORTED FUND RAISING COSTS
NEW YORK FILING ORGANIZATION WITH CONTRIBUTIONS OF \$100,000 OR MORE*
CLASSIFIED BY CATEGORY ORGANIZATION
 Based on Reports on File August, 1975

Figure 2

<u>Category</u>	<u>Number</u>	<u>Contributions</u>	<u>Fund Raising</u>	<u>Percent Fund Raising</u>
Voluntary Health and Social Welfare	351	\$294,521,000	\$ 48,474,000	16.5%
Fund Raising **	115	165,713,000	14,875,000	9.0
Civic, Cultural, Environmental, Fraternal, Political, Hospital and Other	454	418,510,000	57,772,000	13.8
Total	920	\$878,744,000	\$121,121,000	13.8%

* Excludes organizations with reported fund raising costs of less than one half percent. See text for discussion.

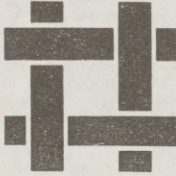
** Includes United Way, federated fund raising campaigns and organizations whose functions are largely to solicit funds for distribution to other organizations.

Figure 3

NEW YORK STATE FILING ORGANIZATIONS
WITH CONTRIBUTIONS OF \$100,000 OR MORE
SUMMARIZED TO SHOW EFFECT OF VARYING
FUND RAISING RATIO LIMITATIONS
 Based on Reports on File August, 1975

<u>Maximum Acceptable Fund-Raising Ratio Limitation</u>	<u>Organizations Adversely Affected</u>			
	<u>Voluntary Health and Social Welfare</u>		<u>All Other Organizations</u>	
	<u>Number</u>	<u>Contributions</u>	<u>Number</u>	<u>Organizations</u>
20%	110	\$49,847,000	116	\$106,875,000
25%	77	31,618,000	84	75,994,000
30%	57	23,017,000	65	50,981,000
35%	45	19,808,000	41	33,405,000
40%	30	15,547,000	29	27,211,000
50%	17	9,266,000	13	3,134,000

A VOICE FOR PHILANTHROPY



National Council On Philanthropy

The NCP is the only national forum where representatives of donors, donees, and the community groups jointly discuss matters of mutual interest for the improvement of Philanthropy. It reflects the interests of thousands of donor and donee organizations serving such fields as education, welfare, health, the arts and religion. The National Council seeks to develop a consensus on major issues and to identify emerging problems in the entire field of philanthropy. The NCP encourages better management of nonprofit, nongovernmental organizations. The National Council operates on a moderate budget — with a small staff — and keeps itself flexible to meet new needs of voluntarism. It is nonpolitical and is directed by a National Board of Trustees, representing the major segments of philanthropy.

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Full Financial Disclosure

essential to the survival of Private philanthropy

by Malvern J. Gross, Jr. CPA

In its 1974 report to the Commission on Private Philanthropy and Public Needs, the Accounting Advisory Committee stated: "In the Committee's opinion, private philanthropy cannot achieve its full potential without completely open, understandable financial reporting based upon uniform principles. The Committee is concerned that if private philanthropy does not do a more effective job of financial reporting, regulatory bodies will increasingly assume responsibility to regulate philanthropic organizations. Inadequate reporting, including the absence of uniform accounting principles, will encourage governmental intervention and may lead to decisions regarding philanthropic goals being made more by government and less by the contributor."

Since this report was written, there has been increasing evidence that the public is concerned about the adequacy of financial reporting by philanthropic organizations. Some of this concern stems directly from well-publicized newspaper accounts of the abuse of public trust by a few charities; part comes directly from the increased public suspicion of all our institutions in

this post-Watergate period, particularly those that seem to operate without apparent public accountability.

These concerns are exhibiting themselves in several tangible but potentially very damaging ways. First, and

foremost, annual giving — while holding up in absolute dollars — is not keeping pace with inflation. Collectively, a smaller and smaller portion of our GNP is being funneled through private philanthropy. The contributor is the ultimate

Mr. Gross is Price Waterhouse's lead specialist for nonprofit organizations. He has long been a leader in the accounting profession in developing accounting and reporting principles for nonprofit organizations, and his book, Financial and Accounting Guide for Nonprofit Organizations, is recognized as the definitive work in the field.

He was chairman of an Accounting Advisory Committee to the Commission on Private Philanthropy and Public Needs. In addition, he is an advisor to numerous state regulatory bodies and is the AICPA's designated spokesman at all Congressional hearings involving nonprofit accounting matters.

Mr. Gross is an advisor to the Board of

Directors of the National Assembly for Social Policy and Development, Inc., and he was a member of the Committee that rewrote the book Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations, published by the National Health Council and several other national organizations. He is a former adjunct professor of accounting at Lehigh University.

One of Mr. Gross's most important activities at present is his serving as chairman of an AICPA Committee on Nonprofit Accounting, which is charged with responsibility for developing accounting principles for all nonprofit organizations not now covered by an Audit Guide.

"stockholder" of most philanthropic organizations, and his vote, or "nonvote" when he fails to give it, is ultimate and final.

These concerns are also expressing themselves in the spate of federal, state — and in some instances, local — legislation, designed to protect the public from real or imagined abuses. Unfortunately some of the legislative remedies proposed would "throw out the baby with the bathwater."

There are, of course, many aspects to accountability and the public's perception of the credibility of a given institution, and the author does not want to overstate the case for the importance of full financial disclosure. Financial accountability is only one part of total accountability. The author submits, however, that financial accountability is the most important aspect of accountability because suspicions of financial wrongdoings or mismanagement can bring down even the largest nonprofit organization in a very short order. Unfortunately, some philanthropic organizations and their boards have not recognized their responsibility to provide financial accountability, or their vulnerability to public opinion once they have received bad publicity.

Full financial disclosure may be discussed in terms of four principal aspects:

1. The characteristics of meaningful financial statements
2. The importance of uniform accounting principles
3. The need for positive legislative leadership by philanthropic organization, and
4. the responsibilities of the board of trustees for full financial disclosure.

Characteristics of Meaningful Financial Statements

The most important aspect of full financial disclosure is the preparation of meaningful financial statements. The existence of uniform accounting principles is important but uniform principles are secondary to having financial statements that can be readily understood by the lay reader. Many philanthropic organizations are careful to follow the intricacies of fund accounting and the latest thinking with regard to accounting principles, but they fail completely to communicate to their readers because they do not prepare their statements in a meaningful manner. Following uniform principles is important, but telling the reader what has happened,

in a manner he or she can understand, is vital.

To make them meaningful and informative, there are six characteristics which should be present in any set of financial statements:

- 1) They should be easily comprehensible, so that any person taking the time to study them will understand the financial picture. This characteristic is the one most frequently absent.
- 2) They should be concise so that the person studying them will not get lost in detail.
- 3) They should be all-inclusive in scope and should embrace all activities of the organization. If there are two or three funds, the statements should clearly show the relationship between the funds without a lot of confusing detail involving transfers and

The AICPA Committee on Nonprofit Accounting expects to publish in January 1977 a "tentative set of accounting principles for nonprofit organizations..."

appropriations.

- 4) They should have a focal point for comparison so that the person reading them will have some basis for arriving at a conclusion. In most instances this will be a comparison with a budget, or with corresponding figures from the previous year.
- 5) They should be prepared on a timely basis. The longer the delay after the end of the period, the longer the period before corrective action can be taken.
- 6) Finally, where appropriate, they should be prepared on the basis of "generally accepted accounting principles." The statements will be easier for the reader to understand if the principles followed are the same as those followed by other organizations.

These statements must represent straightforward and candid reporting — that is, the statements must

show precisely what has happened. This means that income should not be arbitrarily "buried" in some subsidiary fund or activity in such a way that the reader is not likely to be aware that it has been received. It means also that if the organization has a number of "funds", the income and expenses of all such funds should be shown in the financial statements in a manner that allows the reader to know he is seeing all of the activities for the period. In short, the statements have to communicate accurately what has happened. If the statement format is confusing to the reader, and he does not understand what the statements are trying to say, then they have failed to accomplish their principal objective.

Full financial disclosure means, therefore, not just full reporting, but meaningful reporting. A good test of whether a set of statements meets the criteria of full financial disclosure is the "grandperson test." Can these statements be clearly understood by any interested "grandperson" (i.e., grandmother or grandfather) of average intelligence who is willing to take some time to study them? When he finishes studying them, will he have a good understanding of the overall financial activities for the year? If he doesn't, then the statements are not serving their purpose and should be revised and simplified until they do meet this test.

Many readers, particularly accountants, may protest saying that financial statements are normally read and understood only by the board of trustees or relatively few individuals. They may also point out that you cannot expect an average grandperson to understand the "mysteries" of accounting. To these protests, it can only be pointed out that a financial statement is a form of communication, and if this communication cannot be prepared in simple enough English so that the uninitiated reader will understand it, then it has failed in its principal purpose. Every time a financial statement is prepared its effectiveness should be measured against this "grandperson test."

Uniform Accounting Principles

The picture with respect to uniform accounting principles for nonprofit organizations is cloudy and only in the last several years has it started to be addressed. The Accounting Advisory Committee to the Filer Commission noted in its report:

"Alternative accounting principles now exist from which most philanthropic

organizations may choose. Accordingly, transactions handled in one way by an organization may be handled in a different way by another. . . ."

This handling of the same transaction in different ways creates credibility problems because readers become both confused and suspicious when transactions are handled in different ways. Readers must be able to look at the financial statements reasonably confident that sleight-of-hand bookkeeping has not been used to distort the financial statements.

In large measure, criticism of the absence of a uniform set of accounting principles is criticism of the accounting profession. Until 1972, the accounting profession had not formally established accounting rules for any type of nonprofit organization. Since 1972 the American Institute of CPAs (AICPA) has issued guides applicable to three types of nonprofit organizations: hospitals, colleges and universities, and voluntary health and welfare organizations. However, many major nonprofit organizations are not covered by any of these three guides—private foundations, religious organizations, museums, performing arts organizations, membership organizations, research institutions, labor unions and many others. Further, even among the three categories of organizations covered by the existing accounting guides, there is considerable diversity in the accounting rules and reporting practices prescribed.

Largely as a response to the concerns expressed by the Accounting Advisory Committee, the AICPA in 1975 established a Committee on Nonprofit Accounting to write a new accounting guide that would be applicable to all organizations not covered by one of the three earlier guides. This Committee is completing the initial phase of its deliberations and expects to publish in January, 1977, a "tentative set of accounting principles for nonprofit organizations. . . ."

The Committee, which the author chairs, has used the word "tentative" in the title of its draft quite deliberately because the Committee is anxious to get input from all interested persons before deciding on a final set of principles. The Committee is composed of leading CPAs involved with nonprofit clients, selected from among the major accounting firms, and who have undoubtedly had more experience in this area than any other group of accountants. At the same time, the Committee recognizes that there may be aspects of some of these proposed principles to which

it has not given full consideration. For this reason, all philanthropic organizations will be urged to respond to the Committee's request for comments on this "tentative" set of accounting principles.

The Committee's statement will discuss approximately 50 accounting principles and reporting practices, such as cash versus accrual basis reporting, fixed assets capitalization and depreciation, recording of restricted gifts and grants, and functional reporting. While some aspects of reporting practices will be discussed, the Committee does not intend to prescribe format, and each organization will be free to develop the format most appropriate to its circumstances, provided only that it adheres to the principles and reporting practices outlined in the document.

Inevitably, every nonprofit organization looking at the tentative set of principles will find one or more that will cause it

Readers must be able to look at financial statements and be reasonably confident that sleight-of-hand bookkeeping has not been used to distort them.

anguish. There is no way to establish uniform principles without getting someone upset because, by definition, all organizations are not now following the same procedures or there would be no need for this new document. This is not to suggest there are not logical and valid reasons for the practices being followed which may differ from those set forth in this tentative statement. In most instances, there are. But in the interest of full financial disclosure—disclosure which most lay readers can understand and will accept without suspicion—there has to be more consistency than we have at present. Thus, in looking at this tentative statement, each reader should keep in mind that statesmanship is needed for a single set of principles, even if it means that the reader's own organization will have to change some of its accounting principles to conform.

Positive Legislative Leadership
The Accounting Advisory Committee

suggested that there was risk of legislative intervention to enforce full financial disclosure, and this admonition was not without basis. Senator Mundale, and Congressmen Karth, Wilson, and Van Deerin all introduced legislation in the last session of Congress that involved federal regulation of financial reporting by nonprofit organizations. In large measure, these legislative leaders were responding to the public's post-Watergate demand for full accountability, which many perceive as not being adequately met by some institutions.

Unfortunately, while this proposed legislation is well-intended, it would thrust the federal government into the accounting rule-making area, with the inevitable difficulties that arise whenever rules are made in Washington. The motivation behind the accounting profession's recent interest in nonprofit accounting largely has been the recognition that if the private sector does not put its accounting house in order, government will do it for us.

Aside from establishing government as the rule-maker, this proposed legislation also deals with the question of how philanthropic organizations should disclose their financial affairs. Some have proposed that nonprofit organizations should be required to file a form of registration statement with a federal agency prior to soliciting funds; others have suggested requiring soliciting organizations to give a copy of their complete financial statements to every contributor at the time of solicitation. Still others suggest summary information and ratios on all fund raising literature.

Most people are in favor of full disclosure and meaningful financial reporting. The problem is that as well-intentioned as much of this legislation is, it is often ill-conceived. This is hardly surprising since few legislators have a deep insight into the actual practices of these organizations. The disclosure requirements established by legislation usually result in a myriad of reporting forms and accounting rules that bear little relationship to the principles and reporting formats followed by charitable organizations. And perhaps more significantly, legislation is often proposed (and passed) that establishes minimum and maximum ratios for program, fund raising and general and administrative expenses without any real understanding on the part of the legislators as to the effects such limitations would have on the operations of charities.

Responsible charities obviously have an important interest in helping both

legislators and regulators establish meaningful laws that will protect the public against the few charlatans that give all of philanthropy a bad name. The problem is that, for the most part, philanthropic organizations have been unwilling to assume a positive leadership role of assisting legislative leaders in developing meaningful legislation. It seems that most nonprofit organizations only react to legislative proposals, rather than taking part in the process leading up to the proposals. And, for the most part, these reactions come across to Congress and the public as being fairly negative in character.

Perhaps in part the problem is that some organizations are under the mistaken belief that there are only two options — legislation, or no legislation. Thus they fight all legislation because they want to avoid any further administrative burdens. The author believes the real options to be either a viable, workable bill which will promote full financial disclosure without causing harm to philanthropy, or a bill which will provide so many bureaucratic controls and arbitrary accounting and reporting regulations that all of philanthropy will be hurt.

This is where positive legislative leadership comes in. Philanthropic organizations should develop their own workable, model federal law which responds to the demands being made for full financial disclosure. They should go to Congress to urge adoption on a positive basis.

What type of law makes sense? The key is disclosure — meaningful disclosure; this means financial statements that present an overall picture of the organization in a format with appropriate language that the nonaccountant can understand, and it means making these statements readily available to all interested parties.

Naturally this disclosure has to be done in a responsible manner. Most readers do not understand how our philanthropic organizations actually work and are not fully aware that it costs money to raise money. The author is opposed to automatically giving all contributors at the time of solicitation a copy of the financial statements; this would cause more problems than it would solve.

But each contributor should know that he can get a copy of the financial statements easily and without a lot of red tape. Thus, a responsible law would be one similar in intent (but not in detail) to the recently-enacted New York State law which requires all fund raising literature to contain a statement indicating that the contributor may obtain a complete

financial statement by return mail by writing to the organization. This provides full financial information but without some of the cost, risks and bureaucratic control associated with other proposals.

Some argue that merely making the financial statements available, either through a telephone or a mail request is not sufficient — that a relatively small percent of contributors will, in fact, ask for a set of financial statements. This is possibly true, but this author has great confidence in our capitalistic system in which the consumer makes the ultimate market decision. Full disclosure and the availability of financial statements will quickly flush out the few organizations that do not seem to be spending their resources in the manner advertised, and our press will help to call attention to those apparent "bad guys." But without the availability of information, and without the knowledge on the part of the contributor that such

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not put its accounting
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statements are available, these "market forces" will not have a chance to act.

The key point to this discussion is that many in Congress believe philanthropic organizations are not doing a good enough job in providing full financial disclosure and they are determined to remedy this by legislation. So, either philanthropic organizations are going to provide positive leadership in this area, or Congress is going to do it for them. That is the choice.

Board Responsibilities for Full Disclosure

The board of trustees has the final responsibility for all actions of an institution, and this includes the responsibility to see that meaningful financial statements are prepared and that they are made available to all interested persons. Both are essential.

Unfortunately, some board members abdicate these responsibilities, sometimes to the extent that the financial statements are so poorly prepared that they themselves do not understand them. This often occurs with busy, prestigious board

members who do not have the time or inclination to learn the intricacies of fund accounting financial statements, and who are reluctant to ask questions which might expose their ignorance. Unfortunately, this reduces their ability to help govern the institution, with all of the potential consequences this could have for the organization and for their own personal liability, as well.

However, it is not enough to prepare the statement so that the board members understand them; they must also be prepared with the public in mind. "Private" philanthropy is no longer private, and boards must recognize that the attitudes of earlier years are no longer viable. The public is interested, and positive steps must be taken to ensure that meaningful statements are prepared, and that they be made readily available to all interested persons.

This requires positive action on the board's part. The board must insist that their financial management prepare financial statements which meet the characteristics discussed above. They should not allow their staff to fall back on the crutch of traditional fund accounting techniques to justify financial statements that are complex and incomprehensible. Financial statements must communicate and it is up to the board to insist that they do.

It is also up to the board to make the statements available to all interested persons, and positive steps should be taken to make sure that such persons know they are available. Perhaps more institutions should follow the example provided by the New York State law previously referred to that requires an indication on the face of the literature that financial statements are available for the asking. If all organizations did this, much of the Congressional concern would evaporate.

Summary

Full financial disclosure is not a catchy description of something that philanthropic organizations have a choice of either providing or not providing. Full financial disclosure is essential if private philanthropy as we know it is to continue in this country. Unfortunately — or perhaps fortunately — the post-Watergate environment in which we exist demands that each institution justify its continued existence. Justification for continued existence is not only showing what has been accomplished, but, equally important, relating that accomplishment to the financial resources which were used and those which were available. And this is where full disclosure is essential.

Mr. WILSON. Our final witness for the day is Mr. Kirk Batzer, representative of the American Institute of Certified Public Accountants. Mr. Batzer?

STATEMENT OF R. KIRK BATZER, MEMBER, AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, ACCOMPANIED BY ARTHUR HARRIS, MEMBER

Mr. BATZER. Thank you, Mr. Chairman.

I have with me Mr. Arthur Harris of the city of Washington, who is also a member of the American Institute of Certified Public Accountants.

I am a partner in a public accounting firm that practices nationwide. I have my offices in New York City.

The American Institute of CPA's is the nationwide organization of those accountants who practice public accountancy. Mr. Harris and I are particularly interested in the affairs of nonprofit organizations. The institute has a committee which deals with the accounting problems of nonprofit organizations of which we are members.

Among the tasks which we have undertaken is, of course, the study of H.R. 41. I believe that we have studied it carefully and we have also studied with great interest your introductory statement, when you reintroduced this bill in the 95th Congress earlier this year. We have a formal statement which we would like included in the hearing record, if that is possible.

In an organization of our scope and nature, it is our endeavor to be objective and independent. As such, we are not here to testify either for or against the bill. But we do have some observations on the bill, which we believe will be useful and helpful to you.

We note with satisfaction and with pleasure that there are references in the bill to generally accepted accounting principles. Both as to the preparation of financial statements and in the matter of accounting matters, to be dealt with in the regulations that will emanate from the bill, we believe very much that this will be in the interest of the public, it will be in the interest of the charities, and, we think, it will be in the interest of Congress.

Other speakers have alluded to the need for uniform accounting principles. Generally acceptable accounting principles are those rules which have evolved over a long period of time, which enable people to understand better financial information that is intended to be conveyed by financial statements, which is the usual means of conveying economic and financial information.

When the term "generally accepted accounting principles" is used, it's generally thought of in terms of commercial and industrial organizations organized for profit. There is, nevertheless, a substantial body of literature that relates to nonprofit organizations.

The previous speaker alluded to it, and I think you did, Mr. Chairman, in your reference to audit guides issued by the American Institute of CPA's. These have been in existence for some time. They are updated and revised from time to time. The American Institute of CPA's has a keen interest in this subject.

I believe you can be assured that nonprofit industry and professional accountants too will continue to give this matter careful attention in the years ahead.

A second matter that I would call to your attention, which has already been alluded to, arises from my experience, in the State of New York, where legislation dealing with the regulation of the charities calls for an advisory council to assist the regulatory body. That system has been in existence for some time.

This council assists the regulatory body in the procedures that deal with the administration of the law; not only in their proposed form, but in an ongoing capacity, dealing with problems that arise from time to time.

It would be my guess that whatever agency of the Federal Government deals with this legislation, there will continue to be issues which the agency must face. Having a structured and a continuing body of outsiders to whom they may refer a difficult problem and gain insight as to what the effect on the public and on the charities will be on the many things they will have to deal with in formulating regulations will be a great help.

I have prepared, and will leave with you, a formal statement of our position. As part of that statement, there is a reference to the legislation in New York State which sets up this advisory group. I commend that to your earnest attention.

Lastly, I believe I can speak on behalf of our committee that we are pleased, and we believe it is adequate and suitable at this time for the public interest that you are proposing a bill which calls for disclosure in the solicitation for information which you believe to be pertinent and relevant.

We believe this, bearing in mind the fact that many States have considerable regulation involving charities along with the fact there are certain reporting requirements in the U.S. Treasury, and that this requirement in H.R. 41 will be in addition.

We believe though that the provisions calling for disclosure are sensible and adequate at this time, and are much to be preferred to a program which would call for registration and the submission of data to a Federal body, before the charity is permitted to solicit.

You might be interested to know—and I notice that you have alluded to this factor earlier this morning, Mr. Chairman—that a number of charities are already observing these proposed requirements.

Mr. Harris, who is with me, received only last night, I believe, in the mail, a solicitation request from a charity in the Metropolitan Washington area, which appears to comply with the requirements that you have suggested in your bill.

Perhaps Mr. Harris would just like to refer to it in a minute.

Mr. HARRIS. It was actually at a training meeting yesterday. My firm volunteered me as a solicitor for the Junior Achievement program here. Their literature, which was handed out to the solicitors yesterday, included a summary of their budget procedures, indicating that in response to the American Institute of CPA's proposed guidelines on accounting presentation for charities, that program administrative and fund-raising expenses were to be adequately disclosed. And they presented a statement indicating that their program expenses ran some 84 percent; their administrative expenses, 10 percent; and their fund-raising expenses, 5 percent.

So this disclosure came, presumably without even knowledge of your bill, just in response to the generally accepted accounting principles that are being talked about.

Mr. BATZER. We also gave you some exhibits on the New York State law. We are pleased to have had this chance to appear and we would be happy to answer any questions.

Mr. WILSON. Thank you very much. We will include your full statement in the record.

[The prepared statement follows. The publications entitled "Audits of Colleges and Universities," "Hospital Audit Guide," "Audits of Voluntary Health and Welfare Organizations," and a "Discussion Draft," were retained in the subcommittee files.]

STATEMENT OF
THE NON-PROFIT ORGANIZATIONS SUBCOMMITTEE
ACCOUNTING STANDARDS DIVISION
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

The American Institute of Certified Public Accountants is the national professional association representing the accounting profession with a current membership numbering more than 125,000 CPAs. Its members practice in every state and territory of the Union and the District of Columbia.

The practice of public accountancy requires our members to be familiar with a wide range of business and industrial enterprises and, particularly, the financial reporting requirements associated with them. This includes financial reporting for both profit-motivated and non-profit entities.

One of the principal functions of the Institute is to assist in the continual updating of the extensive body of knowledge in the field of accounting. This is accomplished by committees and task forces comprised of practicing CPAs and supported by Institute staff. In the case of non-profit organizations, the Institute's Non-Profit Organizations Subcommittee of the Accounting Standards Division, consisting of eleven CPAs, is devoting a considerable amount of time to developing recommendations on financial accounting and reporting by non-profit organizations. When H.R. 41 was introduced, this Subcommittee was assigned the responsibility to study the Bill's provisions insofar as they relate to accounting matters, and to prepare comments thereon on behalf of the Institute.

H.R. 41 requires the furnishing of certain information in connection with the solicitation of charitable contributions by mail and gives the U.S. Postal Service certain additional authority to carry out these new responsibilities. One of the items of information to be provided upon an individual's request is a "pertinent financial statement prepared in accordance with generally accepted accounting principles, for the most recent complete fiscal year of the organization..." The Bill provides that the Postal Service shall adopt rules and regulations which establish the accounting methods and procedures to be used by charitable organizations, and that these methods and procedures shall conform to any generally accepted accounting principles applicable to the field of operation of the charitable organization involved. In our remarks we are expressing no opinion concerning whether the U.S. Postal Service is the appropriate organization to promulgate such rules and regulations.

We believe Congress and the Postal Service will find this reliance on "generally accepted accounting principles" (GAAP) useful and of significant benefit to the public. In this connection, references to GAAP can be found in federal statutes and regulations requiring financial reporting and disclosure by business entities of many types. For example, as early as 1938, the

Securities and Exchange Commission recognized in Accounting Series Release No. 4 and again in 1973 in Accounting Series Release No. 150, the need for registrants to prepare their financial statements in conformity with generally accepted accounting principles. These federal statutes and regulations recognize that it is appropriate to rely on generally accepted accounting principles which, in simplest terms, are the rules that determine how the numbers representing information about financial transactions are measured, aggregated, arranged, reported, and supplemented with textual disclosure, in stating the financial position of an enterprise at a particular moment in time, the results of its operations for a defined period, and changes in its financial position during such period. "Accounting" is the process by which financial accounting standards are applied to the information about individual business transactions to produce financial statements.

It is important to understand that financial reporting standards--GAAP--are not "laws" or "givens" like the physical laws such as mathematical rules or chemical formulae. Financial accounting standards are conventions, ways agreed upon (or determined by some authority) to measure information about business transactions, aggregate it, state it, and so forth; there is no such thing as an absolutely "right" or an absolutely "wrong" financial accounting standard. Likewise, there will never be a system of financial accounting standards that is finished, complete, immutable, because the business practices which produce the information, which in turn the financial accounting standards organize and communicate in an ordered fashion, are ever-changing. As in the case of companies required to file with the Securities and Exchange Commission, a long history of cooperative effort between that government agency and the public accounting profession has resulted in substantial progress in the development of GAAP to be followed by the many different kinds of companies required to register with the Commission.

The requirement in the legislation to rely on generally accepted accounting principles will serve to assure greater confidence on the part of the users of such financial information. The following sections of this letter deal with the progress that has been made to date in developing GAAP for non-profit organizations and suggest a way in which the Postal Service might effectively utilize the talents available in the private sector in implementing the requirements of the Bill.

To assist practitioners and financial managers in particular industries, auditing and accounting guides are published by the Institute which set forth the applicable accounting and auditing rules for such entities. In the case of non-profit organizations, guides have been issued for hospitals, voluntary health and welfare organizations, and colleges and universities. In addition the Institute has recently exposed for public comment a discussion draft entitled "A Tentative Set of Accounting Principles and Reporting Practices for Non-Profit Organizations Not Covered by Existing AICPA Industry Audit Guides". More than 30,000 copies of this proposal have been distributed to interested parties as well as to

members of the accounting profession. Following the comment period, the Institute's Non-Profit Organizations Subcommittee will consider all the responses submitted and ultimately will issue its recommendations in final form for consideration by the Financial Accounting Standards Board, the official standards-setting body in the private sector. Thus, in the area to which H.R. 41 is addressed, a substantial body of pronouncements affecting charitable and other non-profit organizations already exists. Copies of each of these industry audit guides and the tentative statement of principles are being submitted for your information. These pronouncements are continually being studied to make certain adequate consideration is given to changed circumstances.

As you are aware, several States have statutes affecting reporting and disclosure by charitable and other non-profit organizations that solicit within the States. In New York, for example, the charities disclosure law requires that soliciting organizations rely on GAAP as set forth in the Institute's Industry Audit Guide on Voluntary Health and Welfare Organizations. In addition, New York has a provision (Section 483 (b) of the Social Service Law of the State of New York, Book 52A) providing for an advisory council to assist the New York Board of Social Welfare in developing the administrative rules and reporting requirements affecting organizations covered by that State law. The Board, in large measure, has the functions and duties which are being assigned to the Postal Service in H.R. 41, and in the case of the New York State law, it has proved to be very beneficial to have such expertise and guidance prior to the adoption of new or modified regulations.

The advisory council meets every few months and advises the Board on proposed rules or legislation offered by the staff which would affect soliciting charities. Its membership consists of private citizens who are appointed for three year terms. Although there are no specific requirements as to membership composition, the present membership is composed of lawyers, CPAs, a newspaper publisher, representatives of major charities and several prominent citizens with no specific philanthropic connection.

Although the advisory commission has only advisory powers, it has proven effective in ensuring that staff proposals are well conceived and do not impose an unreasonable burden on New York charities.

We feel that such an advisory panel with similar responsibilities would be desirable in the legislation now being considered. There exists a great number of qualified individuals, including CPAs, who could be of assistance to the Postal Service in its efforts to implement the provisions of this charities disclosure legislation. We recommend that you consider amending H.R. 41 to provide for the creation of an advisory council along the lines selected by the State of New York. For your assistance, we have attached a photocopy of that portion of the New York statute which established the advisory council to assist the New York State Board of Social Welfare in fulfilling its duties and functions, and offer it as a suggestion for inclusion in H.R. 41.

As to the broader aspects of the regulation of charities, we are certain that your Committee is aware that the Bill and its disclosure requirements for charities soliciting contributions by mail are in addition to reporting requirements applicable to these same charities in several states as well as, in some instances, the U.S. Department of the Treasury. However, we believe that the Bill's requirement for financial disclosure to accompany the soliciting material is sensible and adequate under present circumstances, and will be less burdensome and less costly to charities than provisions for mandatory reporting and registration prior to solicitation.

We recognize that this legislation extends the exercise of federal authority into a field that heretofore was to a large extent without significant federal control. We understand, though, that H.R. 41 is not intended to be merely another form of federal regulatory control, but rather is intended to provide disclosures assuring public confidence in the area of charitable solicitation. This objective has merit.

We will, of course, look forward to further opportunities to be of assistance to the Subcommittee in the development of this legislation.

§ 483-b. Advisory council

The state board of social welfare shall appoint an advisory council of not less than five nor more than ten persons to advise it and make recommendations with respect to the operation and administration of this article, with the objective of assuring maximum simplicity in the conformance by charitable organizations with the provisions of this article. The board shall designate the chairman of such advisory council and fix the terms of the members. The members shall serve without compensation but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

Formerly § 483-a, added L.1959, c. 571, § 4; amended L.1971, c. 945, § 9; renumbered 483-b, L.1975, c. 290, § 2.

Mr. WILSON. The only question I have is, whether you feel what we are trying to do is going to add any new or significant cost to the fund-raising activities of charitable organizations?

Mr. BATZER. Well, it would be very difficult to generalize, but could I just make a few general observations, Mr. Chairman?

I would hope that all charities would agree they have an obligation to account for the resources they receive, and account for those that they spend. It has been my observation that well-run charities must have financial information in order to conduct their operations suitably, economically, and intelligently. It has been my observation that charities that do not have this information are not well run and probably do not do a good job in what they are trying to do.

So I find it very difficult to accept the premise that keeping a proper set of accounts and suitably prepared financial statements for, at least, the management to deal with—while it surely costs money—does not, in the long-run contribute to the more effective use of the resources that the charity has.

Adding the requirements that you have suggested, on top of a reasonably organized and intelligent accounting system, should not, in my opinion, significantly increase the costs of any charity.

Mr. WILSON. Thank you very much, Mr. Batzer and Mr. Harris. We appreciate your being with us. You have been of great assistance to us.

This will conclude our hearing at this time.

Our next hearing will be on March 29, prior to the adjournment, when we will hear from another wide variety of professional fund-raising groups and some of those who have questions about the legislation.

Thank you very much for your assistance.

[Whereupon, at 12 noon, the hearing was adjourned, to reconvene on Tuesday, March 29, 1977.]

CHARITY DISCLOSURE LEGISLATION

TUESDAY, MARCH 29, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON POSTAL PERSONNEL AND MODERNIZATION,
Washington, D.C.

The subcommittee met at 10 a.m. in room 311 of the Cannon House Office Building; Hon. Charles Wilson (chairman of the subcommittee) presiding.

Mr. WILSON. This morning our subcommittee will continue hearings on H.R. 41, the charitable disclosure bill.

Last week the subcommittee heard very compelling testimony in support of the legislation from a number of well-known charities, as well as from the secretary of the Commonwealth of Pennsylvania. These witnesses emphasized that the public and reputable organizations desperately need protection against unscrupulous charity operators, and that disclosure as provided for in H.R. 41 is far preferable to government regulatory intervention in charitable fund raising.

Save the Children Federation testified that since placing financial disclosure as would be required by H.R. 41 in their promotional materials this year, support from the public has more than doubled.

Today we will again hear testimony from a wide range of witnesses beginning with my colleague from New York, Representative Ed Koch.

STATEMENT OF HON. EDWARD I. KOCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. KOCH. If I may, I would like to provide evidentiary matter to the Chair.

Mr. Chairman, I am here in support of the need for legislation to correct the abuses that exist in the collection of alleged charitable funds for many causes, some worthy and some not. I am not here to pass on the nature of the causes but simply to establish some background as to the need for the pending legislation as well as additional legislation that I would suggest.

I was told last year about two organizations in the State of New York which had collected moneys—the Hurricane Carter Fund and the Attica Defendant Fund.

Hurricane Carter was a prisoner in New Jersey seeking a new trial. He had his new trial and he was found guilty again. That is not of importance before this particular committee. But I was told that the moneys which were raised, which were to be used, were never in fact used in any great part for the defense of Hurricane Carter. I checked

into this matter and learned that the State of New York's Department of Social Services requires charitable organizations such as these to file periodic reports with the department.

There is no auditing except under special circumstances where people request an audit or where the attorney general requests an audit. I received a copy of the report of the Hurricane Carter Fund and it showed that the fund had raised \$600,000 in two events.

According to the report, one event held in New York at Madison Square Garden raised \$220,000 and showed a net profit of \$108,000. Additionally, the report stated that the second event, held at the Houston Astrodome, had raised \$379,000. Then there was a little note relating to the collection of the \$379,000 that said, "This event resulted in expenditures exceeding receipts."

It's hard to understand how if you raise \$379,000 that the income would be less than the expenditures, but so be it. That's what that particular event did and no one audited the records for that event. The New York State Department of Social Services is now conducting an audit as a result of my request. They would not have done that had I not made the request.

It's interesting because it's timely that on March 26, a few days ago, there was an item in the New York Times which I read to you now, which says attorneys for Rubin "Hurricane" Carter and John Artiss, the codefendant, said they will ask the court for State funds to appeal the two men's preliminary convictions. They were convicted for the second time last December on the charge of murdering three persons in a Paterson, N.J., bar.

The attorneys say they are unable to raise the \$10,000 needed for trial transcripts. For the purpose of conducting the trial, the public gave \$379,000. There seems to be disparity as to how those moneys were used.

A second illustration relates to the Attica uprising, and concerns the people who were defendants and convicts in the Attica Prison. They were placed on trial. Moneys were raised by a unit called the Attica Brigade. We don't know how much money was raised because no figures were contained in the reports filed—only that moneys were raised.

The State of New York, Department of Social Services, that has control over these matters said that when it made an inquiry to the Attica Defense Committee, it was told the committee had gone out of business and that the committee could not locate the people who were involved. That's another situation.

God knows how those moneys were distributed, whether people took them or whether they were declared as income, because the IRS doesn't have any jurisdiction in this area.

A third and more recent illustration which was brought to my attention by a superb reporter, Steve Bauman of Channel 5 News, concerns the Puerto Rican Day Parade, Inc., Committee. There was an interesting set of statistics. The committee raised in 1975 \$93,799 to conduct a parade. Now, the committee shows that its expenses were \$75,433, leaving an alleged net balance of \$18,366.

One of the intriguing expenses listed was \$39,514.39 for conferences and conventions. These expenses were made in relation to a 1-day parade.

Another item was the listing by that committee of a dance held on June 27, 1975, where the gross receipts were \$24,500, with expenses

listed as \$22,364, with a net amount available to charity organizations of \$1,443.

It seems to me to be a bizarre situation. I can't pass judgment on the legitimacy of those expenditures because the details are not available and I have not done the auditing; but neither has anyone else.

Your bill which provides public information is a necessary bill because the public ought to know why the moneys are being raised and how they are being spent and so forth.

And there is an additional aspect which should be addressed. That is auditing by the IRS. Today organizations such as those I have mentioned to you, file with the IRS, but what they file is a request to be exempted from taxes. And the IRS does not have the details as to the collection and distribution of funds.

Therefore, the IRS does not do any auditing. I got in touch with the IRS and I would like to place in the record my full statement, the exhibits and the letter from the IRS dated March 22, 1977, which states:

In the past, the Service has indicated that public hearings on the many aspects of charitable solicitation and fundraising abuses would be appropriate. We believe such hearings would reveal a multifaceted problem deserving careful legislative consideration. As matters presently stand, the Service's primary enforcement tool is an examination of the tax returns filed by the organization. Such examination may be initiated as a result of complaint by members of the public or by a number of more routine selection methods established by the Service to identify returns deserving inquiry.

The point I would like to make with respect to that is that the returns that are filed, for example, by partnerships which list a breakdown on collections and outgoing expenses and which are not themselves subject to taxes, give the IRS an opportunity to decide whether there ought to be an audit.

The returns filed by organizations such as those I have mentioned do not do that. There is no breakdown. Unless there are complaints, we do not know how those moneys went.

Therefore, it's my belief, Mr. Chairman, in addition to whatever controls H.R. 41 would impose, that there should be additional regulation which would require that the charitable organizations file with the IRS the names and addresses of the contributors, and the payees, as well as a list of expenses. In addition, the IRS should be authorized to audit those organizations in the same way that they do other fiduciaries.

We have to know whether huge sums donated to charitable causes are going to beneficiaries or are being shortstopped along the way.

[Mr. Koch's complete statement and supporting documents follow:]

PREPARED STATEMENT OF HON. EDWARD I. KOCH

Thank you, Mr. Chairman, for providing me with an opportunity to testify before your subcommittee on the need for legislation to regulate the collection of charitable funds so as to make certain that they are used for the purposes for which they were collected.

Your bill, H.R. 41, deals with regulations that might appropriately be the function of the U.S. Postal Service in that it would require that information needed to be made available to the public be filed with an agency that is equipped to handle such filings. However, I should like to bring to your attention an area which would require, in my judgment, giving the IRS jurisdiction to monitor and investigate these organizations which collect funds for charitable purposes. I should like to provide you with my own research into this matter which has brought me to this conclusion.

I was advised many months ago that two fundraising organizations in New York had raised considerable sums of money which were not properly accounted for. Let me say at the outset that in the State of New York the solicitation of monies from the public is regulated in a limited way, in that reports simply have to be filed with the New York State Board of Social Welfare. Regrettably, few of those reports are ever audited.

As a result of the information provided to me, I asked the New York State Attorney General and ultimately the Social Welfare Board to look at the reports filed by the two organizations: one, Freedom for All Forever Corporation, a fund allegedly for the defense of Hurricane Carter and a second defense fund known as Attica Defense Committee, allegedly for the defense of convicts who had engaged in what became known as the Attica Uprising at the New York State prison. I will append for the permanent record the pertinent correspondence that I have had with both the New York State Attorney General and the New York Board of Social Welfare. Suffice it to say that with respect to the Hurricane Carter fund, the filed report shows that approximately \$600,000 was raised in two events, one at Madison Square Garden in New York City and the other at the Astrodome in Houston, Texas. The Madison Square Garden event raised approximately \$200,000 and showed a net profit of \$108,000. According to the committee's filed report, the Houston, event, while allegedly taking in another \$379,000, stated that "expenses exceeded income." The New York State Board of Social Welfare is now examining the books of the Hurricane Carter fund.

The second fund to which I have referred, the Attica Defense Committee, allegedly raised a large sum of money, but failed to file the required reports. We have no way of knowing how much they raised, and the Committee is out of existence. When I raised the matter with the New York State Board of Social Welfare, I was advised that "Although Board staff has made several attempts to locate one or more persons who had been connected with the Committee, all efforts along that line have been unsuccessful. When, and if, we manage to contact anyone having knowledge of the affairs of the Committee, we will attempt to secure its records for examination."

The third report that I would like to bring to your attention was filed by the Puerto Rican Day Parade Inc. Committee which shows that in 1975 it raised \$93,779 from the public. The expenses listed totaled \$75,433 leaving an alleged net balance of \$18,366. One of the intriguing expenses listed was the sum of \$39,514.39 for "conferences, conventions and meetings". These expenditures were made in relationship to a one-day parade. Another interesting item was the listing of a dance held on June 27, 1975, by that Committee where the gross receipts were \$24,500 with the expenses being listed as \$22,364 with a "net amount available to charity organizations of \$1,443." Mr. Chairman, I am not able to pass judgment on the legitimacy of any of the expenditures of these organizations, but surely audits should be made either on a regular basis or on a spot check basis so that those collecting public funds will know that there is accountability.

Finally, the need for legislation is evidenced by the letter from the I.R.S. dated March 22, 1977, which I am appending and which is summed up by the following portion of that letter:

"In the past, the Service has indicated that public hearings on the many aspects of charitable solicitation and fund raising abuses would be appropriate. We believe such hearings would reveal a multifaceted problem, deserving careful legislative consideration. As matters presently stand, the Service's primary enforcement tool is an examination of the tax returns filed by the organization. Such examinations may be initiated as a result of complaints by members of the public or by a number of more routine selection methods established by the Service to identify returns deserving inquiry."

We should give the I.R.S. the right to "establish uniform accounting requirements to record receipts and expenditures of these solicitations" which their letter clearly indicates is necessary if we are to deal adequately with this very serious matter and the abuses that clearly exist. Apparently, the only returns now filed with the I.R.S. are those which support the tax exempt status of the charitable organization; and what I believe is necessary is that details of collections, whether subject to taxes or not, be filed with the I.R.S. for post-auditing.

In conclusion, Mr. Chairman, the role of philanthropic efforts in our society is an important and laudable one. In 1975 alone, Americans donated nearly \$28 billion to charitable causes. Yet, these fund raising operations which have benefited from the generosity of the American public are almost without regulation whatsoever and no one knows how much of the monies collected actually reach

the intended beneficiaries. If those charities are required to make disclosures at regular intervals and be subject to I.R.S. auditing, the public would be in a position to know what is happening to the huge sums donated for charitable causes and particularly whether they are actually going to those causes or are being shortstopped along the way.

Therefore, my belief is, in addition to whatever controls H.R. 41 would impose, that there be additional regulation which would require that charitable organizations file with the I.R.S. the names and addresses of contributors, a detailed statement of expenses, the names and addresses of each payee and that the I.R.S. be authorized to audit these organizations in the same manner as other fiduciaries responsible for the safekeeping of monies collected by them.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., November 9, 1976.

NEW YORK STATE BOARD OF SOCIAL WELFARE,
New York, N.Y.

GENTLEMEN: I have been advised by the Assistant Attorney General—see the enclosed—that no field audits have yet been conducted with respect to any of the organizations mentioned in that letter. I am interested in ascertaining whether in each of the cases in which money was solicited by these organizations how much went to the direct benefit for the individuals for whose benefit the money was raised, and whether the respective net amounts meet any criteria imposed by your office, particularly with respect to alleged expenses incurred in collecting the gross amounts. I would appreciate having your responses to these questions, as well as knowing why it is that no audits have been made of any of these organizations' reports. The organizations I have referred to are: The Hurricane Trust Fund, The Attica Defense Committee, Attica-Bridge, Inc. (Bridge/Associates, Inc.).

I would appreciate hearing from you as soon as possible.

Sincerely,

EDWARD I. KOCH.

NEW YORK STATE BOARD OF SOCIAL WELFARE,
Albany, N.Y., November 22, 1976.

HON. EDWARD I. KOCH,
Washington, D.C.

DEAR CONGRESSMAN KOCH: You have inquired about the fund-raising activities of The Hurricane Trust Fund, The Attica Defense Committee, and Attica-Bridge, Inc. (Bridge Volunteers/Associates, Inc.). I note, from the attachment to your letter of November 9, 1976, that you already have been furnished with copies of the registration statements and annual reports filed by these organizations.

The Hurricane Trust Fund was a division of Freedom for All Forever Corporation. The corporation registered in October, 1975 with this Board and on September 8, 1976 filed an annual report for the year ended March 31, 1976. According to said report, contributions, including excess receipts over costs benefiting contributors, amounted to \$155,357. Of that amount, \$79,445, reportedly was used for the purposes for which the funds were solicited; management and general, and fund-raising expenses amounted to \$67,846; and a balance of \$8,066, remained in the fund at the end of the fiscal year. Since more than 50% of the funds collected was spent on program, no further action or referral to the Attorney General was indicated. As a matter of policy we would refer to the Attorney General for his review any report which indicated that less than 50% of the contributions received were devoted to program purposes.

The Attica Defense Committee registered with this Board in February, 1972. They failed to file a financial report for the fiscal year ending December 31, 1972 and on October 16, 1973, a notice of cancellation of their registration for failure to file was sent to the corporation in care of its attorney of record, and was returned as undeliverable. Thereafter, a letter from the Clinical Law Center of New York University advised that the Committee was no longer operating and had not been for a number of months.

Attica-Bridge, Inc. (later Bridge Volunteers/Associates, Inc.) registered on July 11, 1973. On July 21, 1975 the corporation filed a financial report for the

fiscal year ended September 30, 1974 showing that \$18,158. had been received, of which \$15,853.34 was spent on program and the balance transferred for use in 1975. There were no fund-raising costs. On July 28, 1976 the corporation's registration was cancelled for failure to file an annual report. Thereafter, the corporation claimed exemption from the registration requirements of the statute on the ground that it had collected less than \$10,000, during the previous year and no one had been paid for fund raising.

There are some 7,000 charitable organizations registered with the Board. We can only make field audits in selected cases, either upon a direct request from the Attorney General or where the annual report itself indicates the need for a field audit.

Very truly yours,

BERNARD SHAPIRO,
Executive Director.

STATE OF NEW YORK DEPARTMENT OF LAW,
New York, N.Y., December 2, 1976.

Hon. EDWARD I. KOCH,
New York, N.Y.

DEAR CONGRESSMAN KOCH: I have your letter of November 9, 1976 and regret the delay in not responding at an earlier date.

The reports which I sent to you on October 27th are the annual reports filed by the organizations with the State Board of Social Welfare pursuant to Article 10-A of the New York Social Services Law. These are not reports which are filed with this office. All organizations soliciting or receiving more than \$10,000 from the public are required to register with the State Board of Social Welfare and file annual financial reports.

As of the present this department has not received any request from the State Board of Social Welfare to investigate collections and disbursements of these organizations. It would appear to me that questions raised by you should be addressed to that State Board for its consideration. It has the statutory authority to make audits and thereby find the response to your inquiry. Should the Board find any indication of fraud, it can refer to this department for attention. To the best of my knowledge no audit has been made by the State Board of Social Welfare into the activities of either of these organizations.

I am sending the Board a copy of our correspondence for its information and possible attention.

Very truly yours,

LOUIS J. LEFKOWITZ,
Attorney General.
By HERBERT J. WALLENSTEIN,
Assistant Attorney General.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., December 8, 1976.

HERBERT J. WALLENSTEIN,
Assistant Attorney General, State of New York,
Department of Law, New York, N.Y.

BERNARD SHAPIRO,
Executive Director, New York State Board of Social Welfare,
Albany, N.Y.

DEAR MESSRS. WALLENSTEIN AND SHAPIRO: I have the responses of each of you. Yours, Mr. Shapiro, dated November 22, and yours, Mr. Wallenstein, dated December 12, to my earlier correspondence raising questions concerning the auditing of the organizations known as The Hurricane Trust Fund, The Attica Defense Committee, and Attica-Bridge, Inc. (Bridge/Associates, Inc.). I am enclosing the entire set of correspondence because each of you is apparently relying on the other to take appropriate action, and nothing is being done.

It is inconceivable to me that with the large amounts raised and the questions that have been raised concerning the use of the monies, neither of you felt it necessary to date to audit these organizations.

May I suggest that field audits are required and that whoever is authorized to do so undertake that obligation. I repeat that on the face of it the March 31, 1976 report filed by Freedom For All Forever Corporation (Hurricane Trust

Fund) requires inquiries by your respective offices. To simply accept the statement of the Attica Bridge Inc. that the monies were spent on programs without undertaking an audit makes no sense. When questions have been raised as to what benefits, if any, the Attica defendants received from monies raised on their behalf, I urge immediate attention to these matters, and would appreciate having your response on what you intend to do.

Sincerely,

EDWARD I. KOCH.

STATE OF NEW YORK BOARD OF SOCIAL WELFARE,
Albany, N.Y., December 14, 1976.

HON. EDWARD I. KOCH,
New York, N.Y.

DEAR CONGRESSMAN KOCH: In accordance with your urging, I am directing that a field audit be made.

Sincerely,

BERNARD SHAPIRO,
Executive Director.

NEW YORK STATE BOARD OF SOCIAL WELFARE,
Albany, N.Y., February 9, 1976.

HON. EDWARD I. KOCH,
New York, N.Y.

DEAR CONGRESSMAN KOCH: This is in response to your letter of January 27th, inquiring about the current status of our investigation with reference to the above-named organizations.

The Charities Registration Section of this Board has completed its examination of the books and records of the Hurricane Carter Defense Fund of the Freedom for All Forever Corporation. The audit report based on such investigation is being prepared and a copy will be forwarded to you as soon as it has been typed.

As we advised you in our letter of November 22, 1976, the Attica Defense Committee has been out of existence for several years. Although Board staff has made several attempts to locate one or more persons who had been connected with the Committee, all efforts along that line have been unsuccessful. When, and if, we manage to contact anyone having knowledge of the affairs of the Committee, we will attempt to secure its records for examination.

Very truly yours,

BERNARD SHAPIRO,
Executive Director.

NEW YORK STATE BOARD OF SOCIAL WELFARE,
Albany, N.Y., February 11, 1976.

HON. EDWARD I. KOCH,
New York, N.Y.

DEAR CONGRESSMAN KOCH: I am enclosing a copy of the audit report prepared by staff of the Board in connection with the examination of the books and records of Freedom For All, Forever Corporation.

A copy of this audit report was referred to the Attorney General's office on February 10, 1977 for his review and any enforcement action he deems appropriate.

Very truly yours,

BERNARD SHAPIRO,
Executive Director.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., February 15, 1977.

Mr. JEROME KURTZ,
Acting Commissioner,
Internal Revenue Service, Washington, D.C.

Dear Mr. KURTZ: Enclosed for your ready reference are copies of correspondence that I have had as well as a recent article that appeared in Rolling Stone magazine concerning the Rubin "Hurricane" Carter defense fund.

It is alleged that money raised, to be used to insure an adequate legal defense for Rubin Carter, was misspent and mishandled. At my request the New York State Board of Social Welfare conducted an audit and they have recently turned their findings over to the New York State Attorney General for further investigation and possible prosecution. Due to the fact that monies raised crossed state lines, what regulations does the Internal Revenue Service have to insure that the above described organizations are in fact reputable. If regulations do not exist I would appreciate your informing me whether new legislation is required in order for the Service to have jurisdiction.

I would appreciate your responding to my New York office within ten days.
All the best.

Sincerely,

EDWARD I. KOCH.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., March 22, 1977.

Hon. EDWARD I. KOCH,
House of Representatives,
Washington, D.C.

DEAR MR. KOCH: Thank you for your letter of February 15, 1977, concerning the Rubin "Hurricane" Carter defense fund. We apologize for the delay in responding to your inquiry and we hope this has not caused you any inconvenience.

The Freedom for All Forever Corporation (Hurricane Trust Fund) and the Attica-Bridge, Inc. (Bridge Volunteers/Associates, Inc.) are recognized as exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Like all other exempt organizations, their exemptions were granted on the basis of representations made by the organizations during the process of applying for recognition of exempt status. We have no record of recognition of a similar status for the Attica Defense Committee.

The Internal Revenue Service maintains an audit program to review the activities of tax-exempt organizations to insure that they are operating consistently with the representations made during the application process. Because we share your concern about adherence to these laws, we have forwarded your correspondence to our field office for its consideration. We can assure you that the information you have furnished will be thoroughly evaluated for use within the scope of its audit program.

The Internal Revenue Service has limited authority in the area of charitable solicitations. A specific handicap to enforcement in this area is the lack of any provision in the relevant statutes permitting a review of solicitation material by the Service in advance of the solicitation. Under legislation introduced by Senator Mondale and Representative Karth in 1975 (subsequently reintroduced this session as H.R. 478) the Treasury would be authorized to approve solicitation material in advance, and to establish uniform accounting requirements to record receipts and expenditures of these solicitations. Another bill, H.R. 41, is scheduled for hearings in the Post Office Committee beginning on March 23, 1977.

In the past, the Service has indicated that public hearings on the many aspects of charitable solicitation and fund raising abuses would be appropriate. We believe such hearings would reveal a multifaceted problem, deserving careful legislative consideration.

As matters presently stand, the Service's primary enforcement tool is an examination of the tax returns filed by the organization. Such examinations may be initiated as a result of complaints by members of the public or by a number of more routine selection methods established by the Service to identify returns deserving inquiry.

We appreciate your concern.

With kind regards,

Sincerely,

WILLIAM E. WILLIAMS,
Acting Commissioner.

Mr. WILSON. Thank you very much.

Our bill that we are considering, of course, has jurisdiction over solicitations the remittance of which are made by mail.

We are concerned, however, and some of the criticism of the legislation told us that the public would not be able to understand disclosure if we did require disclosure.

You have been quite a leader in the field in consumer protection and is it your feeling that the public would have any difficulty understanding the brief statement which shows how much money was raised and what percentage of it was used for collection and administrative purposes and what was used for the charity which it was supposed to raise for?

Mr. KOCH. I think that any measure that provides the public with additional information so that it can make a determination as to whether or not it will buy or contribute in this case is helpful.

I do believe that the most important measure is actual investigation and auditing of the charitable organization as to how it spent the moneys, but I certainly favor the bill in terms of making that information available to the public.

I do believe that not many people will, in fact, look at that information, regrettably, just as not enough people look at truth in packaging. But it should be there for those who are alert and who want to know.

Mr. WILSON. It's not your belief, however, that there should be some regulatory agency that runs charities?

Mr. KOCH. No; I do not believe, for example, that it is appropriate for the IRS to have advance knowledge of the nature of the soliciting material. That is not a function of the IRS.

I do believe the IRS ought to have the jurisdiction to have informational returns filed with it so it can decide, based on all of the information, whether there should be spot checking, auditing. That does not exist today. And people blithely collect moneys, list expenditures as conventions and other items and we don't know that, in fact, they are not using that money as direct income, and they are not paying taxes on it.

It's definitely not going to the beneficiaries who allegedly are the ones for whom the money was raised.

Mr. WILSON. Thank you very much. I appreciate your statement. I think you have presented a very worthwhile statement to us and suggestion to us in terms of the audit proceedings.

Mr. Myers, do you have questions?

Mr. MYERS. No; I have no questions.

I would like to thank you for your statement. It was interesting and informative. Thank you.

Mr. WILSON. Thank you.

Our next witness is William J. Scott, attorney general from the State of Illinois.

STATEMENT OF WILLIAM J. SCOTT, ATTORNEY GENERAL, STATE OF ILLINOIS

Mr. SCOTT. Thank you very much for giving me the opportunity to testify.

I would like to testify in two capacities, first as the attorney general of the State of Illinois, and second as the chairman of the Charitable Trust Committee of the National Association of Attorney Generals.

As attorney general of Illinois, I would like to testify on behalf of Congressman Wilson's bill, which I think plays a vital role in informing consumers of this Nation of the financial activities of the charities in which they entrust so much of their hard-earned dollars.

Illinois, like many other States in the Nation, is a very generous State. We estimate that the charitable gifts are well over \$1 billion a year. So that it's a major factor and one certainly that deserves to be protected.

We have enacted a statute in Illinois that does authorize the attorney general's office to deal with fraud and deceptive practices in charitable giving. And we have been involved in some substantial litigation. As part of this responsibility we have found that while there are many outstanding charities that do so much for their fellowmen, that unfortunately there are some people who will do anything for a dollar, and that in the field of charitable giving, we see many instances of fraud and deception.

We see instances where fundraising expenses sometimes have gone as high as 125 percent of the money they have raised. We have seen charities getting a very small percentage of the funds that the people intended to give the charities. We have had to go to court not only to see that those funds are properly distributed, but to bring legal action to punish the wrongdoer.

Your bill supplements that type of activity in the States in the Nation that do have charitable fraud regulations. It gives the person who wants to allocate his hard-earned dollars to help his less fortunate fellowman a chance to know exactly what type of a breakdown that organization or that charity has in the administrative expenses, overhead, and how much of it goes to charity.

We think it's essential that people make that determination to allocate the hard-earned dollars to less fortunate citizens.

So, as the attorney general of Illinois, and as a person concerned with seeing that these dollars are allocated to the many fine reputable charities we have in this Nation, I would like to strongly support this bill.

One concern that the attorney generals of the Nation have expressed is the danger of preempting the States from the field of enforcement, particularly in the area of fraud and deceptive practices.

So, at the National Association of Attorney Generals' meeting in Houston, Tex., we went on record saying:

Be it resolved that the position of the National Association of Attorney Generals, that Federal action should not be in a way that would preempt the authority of the attorneys general of the several States.

One of the reasons this recommendation was made was because many of the States have stronger enforcing laws than are provided in this present bill under consideration. As I said, this is one of the reasons that I strongly support this bill, that they covered two aspects. One is the disclosure aspect, so that the people of this Nation will know what they are doing.

The second is the enforcement laws in the States that provide a vehicle for dealing with the unscrupulous people in the fund-raising field.

The concepts are not only compatible, but they are needed. Particularly they are needed as more than half of the States in the Nation have no legislation to deal with any type of charitable wrongdoing.

Mr. Chairman, I particularly appreciate the opportunity to be here and I share in the high regard for Congressman Metcalfe of Illinois, and I'm glad to have the chance to be before this committee and I urge your adoption of the present bill, but I'm also alerting you that there will be undoubtedly some attempts to preempt the efforts of the States in this vital field.

If that would happen, I think it would be a very unfortunate setback for the cause of protecting the consumer.

Mr. WILSON. Thank you very much. It's not our intention to preempt State laws in any way at all. I think you explained quite fully why we should not. We do have a problem with those States that don't have laws, however.

Actually, we are not trying to regulate charities. We are only seeking disclosure so that the public has an opportunity to know what is being done with their charity contributions.

Any legislation which would attempt to preempt States, charities, would probably require an expensive Federal agency to be created and to do something that already is being done on a State level. Wouldn't that be true?

Mr. SCORR. There is no question about it. This present type of legislation fills a vital need. It's vital for the public to know. It protects the public. It enhances a legitimate charity. To go into the enforcement field would be an expensive effort for the Federal Government. Our consumer protection division in Illinois has a larger budget than the Federal budget has allocated in the consumer protection field.

I served on the Consumer Affairs Committee appointed by the President of the United States and I'm well aware of the magnitude of the job.

It would be a tremendous burden on the Federal Government.

Mr. WILSON. Do you see any way that a disclosure bill like this would harm any reputable charity?

Mr. SCORR. It would help the charities. The dollars being drained off by the fly-by-night operations, by direct fraud, are being taken away from the legitimate charities. So the main losers, of course, are the people who depend on those charities for help, and through them, of course, the legitimate charities.

The dollars being siphoned off by those organizations that you are trying to deal with here are being taken away from legitimate charities.

Mr. WILSON. Mr. Metcalfe.

Mr. METCALFE. I want to welcome our distinguished Attorney General, William Scott, before us and I am pleased he is giving testimony. Like on all other occasions, you come forth with fruitful recommendations. Of course, you have had a long and varied background and experience in regard to fraud and the various components of that.

I agree with you that what we are trying to attempt to do is cut out the fraud here.

Personally, you have concerned yourself and made corrections in the State of Illinois where we have had people solicit—not necessarily religious organizations—but from others.

I think the public has become leery as to whether or not when they contribute that they are contributing to a worthwhile cause.

Those legitimate organizations, I think this bill, H.R. 41, will go a long way in order to eradicate that apprehension that people have, and it will help them.

To me it is vital that we address ourselves to that and know in the case of a religious institution, sometimes money is collected and it is laundered through the religious institutions.

They don't have to report. I think this would prevent that. Those soliciting from religious institutions, churches will get the benefit of it.

The most important thing is to make certain that those who are soliciting do not make more money than those they are soliciting for.

I want to express my pleasure for your taking time to come and give us the benefit of your judgment and certainly for your support of H.R. 41.

It is a pleasure to see you.

Mr. SCOTT. Thank you, Congressman.

The two points you emphasize are vital. Not only the fact that it does provide the disclosure but that people are losing confidence because of the few bad Americans that have affected the charitable fundraising field. Unless we have legislation of this nature, there is a real danger that the public's generous desires to help may be badly damaged, and you may see legitimate giving falling off.

Thank you.

Mr. WILSON. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. Attorney General Scott, I want to express my pleasure for your being here and for your comments this morning. I was wondering if in your experience as attorney of the State of Illinois, have you found that there is any marked abuses of this fundraising method that we are addressing ourselves to, by religious organizations? Is it more in the field of religious organizations or is it in other fields of endeavor or charitable contributions?

Mr. SCOTT. We have found in all of the fields of fundraising that there has been abuse. In every area where people can make a dishonest buck, we see more and more of it.

In the area of what we call "white collar crime," "financial crime," this is happening and this falls into that category.

We have seen recently and the attorney general of Maryland has been dealing effectively with it in an investigation we worked with him closely on, an abuse in one of the religious fields.

We recently had a case involving the charitable organization raising funds for widows and orphans of policemen. We had not only to go to court to recover half a million dollars, but we have now obtained a contempt of court citation against the formers of that organization.

There was a fund for scholars where they spent more than they raised. There is no area that the unscrupulous operators haven't moved into. It is an area which is nationwide in scope. It isn't limited to any one State. It is an area we are finding more and more abuse in. There is a danger of loss of dollars to our citizens, as well as loss of confidence.

Mr. TAYLOR. Thank you for those comments. One of the things is we are interested in dealing with this problem. With the erosion of confidence in charitable and religious contributions, it is important that we think in terms of these abuses. However, I have concern that

we will not do anything that will inhibit the continuation of many charitable and church organizations who are doing a good job and we do believe that maybe a dollar contributed by the private citizen on an individual basis is maybe a more effective way than the Federal dollar.

Mr. SCOTT. I couldn't agree with you more.

Mr. TAYLOR. I think these people do a good job and the billions of dollars that are given every year are legitimate charitable contributions and they are part of our way of life and they should be preserved and protected.

I have some concern that maybe a legitimate charge might be perceived by some contributors to be too much when it isn't too much.

I wonder, Attorney General Scott, if you have a percentage that you consider to be excessive in your dealing with these problems? Do you have a percentage above which you feel it is intolerable in the administration and collection of charitable contributions?

Mr. SCOTT. It is hard to put an exact percentage on it. We feel that half of the money that is raised should end up in the hands of the people who need the help. Of course, the cases that I have cited that have had to take priority have been not only where they drain all of the money they raised, but in some instances, even greater amounts. These are substantial figures, half-million and million dollar category.

We have provisions within our Illinois law that we are trying to upgrade. The original concept was to allow them to deduct the expenses of fundraising first, and then 75 percent of it should go to charity.

We find from doing that that not much is left sometimes. We have had to go into court to broaden that concept. We have had to deal with the total figures. Most people are fair. They realize there is a cost of administering these programs. But the abuses have been real and have been staggering.

Mr. METCALFE. Will the gentleman yield?

Mr. TAYLOR. Yes.

Mr. METCALFE. Mr. Attorney General, do we have in the State of Illinois a law that makes it punishable if a person solicits money in the name of a person without that person's consent?

Mr. SCOTT. We have injunctive power in the Attorney General's Office. We have only civil jurisdiction, so that we are able to go to court to get an injunction to stop that from happening and then we can proceed with the contempt of court citation.

I have asked the legislature and will reintroduce into this legislature criminal authority. It may be that I'm a little more successful, because there has been fundraising in the name of the former mayor and, of course, as you know, some of the opposition to this has been from some of his supporters, and maybe this time I can get it through.

Mr. METCALFE. Thank you to the gentleman for yielding.

Mr. TAYLOR. That is all I have.

Mr. WILSON. Mr. Myers?

Mr. MYERS. Thank you, Mr. Chairman.

Mr. SCOTT, what must a charitable organization do in the State of Illinois? Do they go on record or file with the State?

Mr. SCOTT. What we require is that they file their financial statements with the State. We then have auditors who periodically check

those returns to verify them. And we, in fact, have a charity hotline available to individual contributors or through some of the civil organizations in the State, to tell people what the financial background of that charitable organization is.

No way will we recommend one charity over another, but we will provide the factual breakdown. And most important, to let them know whether or not they are registered with the Attorney General's Office.

One thing we find is many of the questionable ones avoid the registration in the first place.

Mr. MYERS. What kind of personnel do you have? How many in numbers do the auditing?

Mr. SCOTT. We have two main offices and in each one of them we have half a dozen people.

What we have found in our overall operations that we have to have an interchangeability of our investigative powers. If we happen to be working on a particularly difficult case, we assign people from the criminal justice part to that.

Mr. MYERS. You say in the State of Illinois approximately \$1 billion was raised, and you have a dozen people doing the auditing between probably thousands of various charitable organizations? I'm sure it limits their ability to get in there and look at things.

Mr. SCOTT. There is no question about it.

We have a limited number of dollars and we are involved in a great number of difficult crusades.

However, \$1 out of every \$8 we spend in the Attorney General's Office is utilized in the area of consumer protection in charitable fraud. We have made a major commitment. It does involve people's hard-earned dollars. In no way can we deal with this by ourselves, and that is one of the reasons we support this legislation.

Mr. MYERS. This would allow you to get to the people who are making violations?

Mr. SCOTT. This complements the type of activity we are involved in. It provides the individual citizen with another vehicle, a chance to make his own decision and determination.

Mr. MYERS. The point I'm making is where you are auditing certain organizations, this bill would make available the very auditing you are doing, public disclosure, and you could concentrate more on enforcement, in areas where you wanted to get after that guy who was the rip-off artist.

Mr. SCOTT. People wouldn't have to call us up to find out what the situation is. We know comparable disclosure that is done through the State.

Mr. WILSON. With the passage of H.R. 41, this would prevent the necessity for the States having disclosure laws; wouldn't it?

Mr. SCOTT. Yes.

Mr. WILSON. You won't need anything duplicative in the State.

Mr. SCOTT. Again, I'm being cautious about preemption. I hope if a State wants to have a tougher disclosure law, they can.

Mr. WILSON. That is our intention. No one has suggested to date that we preempt the States from their own investigating procedures, and prosecution procedures. The first amendment question is going to be raised by some of the religious groups. We had the bill written carefully to avoid any constitutional problems.

Do you see where this infringes on the first amendment rights of religious organizations, this type of legislation?

Mr. SCOTT. I don't see any danger in it, speaking as a lawyer. I think that basically it protects people's rights of legitimate fundraising operations in the religious field. All it does is require people to tell in a fair way what they are doing and, while there have been very real concerns in our legislature with the preservation of religious rights, I think this bill is well-designed so that it does not infringe.

Mr. WILSON. Again, we are going to be asked to exempt religious organizations from the legislation which I personally would be opposed to. How can this hurt a legitimate religious organization by disclosure?

Mr. SCOTT. Again, speaking from personal experience, I happen to have been an elder in the Presbyterian Church and on the board of trustees of a church-related college in Illinois, Methodist Church-related college, so I have been active on the other side in the fundraising field and I have been trying to work with church charities.

I don't see any reason at all why a legitimate fundraising operation could be hurt by telling its proper figures. I am speaking as an individual, not speaking for the church organizations.

Mr. WILSON. Thank you very much.

Excuse me, Mr. Lott.

Mr. LOTT. Thank you, Mr. Chairman, I'm glad you made your comments. They were the exact area where I would like to ask some questions.

First, Mr. Scott, as the attorney general of Illinois, we appreciate your coming here and making this very fine statement. You obviously have had experience in this field, which is helpful to us in making decisions about whether or not such a bill is needed and how it should be drafted.

I probably would be one of the ones that would offer an amendment to exempt religious organizations because it's not a question of, letting the public know what happens to their money. As a matter of fact, every church I have been associated with makes that public anyway, at least to the church members.

The question, to me, is whether or not the Federal Government has a right to mandate this sort of information of religious organizations, evangelical, or any number of religious organizations, or religious activities, that I don't think that we should be directing that sort of activity.

I recognize that in the charitable areas and in some areas or activities that have actually been religious in their origin, there have been abuses and I think we should take a look at how that can be stopped. But again, I think that there is a serious first amendment question here and I would like to get your comment on how you deal with that problem or how your Illinois legislature dealt with that problem as far as the churches or very closely connected religious activities are considered. Is it exempted?

Mr. SCOTT. The Illinois Legislature agrees with you. The State legislature did release religious organizations from the charitable frauding considerations. The question was, in my personal opinion, would it jeopardize legitimate fundraising operations. Like you, the churches and colleges I have been associated with make that disclosure anyhow.

Speaking for myself as an individual, the type of religious and church groups and school groups that are associated with churches that I have dealt with do make disclosure. Illinois did exempt religious organizations from that charitable frauding.

Mr. LOTT. The Federal Government, be it IRS, Postal Service, doesn't have a particularly good track record in dealing with areas like this. As a matter of fact, it has become harassment, in my opinion, in many areas and particularly with the IRS.

One section of the bill, 3012(d) on page 5, specifies that an organization which is required to comply with this legislation must within 30 days after receiving a request from any person receiving a solicitation, submit a pertinent financial statement.

I wonder if we are creating a situation here where legitimate organizations, particularly religious organizations, not exclusively churches, could be subjected to undue harassment.

Mr. SCOTT. I think the concern that you have voiced is a real one. In my job, most of the people I am concerned about are crooks. Unfortunately, they operate in all different fields.

We have had our consumer fraud investigators made ministers by sending in \$25, and for \$50 they can be a bishop and make people exempt from the draft and perform all kinds of things. So, sharing with you a real concern for protecting the rights of religion in this country and emphasizing that our State officially agrees with you, I'm also aware of the fact that there are people who abuse it. I don't know what the way should be for getting a handle on it.

Mr. LOTT. Thank you very much. We appreciate your coming.

Mr. WILSON. Thank you, Mr. Scott. Under the provisions of the bill, of course, as it is now written, the U.S. Postal Service would have the jurisdiction of enforcement of the legislation.

We now have George C. Davis, Assistant General Counsel, Consumer Protection Division of the U.S. Postal Service.

Mr. Davis.

STATEMENT OF GEORGE C. DAVIS, ASSISTANT GENERAL COUNSEL, CONSUMER PROTECTION DIVISION, U.S. POSTAL SERVICE

Mr. DAVIS. Mr. Chairman and members of the subcommittee, my name is George C. Davis and I'm Assistant General Counsel in charge of the Consumer Protection Office of the Postal Service Law Department. I'm accompanied by the Chief Postal Inspector C. Neil Benson and Janice Adams, the attorney in my office, who will do the work in case this bill is enacted.

If I utter an occasional grimace of pain, it is due to a back problem and not due to the subject matter here or the company. In summary, we believe that if enacted with minor modification, H.R. 41 would facilitate both public awareness of the relative matters of the charities soliciting support, and our ability to apply the postal false representations statute and the mail fraud statute to dishonest or deceptive charities.

The postal false representations statute (39 U.S.C. sec. 3005) permits the Postal Service, upon compliance with the requirements of the Administrative Procedure Act applicable to administrative hearings, to issue a mail stop order against any person who "is engaged in con-

ducting a scheme or device for obtaining money or property through the mail by means of false representations." Such orders provide that mail in response to any such scheme be stamped as being in violation of the statute and returned to the senders, and forbid the payment of postal money orders drawn to the operator of the scheme. To prevent interim public injury pending the administrative proceedings, 39 U.S.C. sec. 3007 allows the Federal district courts to order the Postal Service to temporarily withhold mail in response to a misrepresentation scheme. This authority is particularly important in view of our lack of authority to compel restitution of losses to victims. H.R. 41 provides for the use of these statutes to enforce its provisions.

Proceedings under sections 3005 and 3007 are relatively expeditious and, we believe, effective. However, two constraints should be identified: First, because our statutes operate on a case-by-case basis, some experienced violators of the statute are adept at resuming their schemes under new names and addresses, thus necessitating repeated administrative proceedings against the same promoter; and second, the effectiveness of section 3005 is directly related to how promptly we identify a violation and are able to take administrative action.

The mail fraud statute (18 U.S.C. sec. 1341) holds the threat of a 5-year sentence and a \$1,000 fine for any person convicted of use of the mails in "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent promises."

Violations of these statutes are investigated by the Postal Inspection Service. The Inspection Service presents evidence of apparent violations of the mail fraud statute to the Department of Justice and violations of section 3005 to my office.

The statutes I have described may, in appropriate cases, be used concurrently, and each is presently applicable to deceptive or dishonest charitable solicitations by mail.

However, charity cases are relatively infrequent and difficult for a number of reasons. Most importantly—and a difficulty the proposed legislation seeks to alleviate—effective enforcement of these statutes is largely dependent upon the public knowing that it has been victimized and reporting that fact to the Postal Inspection Service. In most fraud or misrepresentation cases, the operator of the scheme fails to deliver promised goods or services; the victim thereby becomes aware of his injury, and we are informed. In charity schemes, the victimized contributor does not await any key event to tip off the fact that he has been taken.

It is exceedingly difficult for the public to gain awareness of a cleverly designed charity fraud. A shrewd illicit operation is designed to be indistinguishable from its legitimate counterparts, and the contributing public will not ordinarily be able to determine whether the promoter has dedicated a disproportionate percentage of the contributions to his own use, or has misused the name or reputation of well-known persons or groups allegedly supporting the solicitation.

Even where the Postal inspectors become aware of a charity swindle in time to take effective action, successful prosecution depends upon our ability to prove intent to defraud. Traditionally, it is left to the public to determine the merits of a particular appeal for contributions. No law directs the founding of a charity or the use of its income and the unscrupulous promoter finds this gray area hospitable. To make

difficult proof of intent to defraud and to affirmatively show his "good intentions," the operator has merely to keep his books in order and make sure that some portion of the receipts is devoted to the cause his "charity" ostensibly serves.

Moreover, U.S. attorneys are understandably reluctant to prosecute all but the most flagrant cases of charity fraud. The ordinary cases generally lack jury appeal and the difficulties of prosecution are multiplied if the charity is affiliated with an ostensible religious organization.

In partial recognition of these conditions, in the past 5 years only 6 of approximately 800 cases initiated under the false representations statute and 400 of approximately 46,000 investigations initiated under the mail fraud statute were concerned with charitable solicitations. While these statistics reflect the difficulties I have mentioned they may perhaps also suggest that most charitable solicitations by mail are honest.

In my judgment the only effective preventative of consumer deception is an informed public and the proposed legislation is a salutary effort in that direction. It seeks to require each person mailing a solicitation for charitable contributions to include with the mailing information disclosing: (1) the name and address of the charitable organization; (2) the intended use of the contribution solicited; (3) the availability of further financial information upon request; and (4) the percentage of all contributions which remained for application to that purpose after deducting costs.

We believe the proposed disclosure requirements afford potential donors a reasonable opportunity to compare the actual or anticipated operations of a charity with its promises and would appear, for the most part, to call for information which, we should expect, is already customarily supplied by any legitimate solicitation.

By requiring charitable organizations to furnish more detailed financial information only upon request, we believe the bill appropriately meets the reasonable needs of the public for financial data concerning a particular solicitation; permits the organizations to deny unreasonable requests; enables the public and, in turn, the postal service, to be in a better position to identify suspicious solicitation claims; and strikes a workable balance between the varying levels of public desire for detailed information and the burden of providing possibly excessive information.

The legislation would generally apply to any eleemosynary appeal which seeks contributions by mail without regard to the purpose of the appeal or the form of communication or media used to effect the solicitation. The only exceptions appear well-designed to exclude only solicitations of individuals whose relationship to the solicitor is such that they may be presumed capable of readily acquiring adequate knowledge of the actual operations of the charity.

Required disclosure of the information contemplated by the bill will place the recipient of a charitable solicitation in a position whereby he or she may acquire the facts necessary to make an informed judgment concerning the merits of respective pleas for funds—it will not make the judgment.

The costs and benefits paid by a particular charity have little absolute value. Their significance becomes apparent only through com-

parison with other solicitations. The bill provides the recipient this opportunity without making his conclusions for him and the deferred effective date of the bill will permit the charities to inform the public with respect to the high start-up costs of charities.

The Postal Service supports this legislation and agrees with Mr. Wilson's view that the approach adopted in H.R. 41 is preferable to undue Government regulation of philanthropy. In this regard, we have in commenting upon the bill suggested several changes in the assigned administrative duties which, we feel, further remove the Postal Service from an unnecessary and undesired regulatory role in this area while not diminishing the intended public benefit.

The recommended changes involve proposed section 3012(e) which would direct the Postal Service to prescribe by regulation the accounting methods and procedures to be used by charitable organizations to assure compliance with new section 3012. Our concern is threefold: First, we believe this provision is unnecessary because the Postal Service, under 39 U.S.C. 401(2), already has the general power "to adopt, amend, and repeal such rules and regulations as it deems necessary to accomplish the objectives of this title"; second, because the provision casts the Postal Service in a role in which it has, at present, no particular expertise and is ill equipped to assume; and, third, we believe that charitable organizations should be free to adopt systems of accounting which fit individual institutional needs, provided the system used does not frustrate the purpose of this legislation through practices which distort the financial affairs of the organization. We believe that, absent compelling reason to involve the Postal Service immediately in the prescription of accounting methods and procedures, the Congress should adopt a generalized standard to govern the accounting practices of organizations subject to this bill, while recognizing the existing authority of the Postal Service to adopt substantive regulations particularizing accounting standards should such action become necessary at some future date. If, upon acquiring experience in this area, we conclude that a case-by-case approach should be supplemented with substantive regulations, we intend to so act.

In our written comments we have suggested specific language which might be adopted to accomplish this and a few additional administrative changes.

In further regard to the testimony presented last week, I should like to add to my prepared remarks the following observations and comments.

We do not intend to assume a regulatory role over charities. We view this legislation as an effort to cause charities to reveal reasonable information with minimal inconvenience and minimal bureaucratic interference.

The bill enhances our authority to act on a case-by-case basis where we become aware of a violation of law. We contemplate no industry-wide action including requesting all organizations subject to the bill to file reports with the Postal Service.

Second, unlike H.R. 5269 in the last Congress, H.R. 41 does not require new charities to estimate their initial year's performance. Recognizing the difficulty facing any organization required to make such estimates we agree that it is appropriate to delete this requirement.

We suggest, however, that it may be desirable in the interests of an informed public and more equitable to preexisting charities subject to the bill if the statute required that initial solicitations bear a conspicuous notice that the organization has no prior experience upon which to base the disclosure by H.R. 41.

Third, we understand from the testimony of prior witnesses that IRS considers the tax returns of tax-exempt organizations to be public information. Whether this is so or not, I do not know. But some organizations subject to this law—and they are the organizations we are going to be most concerned with—may not elect to be tax exempt for IRS purposes and their returns may not be available to the public or to the Postal Inspection Service.

The availability from IRS of tax returns of all persons or organizations subject to this act would provide meaningful investigative assistance to the Postal Inspection Service, particularly in the area of identifying fraudulent books and records.

Accordingly, we suggest the committee to consider amending the bill to require that upon demand any person subject to the act and the IRS provide copies of income tax returns to the Postal Inspection Service.

Fourth, Mr. Gross of Price-Waterhouse suggested that paragraph 4 of subsection (a) be amended to require disclosure of contributions distributed to the charitable activity rather than disclosure of funds remaining for distribution after deducting costs.

We agree that this change would be more consistent with the intent of the legislation.

Finally, the Pennsylvania secretary of state suggested that the exemption for radio and TV solicitations be changed from 60 to 45 seconds. If this is, in fact, practicable, we agree. We are not, however, in a position to express an informed judgment on whether radio and TV solicitors could live with the induced exclusion.

Thank you very much.

Mr. WILSON. Thank you.

Last week, Mr. Gross said that generally accepted accounting principles have already been developed for charitable organizations and are being followed by reputable charities.

He said these standards would be a basis for compliance with H.R. 41. Do you agree?

Mr. DAVIS. Yes.

Mr. WILSON. You understand the legislative intent is that the Postal Service would not be required to develop any new accounting standards.

You are not as concerned about the accounting procedures as you are the enforcement, law enforcement, aspects; is that correct?

Mr. DAVIS. Yes, Mr. Chairman.

As we are viewing this legislation, we are drawing a line—the committee has drawn a line between what might be called a regulatory approach, typified by the filing of reports, scheduled auditing, and all of the panoply of the full regulation of an industry, and what I would call a case-by-case law enforcement approach.

It is the latter approach we are following here. If we have reason to believe that someone is not doing what this legislation requires, then and only then would we take action, and this is action which is large

part we are presently taking against the same organizations that are subject to this bill.

Both the mail fraud statute and postal misrepresentation statute are fully applicable to charitable organizations.

Mr. WILSON. The fear again was expressed last week, if you recall, that the Postal Service might administer the provisions of H.R. 41 differently in different parts of the country.

There is no way this can happen.

Mr. DAVIS. I don't understand that concern.

Mr. WILSON. I think that was based on actual postal procedures where in one region they interpret things differently than they do in the other. Your office would be the office establishing the principles here.

Mr. DAVIS. Actually not.

There is considerably more constitutional protection built into the process than my own judgment on how this should operate. The sanctions of this bill are twofold. One is explicit—39 U.S.C. 3005. That is the strong arm. If someone fails to do what the bill requires, the statute says that 3005 has been violated and we can cut off their mail.

The second sanction is implicit. That is the mail fraud statute. Neither of these statutes can be applied to impose any sanction without, in the case of 3005, a full administrative hearing before an independent administrative law judge with rights to appeal to the Postal Service Judicial Officer and ultimately to the courts, and in the second instance the mail fraud statute, the sanction of which is imposed only by the U.S. district courts and not by the Postal Service. Our administration of the statute is going to be investigation where we have reason to think there is a violation, and initiating action where we think that is the case.

If we believe there is a violation and 3005 appears to be the proper remedy, my office will initiate proceedings before an administrative law judge and see whether our case is sound and whether we can prove it.

In the case of the mail fraud statute, the sanction would be imposed by a Federal court with a right to a trial by jury. This is not a matter that is subject, I think, to the various administrations by the Postal Service throughout the country.

Mr. WILSON. The suggestion again was made last week that perhaps an advisory committee should be set up composed of the American Institute of Certified Public Accountants and charity representatives to assist in establishing auditing procedures.

Do you see any value to this suggestion or need for it?

Mr. DAVIS. Let me comment in this manner.

If we were going to follow the approach of having the Postal Service get into indepth regulation of charities, establishing volumes and volumes of regulations, telling them how to account for pens and erasers, then I think the establishment of a statutory advisory committee would be useful both to the Postal Service and to industry. It would give us a lot of help and good guidance.

But that is an approach more consistent with the regulatory means of enforcing the statute than the case-by-case law enforcement approach that we are urging the committee to adhere to.

In case-by-case law enforcement we would like to have voluntarily available to us any informed judgment that we can have to guide us in doing our work. For example, if we find that we have to take action against a particular organization because their accounting procedure is not, in our judgment, consistent with generally accepted accounting principles, we are going to need witnesses to prove our case. We are going to have to have experts from the accounting profession testify, either before the administrative law judge or before the courts, or both, that our judgment was sound and that the charity has not followed what is considered to be generally accepted accounting practice. We will have to have that assistance. But I don't think we need it in the form of a statutory advisory committee. I'm hopeful, and I have reasonable ground for being hopeful, that the accounting associations will be helpful to us if we need help. We have found them to be in the past.

Mr. WILSON. How would the inspection service learn of charity abuses under H.R. 41?

Mr. DAVIS. Would you repeat that question?

Mr. WILSON. How would the inspection service learn of charity abuses under H.R. 41?

Mr. BENSON. Probably by someone bringing the matter to our attention, in the form of a complaint or questioning a report. One charity may say "I can't see how this charity can say they are contributing 85 percent to this factor when it doesn't appear to be legitimate."

Generally, we get our reports in all mail fraud and in all of our criminal investigations by complaints, external type of things.

Internal theft, we get them from other methods.

Mr. TAYLOR. During the previous hearing, Mr. Grohs of Price Waterhouse told the subcommittee that some type of fundraising organizations require a smaller percentage of fundraising costs than do others. The general public, however, is not aware of the differences.

I was wondering, do you feel that a percentage disclosure as required in the bill would adversely affect organizations that could have justifiably higher fundraising costs?

Mr. DAVIS. I think it might. It's inevitable. The only way I can see to minimize that effect is to provide a really good public relations job on the part of the charity. It's crystal clear to me that the most legitimate charity conceivable, when first starting out and having to use mailing lists or other sources of names of potential contributors that is not refined by experience, is going to incur a vastly higher cost of conducting its solicitation in the first year than it will in succeeding years.

This is a fact that I think is inescapable in this field. I think the charities are going to have to find a way to ameliorate that, and they have to do it now. I don't believe that this bill is really changing that fact.

If a very legitimate charity were to solicit me and I wished to know more about it and wrote to them and said, "Where does your money go?" I would expect them to reply to me with an honest, forthright statement of where their money goes.

If they don't reply to me, they are not getting my money. If they do reply in a manner that indicates a high overhead rate, I would expect some explanation of that. It's only logical to expect that they would say; "We have a 65, 75, 85 percent overhead rate this year, but it's because blah, blah, blah." This is a fact of life in this business.

I think it can be ameliorated by appropriate educational campaign on the part of the charities.

Mr. TAYLOR. We recognize that an unrefined list will incur a great deal more overhead than a refined list. For those people who are just fishing to begin with, to get a list that is refined, to make it a list of creditors, we recognize they are going to incur vast amounts of expenses at the beginning.

Mr. DAVIS. Yes, sir.

Mr. TAYLOR. There is one other thing that concerns me some. That is our many thousands of small charities across this country who raise funds without the benefit of professional fundraisers. I received a letter from a small church in my district that my mother used to belong to. They are trying to raise money to do work on that church. It was written by a volunteer on the board of deacons of that church.

I'm concerned about the minimal bureaucratic interference that might become thrust on thousands and thousands of small churches like these, who are trying to do a job, raise money for a cause they consider worthwhile. The records of this country are replete with bureaucratic boondoggles that this Congress perpetuated on the people when they didn't intend to do it.

Are we going to put ourselves in a position where, somewhere down the road, a bureaucrat is going to write a regulation and some small church will have to fill out all of these forms?

Mr. DAVIS. If any bureaucrat wrote that regulation, it would be invalid under this bill. This bill exempts membership organizations such as small churches. We would have no authority to regulate under this bill any such organization.

Mr. TAYLOR. I'm not a member of that church, but my mother was. I'm a friend of that church. There are other friends of that church, whose parents may have belonged to it years ago and who are inclined to contribute to that church. I'm not a member.

Will they have to file a long statement with some agency of the Federal Government, saying they sent Lela Taylor's son a solicitation letter to contribute to the church which she belonged to and which I, as a small child, went to?

Mr. DAVIS. The problem is how do you draft a logical exemption. The bill evidences an attempt logically to exclude those organizations where the persons being solicited can be supposed to know what is going on in the organization. Your local lodge or your local church or college or university, people who are being solicited within that family, if they have reason to suspect something is wrong, they know the fellow to go to and say, "Look, what's going on here? This doesn't make sense and it's inconsistent." That kind of exemption we favor.

If it can be broadened to more logically include similar situations, we are in favor of it. I don't know at the moment how to broaden to cover the specific example you have raised—to include people who are not members of the church and are not located with it. There may be a way of doing it. If there is one, as I say, we would support it.

The point is, we don't feel that there is any need to have any governmental interference in the way of requiring disclosure of information, if those who are being solicited are already in a position to do it for themselves. If you have that kind of relationship with a charity, where you can go to them and say, "Look, let me see what your books and

records say. Why are you asking for this? What are you doing?" Well, that's fine and we don't need to get into it.

If you are dealing with a large charitable organization sending out solicitations to people they don't know and have never heard of, have no contact with them or have any way of getting information, then there is a need to have a better method of getting disclosure. I think this bill does that.

Mr. TAYLOR. I think, as in many of these bills we pass, we don't know where to draw the line. You pass these laws up here and sometimes they go awry badly. The regulations are written into law. The last paragraph of these laws say some bureaucratic agency will devise such rules and regulations as is necessary to carry out the intent of this act. I have read that over and over.

I don't believe Congress, when they passed the OSHA bill, thought you would have to put a horn on a wheelbarrow, but one of the regulators said you have to do that. I don't want to harass the charitable organization of this country.

Mr. DAVIS. The primary interest of the Postal Service is to deliver the mail. We are spending all of our time and effort doing that. My office has three and a half lawyers working on section 3005 cases and we are bringing 150 cases a year now. We are not seeking to vastly expand that. The Postal Inspection Service is working as hard as they can to do the job they have. They are not seeking to expand that authority.

If there is any way to limit the coverage of this bill and still accomplish its purpose, I'm all for it.

Mr. TAYLOR. I'm not adversely opposed to trying to do something about fraud through charitable contributions. I am concerned about keeping more and more bureaucratic control on well-meaning, well-intentioned charitable and religious organizations. And I hope we don't move in the direction that would accomplish that ill-advised goal.

Thank you.

Mr. WILSON. Your interpretation of the case raised by Mr. Taylor is what my intent would be; that the small churches—particularly the fact that his mother was a member of the church would qualify that particular church, their solicitation to Mr. Taylor, as being exempt from the regulations of the bill.

I was glad to hear your answer because that indicates to me that you would use a realistic-approach interpretation of the legislation. I hoped that would be the case.

Mr. DAVIS. It may be useful to exclude in the exemption members of the church and their family. In Mr. Taylor's case, if he had a question about a solicitation he received in the mail, his family would have sufficient presence in the church to investigate that themselves. That may be broadened and still serve your purpose.

Mr. WILSON. We will have our staff work with you so that this type of thing can be corrected. The purpose of these hearings is to improve the legislation. We don't come in here with the idea that we had a perfect bill. We thought we did, because we had hearings last year, but we are still agreeable to anything that will give the bill more sense and won't put too many difficulties or restrictions on anybody.

Thank you very much for your testimony today.

Mr. DAVIS. Thank you.

Mr. WILSON. Our next witness is J. Edward Day, former Postmaster General, now representing a group of ad hoc charities.

STATEMENT OF J. EDWARD DAY, REPRESENTING AN AD HOC GROUP OF CHARITIES

Mr. DAY. Thank you, Mr. Chairman, and Mr. Taylor.

I will add variety to this because I see I am advocating something you and Mr. Scott and others are opposed to, preemption. I'm not adverse to taking views different from other people.

I appeared here five times in 1969 and 1970 to urge that the Postal Corporation bill not be passed, and I was the only one taking that position. Now all those dire predictions of mine are coming true.

Mr. WILSON. I'm sorry I didn't pay more attention to you. I have been trying to figure some way to undo that wrong deed.

Mr. DAY. There is no way.

I'm a member of the National Board of Project HOPE and one of the national volunteer officers of Project HOPE. I'm here in that capacity as a labor of love. I am not representing any of my various postal associations. We are speaking in this testimony for five organizations that have a common view and common interest: Project HOPE; the International Rescue Committee; CARE Inc., the Planned Parenthood Federation of America; and Save the Children Foundation.

I would like to say that all of these organizations strongly support the objectives of the bill that you have been urging upon the Congress, Mr. Chairman.

We understand that the subcommittee is concerned that in some circumstances the public is inadequately protected against fraud and abuse in the solicitation of contributions for ostensibly charitable organizations. Those proposing legislation in this area have also expressed dissatisfaction with the excessive percentage of their contributions which some organizations devote to fundraising and overhead expenses, while giving little help to the people who badly need the benefit of their charity.

We feel it is necessary for the National Government to prescribe uniform standards in this area to which all charities that solicit funds from the public would be bound to adhere. This is especially necessary in view of the threatened proliferation of inconsistent State regulations that it would be difficult for nationally based charities to comply with.

H.R. 41 includes some constructive measures to deal with important problems. We specifically support the approach of requiring disclosure of information to the public which is contained in H.R. 41. We believe that the proper course here is to assure that each member of the public has accurate, concise, and relevant information at the time when a decision to contribute to a charity or not is being made. This information should be meaningful, but not so burdensome as to render the solicitation ineffective.

We do not believe that it is the Government's function to decide for the charity or the public what particular charitable purposes should be favored. Nor should the government dictate how much

money specifically a charity should devote of fundraising and overhead expenses. Those decisions are best left to the public.

But, so that those decisions may be made wisely, the public needs information about what organizations do and how they spend the money they receive. This approach will allow charitable organizations to continue to provide the important services that so many persons throughout the world have come to depend on. It will also allow private citizens to support programs of their choice with confidence in the effectiveness of their generosity.

If the Congress is to act truly effectively in this area, however, it must legislate comprehensively. In its present form, H.R. 41 fails to deal with the problems of inconsistent and duplicative regulation of solicitation by State and local governments.

While H.R. 41 would establish certain minimum requirements for disclosure in the solicitation of contributions and thereby relieve some of the existing pressure for State regulation in the field, it would not specifically prevent States from applying additional requirements to solicitations in their jurisdictions, and it would not prevent the adoption of different requirements in different States. These requirements could well be inconsistent with one another, even though they were all consistent with the Federal legislation.

It bears emphasis that the prospect of inconsistent legislation in this field by States and localities is very real. At the moment, two States and one municipality have laws on the books requiring certain disclosures at the time a solicitation is made; the same two States require specific additional information to be given to members of the public on request; at least 18 States and the District of Columbia require specific information to be filed with the State government prior to solicitation of contributions from citizens of that State.

Many other States are presently considering legislation which would further regulate the solicitation of charitable contributions. A number of municipalities also impose their own additional requirements.

While the purpose of all these laws is identical, the specific forms which they take vary in detail as a result of their being enacted by scores of different legislative bodies. Usually, the variations are just enough to require the charitable organization to spend valuable time and effort to comply with the form of each different law; rarely, if ever, do the variations represent different judgments as to what is really needed to protect the public.

We believe that State and local legislation in this area should be specifically preempted by Federal legislation. H.R. 41, as it stands now, represents a badly missed opportunity. While we would like to see States impose uniform requirements as to what information charities must file with them prior to solicitations, the burden of complying with different State laws in this respect alone would be tolerable, and perhaps justified by peculiar State interests, if it were not aggravated by inconsistent provisions governing communications with the contributing public itself.

We believe that requirements for what information must be disclosed at the point of solicitation and what further information is available to the public on request should be uniform throughout the country, and H.R. 41 should address these two questions. If different

disclosures are required at the point of solicitation and different information required to respond to inquiries from each State, as is now the case, public national charities will have to continue to devote considerable resources to assuring their compliance with the variety of State requirements rather than to the pursuit of their charitable purposes. The failure of H.R. 41 to specifically preempt State and local legislation on the same subject with which it deals is a significant shortcoming in the bill.

We would like to bring to your attention some of our concerns with the scheme of administration anticipated for the bill, which has been discussed by Mr. Davis here this morning. Charitable organizations as a group have not had significant experience with the Postal Service's administrative practices. As a general proposition, our concern is simply that the administration of the bill be placed in agency—and it may be that that agency is the Postal Service—that is knowledgeable about the nature of charitable organizations and their activities, fair in its treatment of those subject to its regulation, and effective in its enforcement program.

More specifically, we are concerned that the language of H.R. 41 might be read to authorize the Postal Service or any other agency that might be responsible for regulation of the activities of charitable organizations to impose new requirements with regard to their accounting practices.

We have heard from Mr. Davis that the Postal Service does not wish to get into that role. That is helpful information, if the Postal Service is to be the administering agency, because a great deal of progress has been made in recent years toward establishing uniform, accepted accounting principles for charitable organizations. The American Institute of Certified Public Accountants (AICPA), and the organizations themselves have cooperated in this extremely difficult task.

AICPA standards for charities' financial accounting practices were first adopted several years ago; they are in the process of being implemented. These AICPA standards should control, and the administering agency for H.R. 41 should be explicitly required to adopt them, now that they have been so painstakingly derived, and it should not be given any discretion to establish new ones. We agree with previous witnesses that it would be desirable to require the administering agency to develop all of its regulations in consultation with an advisory committee on which charitable organizations and members of the public would be represented.

A second concern we have with the administrative aspects of the bill relates to what we understand to be the Postal Service's practice of relying on complaints to trigger investigations, rather than adopting a comprehensive enforcement program on its own initiation. The chief postal inspector confirmed that that is basically the approach to enforcement in the other things covered by the portions of the Postal statutes to which this provision would be attached.

In a number of Government programs reliance on complaints alone in identifying violations of the the law has led to skewed enforcement patterns with an inappropriate emphasis on the trivial. Some provision should be made in this legislation for spot checks and periodic review of the practices of each charitable organization. This should not require that any large new bureaucracy be established, it would merely

act as an effective, occasional complement to the general complaint oriented enforcement policy.

Finally, with regard to administration, we would urge the subcommittee to assure that the bill explicitly provide for due process for charitable organizations which come to the attention of the administering agency. This should be assured both during an investigation and in any subsequent proceeding.

Mr. Davis covered that as far as the Postal Service is concerned and assures us that those protections are given in connection with its enforcement efforts whereby mail might be shut off for a particular organization.

We believe that the investigative process should be conducted on a completely confidential basis and that the bill should explicitly provide for notice and an opportunity for hearing by an organization prior to any adverse action being taken. Even where an organization ultimately is given a clean bill of health, publicity of the fact of an investigation can seriously impact on an organization's ability to solicit contributions from the public. As we all know, people are inclined to read headlines and they don't read the details or retractions.

We believe there are ways in which H.R. 41 could be strengthened to provide better protection to the public, without unduly burdening legitimate charities.

Specifically, we believe that it is not necessary to exempt completely from the bill's disclosure requirements those solicitations by television and radio which are of less than 60 seconds in length. We agree that it is not feasible to provide the full disclosure required by H.R. 41 in advertisements this short in duration. It would still be possible, however, to require full disclosure to broadcast stations, which can then decide knowledgeably how to use their public interest time. Many of these charitable advertisements on radio and television are public interest advertisements.

We do not believe that the bill provides adequate protection for the public from the deceptive practices of new or short-lived organizations. Where an organization has no history to report, it might at least be required to state whether or not it is tax-exempt and perhaps some other information which would indicate to the public more about its background and purposes. As you see from examples recited by Congressman Koch earlier, many one-shot efforts don't build up a record that can be used later on.

We do not think it is necessary to postpone the effective date of the bill until 3 years from enactment. We believe that charitable organizations can adjust their activities to the requirements of the bill in a shorter time.

Finally, I would like to comment on the specific requirements of the bill for disclosure of information. As I have already said, we believe that the bill's requirements can in the main be complied with. We would suggest, however, that the bill's requirements for disclosure may, as presently cast, be too extensive as they apply to posters and small advertisements.

A considerable number of charitable organizations rely on public service advertisements, which are characteristically small in size. It would be difficult in many instances to include all of the information required by the bill and still have an effective ad. We would propose

that the bill be modified to take into account this difficulty which it presents to solicitations which must be presented in a limited space. A provision along the lines of what we have suggested for shorter TV and radio ads would be appropriate.

The objectives of H.R. 41 have the support of our organizations. We believe that effective Federal legislation assuring that the public is informed and providing one national set of disclosure requirements is needed. We look forward to working with the members of the subcommittee and your staff as your consideration of this important subject proceeds.

Thank you very much for the opportunity to appear before you. I will be happy to try to answer any questions you may have.

Mr. WILSON. Thank you very much, Mr. Day. You have presented worthwhile suggestions to us. I believe the enactment date can now be shortened. That was originally put in to accommodate the charitable organizations, but the year has passed since that time, and already some of them are complying with what this bill would require them to do.

I think we can get together on something that's reasonable insofar as that particular provision is concerned. You obviously, because you supported the legislation or principle of the legislation, and speaking for five well-known charitable organizations, don't feel that disclosure will damage charities in any way. Rather, it would build up confidence in these institutions. Is that true?

Mr. DAY. Correct.

Mr. WILSON. Do you see any reason why religious organizations should be exempt from the bill?

Mr. DAY. No. We don't. Many of them are seeking support from the same public that nonreligious charities are.

I think the same rule should apply to all of them. I get solicitations at home from obscure missions and so on, that I know nothing about, that apparently do all right, because they keep going over the years.

I don't see why they shouldn't provide the same type of information. Churches and religious groups use volunteers generally in connection with fundraising. The fundraising expenses of an established organization is of such a level that disclosure won't hurt them a bit. As was mentioned here by Mr. Scott, there have been abuses of organizations calling themselves religious charities where there is some doubt about whether they are religious in the proper sense of the word.

Mr. WILSON. The problem in exempting religious organizations is where do you stop—do we take the accepted religious organizations that we think of when we speak of religious, maybe six or seven of the largest churches?

There is no way it can realistically be done. The Unification Church, Reverend Moon, I don't know whether they solicit by mail or just do their panhandling on the street. I would feel that this type of organization would certainly be under the provisions of this bill. And so it becomes difficult to separate religious groups.

Mr. DAY. I agree with you. I don't see how separation can be made on the basis of size, or how long they have been established. I remember reading once that Senator Schweiker belongs to a church that only has 7,000 members nationally. It's a recognized church. I don't see how you could put the Methodists in and leave it out.

Mr. WILSON. We have also been told that the public wouldn't understand the disclosures provided for in H.R. 41. You don't think that is a problem. Do you feel the public would understand the disclosure?

Mr. DAY. I think they would. One of the organizations that's in our group already makes these disclosures in the first instance. The others are all prepared to, when they are asked for the information. You pointed out a case in your opening statement where an organization found that the use of the disclosure certainly didn't hurt them. Their fundraising return has been increasing rather than going down.

Mr. WILSON. Last week the secretary of The Commonwealth of Pennsylvania stated that this bill would allow the States to move away from burdensome individual licensing and disclosure, and focus their attention on catching charity frauds.

I'm sure you feel this would be desirable, but you still have the fear that there is going to be a lot of different types of State laws that make it extremely difficult, some in contradiction of others, national charities who solicit in all of the States.

Mr. DAY. That's right. It already exists, to some extent. For a national charity such as Hope, we have to put on our direct solicitation material references to the fact that our report filed in New York State is available. We have to put certain things on it in reference to the Michigan law. It's not practical to have fund raising literature for each State; the same literature goes to everybody. As a result you have a long list of information on a charitable solicitation piece. It's bound to make the request look like a complicated document, rather than focusing on the charitable solicitation effort. I think laws in other States are going to proliferate because a problem does exist, and as various States go at it in different ways, it's going to take up more of the time of national charities trying to comply with all of these local laws.

Mr. WILSON. If we did preempt the States and local municipalities from this field with this legislation, would that not create an enormous bureaucracy to take care of that?

Mr. DAY. I don't think so. The testimony of Mr. Davis and his colleagues was enlightening on that. It's not advocated by them or us that the enforcement agency prescribe a specified accounting system. It would be this system that has been established by the accounting associations. It would not require reports to be filed. There would be a combination of spot checks and complaint receipts as a way of finding cases where the law wasn't being complied with.

I don't think that would require onerous bureaucracies.

Mr. WILSON. Mr. Taylor.

Mr. TAYLOR. I want to express my appreciation for your comments. I think they are pretty good. I do have some disagreement with Attorney General Scott relative to the preemption of the States in this legislation. He has a great fear that we might preempt them and he doesn't seem to think we should do that.

On the other hand, you think this would be streamlined and could be better handled if the States were preempted and we had one set of rules and regulations. Is that true?

Mr. DAY. I'm on a different side from him on that issue. I think that some people have a natural reluctance about preemption, but when an activity is done on a national basis and the problems are

national in scope, I think that one should look kindly on the idea of having uniformity.

There are plenty of other things for the State governments to regulate.

Mr. TAYLOR. That's all, Mr. Chairman.

Mr. WILSON. Thank you, Mr. Chairman and we appreciate your being with us.

Our next witnesses represent fundraising groups. If they will come to the table as a group.

We have Mr. John J. Schwartz, president of the American Association of Fund-Raising Counsel, Inc., Henry Goldstein, director and member of the executive committee of National Society of Fund-Raisers, Inc.; and we welcome the legislative chairman of the National Society of Fund-Raisers.

STATEMENT OF JOHN J. SCHWARTZ, PRESIDENT, AMERICAN ASSOCIATION OF FUND-RAISING COUNSEL, INC.

Mr. SCHWARTZ. I am John J. Schwartz, president of the American Association of Fund-Raising Counsel, Inc., the Nation's oldest and largest association of professional fundraising counseling firms.

On behalf of the association, I would like to thank the chairman of this committee, Mr. Wilson, and the distinguished members for permitting us to share with you our views on H.R. 41—one of the most important pieces of consumer legislation being considered by the 95th Congress.

We applaud the efforts of Mr. Wilson to seek some measure of protection for both the American public and the charities that are such an important function in our society, from the effect of the few fraudulent charlatans that cast a suspicious shadow over the entire nonprofit sector.

But before going into the provisions of H.R. 41 specifically, I would like to acquaint the committee members with the scope of the programs the members of our association conduct.

Also, for those who may not be thoroughly familiar with the dimensions of private philanthropy in America, I would like to give you a brief review of its impressive contributions to the improvement of our society.

Each year, the member firms of the American Association of Fund-Raising Counsel manage campaigns and development programs for approximately 1,000 philanthropic institutions, organizations, and agencies, ranging in size from local parish drives to campaigns that total over \$100 million.

The clients of AAFRC member companies include hospitals, health agencies, colleges, universities, secondary schools, religious organizations and groups, youth-serving and welfare agencies, civic organizations, cultural institutions, and the like.

For the past 20 of the association's 41 years of existence, we have published an annual compilation of private philanthropy in America, called Giving U.S.A.

The totals in the new issue will be of interest to everybody. It will be published early in May. The 1975 figures will show the immense portion of this part of our society.

We think it is a remarkable demonstration of what can be accomplished by private initiative when it is nurtured by the free society.

In 1975 Americans gave a record of \$26.88 billion. Of this total, living individuals gave \$21.47 billion which with individual bequests of \$2.23 billion accounted for 87 percent of total giving; foundations gave \$2.01 billion and business corporations contributed \$1.17 billion.

There were 26.1 million Americans who filed itemized income tax returns for 1975 and among just this group, contributions totaled \$15.4 billion.

It is estimated that the other 56.1 million who took the standard deduction contributed a total of \$6.3 billion during the year or more than \$112 each.

On an average basis, Americans contributed 1.72 percent of their personal income to charitable causes in 1975. As a percent of personal disposable income, contributions averaged 1.99 percent.

In addition to the actual dollars contributed, the Commission on Private Philanthropy and Public Needs estimates that Americans give in excess of $5\frac{1}{2}$ billion hours of volunteer time each year to various causes and organizations engaged in charitable activity. The time alone is estimated to be worth more than \$25 billion.

Our preliminary figures show that in 1976, a total of \$29.42 billion was given to charities. This is an increase of 9.4 percent over 1975 and it is the first year in the past 3 years that philanthropy has kept up with the eroding effects of inflation.

Our figures show that of the total contributions in the past year, individuals donated \$25.94 billion, or 88 percent. The fact that 88 percent of all contributions last year came from individuals—and that does not include the amount of time or value of time given by volunteer workers—proves conclusively that charities are, indeed, a people-oriented enterprise.

Where does the money go?

Religion gets 42.6 percent, hospitals 14.9, education 13.8, social welfare 9.1, arts and humanities 7.1, and in the year 1976, because it was our Bicentennial year, civic and public affairs got 3.3 percent.

These figures show clearly, this is a business or enterprise of people, the same individuals the thrust of H.R. 41 is pointed toward. Religious causes and churches are nearly totally supported by individual contributions. In 1975, giving to religion totaled \$11.68 billion.

Colleges and universities receive roughly half their support from individuals and in 1975, the Nation's private educational institutions raised \$3.59 billion.

Roughly 60 percent of the total support given each year to social welfare agencies, such as the United Way and the various federations comes from living individuals; and hospitals, as well as civic groups and cultural organizations receive a good share of their annual support from individual donors.

I have gone into detail about individual giving primarily because H.R. 41 would influence the fund-raising activities aimed at individuals and not the other segments of the donor category—foundations and corporations.

And we agree without doubt with Mr. Wilson and many of the other members of the 95th Congress that Federal legislation is desirable and will help the legitimate charities achieve more credibility.

But we have some difficulties with H.R. 41—particularly in the areas of disclosure which we believe in many cases will cause misunderstanding by the general public; and in areas of enforcement and rulemaking, which we feel might more appropriately be in the domain of the Internal Revenue Service, rather than the Postal Service.

First, with respect to the provisions of the bill calling for the providing of certain information, including fund-raising cost percentages, at the point of solicitation—

By asking for this limited information to be made available as an isolated statement to the public, the legislation is asking the public, in effect, to determine on the basis of the fund-raising cost percentage, whether or not the charitable cause is efficient and thereby worth supporting.

We believe this is a mistake and would like to point out that there are many factors that must be taken into account in judging the worthiness of an organization. The fund-raising cost is only one of them and in many cases, it is not an accurate measure at all. We would urge instead that charities make available full disclosure as is contained in the typical annual report.

Emphasizing fundraising costs at the point of solicitation will inevitably cause some individuals not to contribute—individuals who would support a cause if they were aware of its complete financial record, purpose, and programs.

For example, new or lesser known causes, or those which are generally unpopular, have high fund-raising costs, particularly in the beginning of a campaign. This was partially taken into account in the legislation by delaying its effective date for 3 years, but even this may not be sufficient time for these newer causes to grow to the point of being accepted to the degree necessary to enable them to raise sufficient funds for these programs.

Organizations with long range capital campaigns would necessarily have high costs for the first year or two and income for the same periods would be on the low side. Donors presented with these statistics would get a distorted view of the effectiveness of the organizations' fundraising ability and this view could result in a lack of support critical to the program's success.

Basically, these requirements favor those organizations which have been established for a period of time, which are relatively well known to the general public and which have a large segment of volunteer workers. These organizations, if compared with some others without the benefits they enjoy, would have a low percentage of fundraising costs and if the public were to make their determination to give only to those with the lower costs, the others would, in all probability, cease to exist.

In view of the complexities that are involved with raising money today for different types of institutions and agencies, the American Association of Fundraising Counsel would urge this committee to allow the public to base its decision on whether or not to give on as much information as they can possibly obtain.

The information contained in an organization's annual report includes that which H.R. 41 presently calls for—fundraising costs—but at the same time, it contains much more information, including such things as individual programs and how much each costs.

It is available to the public without the added burden of extreme additional cost on the part of the charity since currently, it is made available in compliance with a number of State statutes.

We would suggest, therefore, that the charity be required to tell the public that a copy of its annual report can be obtained on request by writing to a specific address. In this way, the public would get a full picture of the charity's financial activity, and not just a portion of it.

At the same time, we would strongly urge the committee to make clear that the administration of the disclosure requirement should take into account the need for accounting principles for different categories of charitable, educational, and other nonprofit organizations.

In regard to the provisions of H.R. 41 designating the Postal Service as the regulatory agency, we would suggest the committee assign this responsibility to the Internal Revenue Service.

Our reasoning behind this is prompted by the fact that most charitable organizations regularly file information with the IRS—on form 990—and through the years the IRS has acquired extensive knowledge in the area of charitable organizations. In addition—and equally important—the IRS can apply the greatest sanction of all—the loss of tax-exempt status to organizations that are not in compliance with the law.

The increase in the workload of the IRS, we believe, would be small, compared to that required by the Postal Service, which would be extensive.

Aside from that, the relationship between disclosure, annual reports and the retention of the organization's tax exempt status would, in our view, give muscle to the legislation.

We agree with many others in the profession who feel that an expansion of the form 990, or the requirement of filing a separate annual report, could fill the necessary reporting requirements of H.R. 41. At the same time, by confining reporting to the IRS, costly duplication could be eliminated.

While those who do not meet the reporting requirements could face loss of their tax-exempt status, at the same time, IRS could notify the Postal Service to stop mail, if it was necessary to do so.

As a final suggestion, the American Association of Fundraising Counsel, would ask the members of this distinguished committee to give careful consideration to adding an amendment making the legislation preemptive of the myriad of State statutes and local ordinances which are presently causing confusion and monumental problems for the philanthropic community.

Just to keep aware of the new laws being introduced in many of our States and municipalities, and the amendments to existing legislation is a mammoth job. And the compliance is costly for the charities. This compliance and monitoring necessarily takes away the program dollars that go to the philanthropic causes and funnels them into additional administrative costs. We would hope that this committee would establish itself as a leader in this area and consider legislation that would be truly national in scope, and at the same time, meet the objective and intent of us all—the protection of the general public and the legitimate charities they support.

To that end, I would like to thank you again for letting me appear here and share our views on this subject. At the same time, I would

hope that we can work with this committee—as we have in the past with both State and Federal committees—in formulating legislation, rules and regulations.

SUMMARY

We think that disclosure is essential and we are for it. The main objection we have to H.R. 41 that as it is now written is that it does not provide for enough disclosure.

We feel that at the point of solicitation just to give fundraising costs is not sufficient information for the donor to make the judgment as to whether he or she should give to that charity.

We think there should be available to the donor, information on the program of that organization, who are its directors or trustees, what its track record might be and, if you will, a history of its finances, not just that of a given year.

All this in a solicitation letter would not be a practical thing to write but if the letter says that the donor can ask for and receive an annual report from the charity, then the donor could make a more careful judgment on whether the charity should be supported.

It has been said many times in this room this morning that some charities must spend more money to get their money each year than others.

To give you some figures, the average for 32 national health agencies is 29 percent. The average for education programs will go as low as 4 and 5 percent.

So the percentage itself, alone, when emphasized at the point of solicitation is not a sufficient guide for the donor to make a judgment.

You always learn a great deal when you come to hearings like this and hear the opinions of others. I came in with the intent of suggesting that this committee consider the Internal Revenue Service as the governing agency rather than the Postal Service.

My reasons were twofold, the tax element—the exempt status of the organization and the form 990 are already filed with the IRS and administratively it might not be difficult to expand the scope of the 990 to make it a more complete report for the donors.

The IRS could recommend a postal stoppage on organizations that are of question. The other item mentioned were suggestions by former Postmaster General Day and several others to set up an advisory council comprised of individuals from the proper Federal agencies and from charity to make judgments on this issue.

Finally, I would like to endorse in full measure, Postmaster Day's suggestion that somehow the amendment be made to this bill if it goes forward to preempt the State regulations.

The efforts or the problems of national charities today to stay abreast of the paperwork and the various State regulations make it an awesome task.

There are 32 States that have legislation requiring registration of charities and reporting among other things. There are 12 other States, Mr. Chairman, that are now considering new or additional legislation.

Even keeping abreast of what is going on is an overpowering proposition.

Finally I endorse the concept of this bill in full measure. I think there are some ways that it can be improved. I again am grateful for having this opportunity to share my views with you.

Mr. WILSON. Thank you very much, Mr. Schwartz.
Mr. Goldstein.

**STATEMENT OF HENRY GOLDSTEIN, DIRECTOR, NATIONAL
SOCIETY OF FUND RAISERS, INC.**

Mr. GOLDSTEIN. My name is Henry Goldstein. I am testifying today on behalf of the National Society of Fund Raisers, Inc., NSFR, an organization of which I am former board chairman and president. I am presently a director and member of NSFR's executive committee and immediate past chairman of our legislative and public affairs committee.

For purposes of further identification, I am professionally employed as president of The Oram Group, Inc., a New York- and Washington-based fundraising, public relations, and management counseling firm, which has been in business since 1940. I am also a director of the American Association of Fund Raising Counsel and former vice chairman of the board.

I am accompanied here today by NSFR's president, Mr. Fletcher Hall, whom I am happy to introduce to the committee at this time. We are happy to have this opportunity to present our views.

You have heard Mr. Schwartz describe the function and scope of the American Association of Fund Raising Counsel, Inc., the principal association of consulting firms. NSFR is the principal organization of individual fundraising executives. In order to put our testimony on H.R. 41 in perspective, a brief digression on NSFR's scope and function is required.

We have heard so much about charlatans and crooks and other types that perhaps we ought to have balance the other way.

We, for example, are a professional society of some 1,500 men and women who are employed throughout the United States by not-for-profit institutions and organizations in several fields of health, medicine, education, welfare, the cultural and performing arts, social action, recreation, youth service—every kind of charitable organization. Some of our NSFR members, like myself, are employed by consulting firms who are, in turn, retained by the organizations I have just cited.

The society operates through chapters or affiliated organizations in the States of Arizona, Pennsylvania, Georgia, Florida, Massachusetts, Minnesota, Illinois, New York, New Jersey, California, Missouri, Wisconsin, Texas, and in the District of Columbia. In addition, we serve members at large from all over the country.

I have taken your time to describe NSFR because I seek to establish two points:

First, our members—who belong only as individuals and not as institutional representatives—cover the full spectrum of American philanthropy. We represent no special interest except the philanthropic interest.

Second, H.R. 41 is of manifest concern to this organization whose greatest strength, perhaps, is its diversity.

NSFR's legislative and public affairs committee has carefully studied H.R. 41, and its predecessor in the 94th Congress, H.R. 10922. Here are our conclusions:

On the positive side, it is clear that the legislative intent is beyond argument: This is a bill to insure that the people of America—who donate more than \$26 billion annually to gift-supported causes—can gain access to basic information as to how their charitable dollars are used.

It is also clear that despite a proliferation of legislation on the State level—and even in some municipalities—there are those few individuals and organizations who unconscionably abuse the public trust, as Congressman Wilson so well noted in reintroducing his bill.

It may be conceded by most that when a sector of the economy accounts for nearly 2 percent of the gross national product, it is unrealistic to assume that the regulatory attention of the Federal Government will not or should not be engaged. The real question, then, is not whether the Government will intervene but how, to what extent, and with what degree of sensitivity. In this case, the question is of burning importance because it goes to the root of a peculiarly American phenomenon, the voluntary, private support of the public good.

This is not simply a question of the Government moving into the profit sector to regulate an industry. The hurly-burly of the American marketplace is one thing. The “Y”, the Scouts, the Salvation Army, a local college, the community hospital, the county museum: these are the kinds of institutions this legislation will affect, the bedrock of American communal life.

They are essentially honest, dedicated, perhaps not as efficient, always, as they should be. But they are this Nation’s philanthropic matrix. They are not the Pallottine Fathers, the Gorman brothers, or the other miscreants who cop the headlines and who properly attract the zeal of Federal, State, and local officials.

Government intervention in the affairs of gift-supported institutions is, I submit, a highly delicate and sensitive proposition. The desirability of balancing the public interest with full disclosure is conceded. But one question we have is whether the proper fulcrum is the Postal Service.

You have heard others testify to this so I shall not prolong it: The main argument for placing enforcement of a Federal disclosure bill in the post office, as I understand it, is because the mail is the medium by which the contribution is transmitted.

True; but the Postal Service, so far as I know, has no experience in evaluating the kind of complete information charitable organizations already file annually with the Internal Revenue Service, Form 990; the sanction IRS can apply is extremely forceful—loss of tax-exempt status; and the problems the Postal Service has in discharging its basic function, the delivery of mail, militate against such a sensitive responsibility here whether 1 year, or 3 years hence, as H.R. 41 provides.

We are not talking about mail fraud or mail stops—legitimate concerns of the Postal Service—but of disclosure. The present form 990, perhaps somewhat expanded, is more than adequate in NSFR’s opinion. In short, if a Federal law is enacted, enforcement, in our view, properly belongs with IRS.

We strongly believe that any Federal law should preempt State and local government registration and reporting requirements, an

increasingly onerous burden for legitimate philanthropy. Thirty-two States already have such legislation; most of it is incompatible State-by-State and a major administrative headache for many national agencies. This year alone, I have responded to at least six States who are revising or enacting reporting or registration requirements.

None of it is compatible State-by-State. It's possible to accept the need for governmental oversight, but if our gift-supported institutions are to get on with the business of helping, healing, and serving people, is it unreasonable to ask for a uniform Federal law?

The subject of fundraising costs is difficult—not because the public is being ripped off—but because costs do not alone tell the whole story. The type of appeal, the history of an organization, volunteer outreach, public visibility, charitable purpose, and other factors influence costs. The best index of charitable worth is an institution's audited annual report, provided the financial information therein has been prepared in accordance with the standards promulgated either by the National Health Council, where appropriate, or by the audit guides furnished by the American Institute of Certified Public Accountants (AICPA).

It may interest the committee to learn that NSFR is one of few groups in the country which has undertaken a scientific study of fundraising costs. There is no information at all on this one. Mr. Gross, who previously testified, is working with us, or we with him, as well as with other accountants who are specialists in the area of auditing charitable institutions. There is virtually no real information on how costs are allocated.

We believe we have engaged the interest of some foundations and corporations who may help pay for this research.

To end on a positive note, NSPR believes that the legislation which comes closest to dealing fairly and evenhandedly with this problem was introduced in the 93d Congress by Representative Van Deerlin. You are probably familiar with it.

Despite some serious flaws, it dealt with the essence of the matter in a very commendable way:

Solicitation material must contain the following statement: "Recipients of this solicitation may receive pertinent information about it and the person making the solicitation by sending a request and a self-addressed, stamped envelope within 180 days after receipt of this solicitation to * * *"

In most circumstances, a legitimate organization could meet the burden of such a request simply by forwarding a condensed annual report.

I need not say what happens in the case of an illegitimate organization. NSFR respectfully urges this legislative approach.

In sum, NSFR applauds the intent, but not the likely result, of H.R. 41.

We urge that if and when a Federal law is enacted, it be enforced by IRS, as almost everyone in the field has recommended.

We seek a law that would preempt the waste, duplication and increased cost myriad state and local legislation has imposed.

We believe that fund-raising costs are obviously an important factor in evaluating charitable worth. But costs alone are an insufficient gauge. The best guide is an annual report containing audited figures in addition to other descriptive information.

NSFR believes that Federal legislation should follow the concept of the Van Deerlin bill—and not push the matter of costs to the forefront, at the expense of completeness, objectivity, and charitable purpose.

I personally believe that the gift-supported institutions would welcome fair legislation. For this reason, I much hope that the objections respectfully entered here will be carefully and dispassionately considered.

Thank you again for this opportunity to present NSFR's views. I would be happy to take questions.

Mr. WILSON. Thank you, Mr. Goldstein.

Now, Mr. Wilkinson.

STATEMENT OF WILLIAM WILKINSON, DIRECT MAIL FUND RAISERS ASSOCIATION

Mr. WILKINSON. Good morning, Mr. Chairman. For the record, my name is William Wilkinson, and I am legislative chairman for the Direct Mail Fund Raisers Association. Our association is composed of 300 individuals who work in direct mail fund raising or ancillary fields of endeavor. In the past 5 years, we have become the largest organization of our kind in the country. Collectively, we direct or work on campaigns for more than 500 local, regional, and national organizations which range from small special interest groups to large health and welfare agencies.

Our association functions as a forum for the exchange of ideas among fund raisers and within the confines set by the laws governing trade associations, we strive to promote ethical standards of direct mail fundraising.

I am a consultant in fundraising and a veteran of some 22 years in the industry. I have been asked by the DMFA to say first that we are pleased to see Congress direct its attention to the regulation of charitable solicitation. We believe some form of central legislation is possibly overdue. While it may not be generally recognized, those of us who labor in fundraising are as anxious or perhaps more anxious than anyone else to see fraudulent operators and dishonest charities exposed. They reflect on the industry and make our job doubly hard. We do however have two very basic problems with H.R. 41 as it stands now and as it relates to organizations which must depend on mail solicitations to raise funds.

We believe the requirements mandated in item 4 of the bill will be particularly damaging to new organizations, to organizations working in areas of special interest and quite possibly to small, local, or regional organizations. Item 4 requires all organizations to cite on their materials the percentage of contributions applied to charitable purposes after all fundraising, administrative, and general costs were subtracted in the preceeding year.

The implication is that arbitrary ratios are a valid yardstick for measuring charities and we dispute that point. Among fundraisers it is a well-known and accepted fact that it takes a disproportionate amount of money to get an organization started. All of the expenses tend to come first, as with many businesses. It is also widely acknowledged that organizations working in unpopular areas or on very spe-

cialized problems will have high fundraising costs. They cannot attract volunteers, drum up an emotional appeal or muster the grants and special gifts which combine with the dollars of ordinary contributors to lower cost ratios.

If such organizations are forced to compete in a price war with well-established organizations and/or organizations working in popular fields, they will simply lose. And this will stifle initiative and tend to act against the interest of some of our best voluntary efforts. Studies have shown that the public tends to equate effectiveness with costs and at that with very low costs. My colleague, Andy Andrews, of the American Fund Raising Service, quoted a Gallop Poll at a hearing 2 years ago which found that most Americans thought no more than 10 to 20 cents should be spent to raise a dollar and that those most able to give favored the lower figure. Unfortunately, even the fundraising giants and those with strong emotional appeals have difficulty bringing home the bacon at 10 cents on the dollar. It's unrealistic. And in the 3-year slot before H.R. 41 is to take effect there is not enough time to educate the public to this fact. We are not organized as labor or other industry is. We do not have a loud central voice and we cannot reshape ingrained opinions which have been carried over from simpler times in so short a period.

Above and beyond what section 4 will do to new or special interest groups, we fear it is bound to have some adverse effect on most charity. It fails to take into consideration the fact that fundraising costs differ greatly from one region to another. It does not recognize that there are two basic types of campaigns—maintenance campaigns and capital campaigns—whose costs have no relationship to each other and if published can only be confusing to the prospective contributor. Ultimately, if charities are forced to display percentaged figures at their point of sale only those with the lowest ratios—not necessarily the best services—can hope to survive.

We believe the requirement to include a percentage figure in the solicitation should be struck. Instead we think a statement should be carried on all solicitation material saying, "A copy of our tax return and/or our annual report is available on request." This, we are told, parallels the requirement in the Federal Election Campaign Act and should be effective for charity. Further, section (a) 3 requires a charitable organization to furnish full financial information on request and this would guarantee the offer.

Our second problem with H.R. 41 as it now stands relates to a point we would like to have considered.

One of the strongest recommendations made by the Filer Commission was that more research and study was needed if charity was to be regulated intelligently. We agree with this and believe there is one major omission in H.R. 41 which underscores this need. At no point in the bill is any attempt made to have it free national and regional charities from the morass of State and local jurisdiction claiming authority to supervise solicitation. These varying requirements, some of which are contradictory and incapable of being met by a single charity, add tremendously to the cost of fundraising. They usually require special printings, frequently necessitate special handling and nearly always add to administrative overhead. It is not unusual for a charity to spend \$2,000 or \$3,000 a year for State and local

registration fees, and it is more often than not that a full-time staff person is required to handle the filing of such registrations.

Now, while we fully understand the question of Federal preemption is a difficult one, we also know that Federal law will not preempt State law unless the text specifically states that such preemption is a purpose of the legislation. The fact that such a statement is missing in H.R. 41 gives us cause for concern. We would like to request that consideration be given to its inclusion. Such a statement would clarify once and for all the question of who has the right to regulate direct mail solicitation. As the bill stands now, we are fearful it will add to costs and go against one of the very purposes for which it should stand.

To the best of our knowledge, most of those who have been involved in H.R. 41 to date have been representatives of big charity and legislators reacting to constituents who feel they receive too many appeals. Big charities represent only a small portion of the 20,000 or so registered charities in the country and people who complain about the mail they receive are actually a small but vocal minority among those receiving mail appeals. Therefore, before passing on national legislation dealing with so vital a subject as the financial life blood of charity, we ask you to give consideration to the two points we have cited.

We appreciate the opportunity you have given us to testify and participate in this hearing. It has been an honor and we thank you most sincerely.

Mr. WILSON. Thank you, Mr. Wilkinson. The reason Mr. Van Deerlin's bill was never pushed seriously was because there was opposition to it, and he had other things to do.

We obviously aren't going to be able to have legislation that is going to satisfy everyone.

Of course, the reason you have all of these State laws is because there has never been a Federal law on the subject. We think this is a mild one, hopefully, that will discourage those States that are considering legislation, if we could have this passed from adopting additional legislation over what has already been put in effect in those States that have laws.

We are going to do the best we can.

There has been, of course, a lot of misrepresentations by those who oppose the legislation last year by telling the Rules Committee we had not held public hearings, which was absolutely untrue.

And, already, letters have been sent to Members of Congress by people who apparently have not read the bill, to try to influence their thinking.

I'm just expressing a few thoughts here that come to mind. It doesn't affect any of the organizations that are represented here at the table at the present time.

But it is difficult for me to understand why you feel and, in effect, you are saying that the public will be incapable of knowing the disclosure requirements of H.R. 41 if we do retain that in the bill. Why do you feel that that is the case, that the public would be confused rather than assisted, if we keep percentages in.

Mr. SCHWARTZ. The point has been made by all of the witnesses that if you receive an appeal from a charity that you don't know, even an

example of one in whose program you might be interested in, and you see a high percentage recorded in that letter of the cost of that appeal, you are probably going to ignore it. Some charities have to spend more money, as we have gone over many times. The big problem here is that the disclosure requirements of H.R. 41 says that you state in the letter how much that fundraising is costing, but nothing about the charity itself.

The only way to give a full picture of the organization is to have a report in which all information is available and we want to make the report available, rather than just the one focused item of fundraising costs.

Mr. WILSON. There is nothing in H.R. 41 which prevents an organization from providing additional information aside from the brief disclosure materials. The comment was made about new charities and the difficulty they have. Their organizational expenses are going to be higher than those of older ones. If this information was included in the letter, that they are new and undoubtedly the costs for getting started will be greater now than in the years to come, the public would understand and would contribute. Am I wrong. Don't I understand the public mood?

Mr. GOLDSTEIN. I don't know if you are wrong or right, Congressman. Nobody has powers of divination in the room, as far as I know. The question is you present one aspect of charitable concern, costs. That is in a mailing or advertisement or in a particular moment in time when a contribution is being solicited. It is like any other field that has some technical aspect to it. I'm not so sure in considering the merits of a new organization, for example, the lay person would be able to tell whether it is appropriate to spend a dollar to gain a dollar; spend \$1.25 to gain a dollar or spend \$0.85 to gain a dollar. What is an appropriate figure for a given charitable organization at a given moment in its history? It is simplification, perhaps, to assert that the public will know. Perhaps it will and perhaps it won't.

Mr. WILSON. The Save-the-Children Federation, they have received a greater amount since they included disclosure in their solicitations. Perhaps some of the others have. It is interesting that so many charities, large and small both, have endorsed this concept now. They are voluntarily doing it. So apparently disclosure is not harmful in any way.

Mr. WILKINSON. May I direct myself to that. I had occasion 2 years ago to represent an organization that had a fundraising cost of 6 percent. I think I was one of the first people who put the percentage figure on the mail solicitation, including the reply device and the booklet.

That was favorable. Since then I have been working with new organizations, one a very regional organization.

If I were to put on the mailings I do for this client what their fundraising costs were in their first year, I could not compete in that way. I would not get favorable attention even for a community organization because someone else would come in and compete more effectively.

Mr. WILSON. Don't many of your organizations endorse H.R. 41, Mr. Goldstein, as it is?

Mr. GOLDSTEIN. We have members who work for—

Mr. WILSON. I mean on a broad basis.

Mr. GOLDSTEIN. Yes; some of our members do work for organizations who have already indicated their support to you.

I believe that there are four or five major health organizations who have indicated support of this legislation as it is. Those four or five, of course, have to be thought of against perhaps 32 or 33 major national health organizations. So that it is true that many of our members work for organizations who support the bill. Many of our members also work for organizations represented as well by CASE, the Council on Advancement for the Support of Education. They do not support your bill. You can't do it by a vote of our members. I'm not sure that that would prove your case in any way.

Mr. WILSON. We'll hear, I think, from the health organizations tomorrow. Doesn't the New York State experience suggest that having information available upon written request only is not meaningful disclosure since inquiries are only made less than one one-hundredth of 1 percent of the time?

This isn't really disclosure, is it?

Mr. GOLDSTEIN. You have a couple of problems in New York. As you know, the availability of report requirements on all literature circulated for charitable purposes in New York State has probably been very good. Nobody has had a terrible problem with that kind of regulation, although it has increased costs for the charities.

One of the problems in New York of which we are painfully aware is budget cuts at the State level really wiped out effective enforcement. They don't have enough people in the New York State Board of Social Welfare Offices to track this stuff. That is a serious problem.

But I think it has been effective and I think that people do write for information. In one opportunity I had to discuss this with someone on the State level, I asked what is happening, has anyone bothered to write, and they said, yes, there is quite a bit of inquiry on this.

Mr. WILSON. There are 6,000 requests apparently out of perhaps 100 million solicitations in New York.

Would that be a reasonable figure—there are 18 million people in New York and there would be 100 million requests for various charities going through the mails.

Mr. GOLDSTEIN. I didn't understand the burden of your remark.

Mr. WILSON. There have been 6,000 requests for disclosure information in New York with all of the millions of pieces that have gone out to the public.

That 6,000 probably seems like a lot to the agency handling it, but it is not very much as far as public knowledge.

Mr. GOLDSTEIN. It may represent a simple truth. It may be that the public is less interested in costs than the Congress believes. I don't know.

Mr. WILSON. The public is not inclined to write letters, unless they get stirred up over something. They have strong views about everything. But they don't write letters unless there is a particular subject that is close to them, that really they want action on. It is hard to judge on a number of letters, just what the interest level is.

Mr. Schwartz, I think your organization has a membership which includes voluntary health agencies, education, religious, and other groups.

Mr. SCHWARTZ. They are clients of member firms of my association.

Mr. WILSON. It is a broad base; you have health agencies, religious, and other groups.

Do you think legislation, disclosure or otherwise in this field should apply to all of these groups? What exemptions do you think are justified?

Mr. SCHWARTZ. I reflect the views of an earlier witness this morning. I think any bona fide charitable organization should be willing, free, and able to give disclosure. Having said that and realizing we have the problem with the first amendment that we are aware of, I don't know if it can be applied across-the-board. I don't know of any institutions or agencies for which we work who have audits that aren't willing to share these with any governmental agency.

Mr. WILSON. Thank you very much.

We have another witness that we want to hear from before we adjourn our session today. I appreciate your testimony.

Our last witness is Robert O. Bothwell, from the National Committee for Responsive Philanthropy.

STATEMENT OF ROBERT O. BOTHWELL, EXECUTIVE DIRECTOR, NATIONAL COMMITTEE FOR RESPONSIVE PHILANTHROPY

Mr. BOTHWELL. The Committee for Responsive Philanthropy was incorporated as a nonprofit corporation in the District of Columbia on February 12, 1976. Now known as the National Committee for Responsive Philanthropy, the organization attempts to represent the aspirations and interests of the multitudinous nonprofit organizations around the country which are in a constant state of tension concerning the raising of funds to carry on their charitable and educational activities, because of their smaller size, relatively recent origins, and often controversial programs.

The National Committee for Responsive Philanthropy is a successor to the Donee Group, publisher of the report "Private Philanthropy: Vital and Innovative? or Passive and Irrelevant?" The Donee Group was a coalition of public interest, social action and volunteer groups which acted as advisers to the Commission on Private Philanthropy and Public Needs (the Filer Commission).

As stated in the Preface of the Filer Commission Report:

In answer to criticism that the Commission's membership represented donor interests more than donee interests within the world of philanthropy, the Commission supported the establishment of a "donee group," which was linked to the Commission and which sponsored a number of studies and critiques for—and of—the Commission. This group has had, we believe, a valuable influence on the Commission's thinking and on its report.

While acknowledging the salutary work of its predecessor, the Donee Group, the National Committee for Responsive Philanthropy has been organized to be completely independent of the Filer Commission and its Follow-up Committee. Furthermore, the National Committee for Responsive Philanthropy has been organized with a broader membership and constituency than the Donee Group. Local, nonprofit groups, and racial/ethnic minorities are much more a part of the fabric of the National Committee than they were of the Donee Group.

Our board of directors represent organizations which work closely with more than 3,000 local and State groups in every State in the country. These groups are pursuing charitable and educational activi-

ties in every conceivable area of public need: education, health, social welfare, housing, neighborhood revitalization, civil rights, equal employment opportunities, environmental protection, et cetera. They are principally focusing on the public needs of the people left out of the American mainstream: low-income families, older people, youth, women, and racial/ethnic minorities.

Every major racial/ethnic majority is represented on our board of directors and significantly represented among the staff and volunteers working for the 3,000 plus local and State organizations with which our board of directors are in contact.

The National Committee for Responsive Philanthropy solicits funds for its charitable activities through the mail. Of contributions so far received most have been solicited and received through the mail, and 99 percent of the dollars received have been received through the mail. This is also generally true for almost all of the 22 organizations which are represented on our board of directors. And while the 3,000 plus local and State organizations with which our board of directors are in contact are not as dependent on contributions solicited or received through the mail, nevertheless, these organizations, as far as we know, are substantially dependent on contributions received through the mail.

The National Committee for Responsive Philanthropy supports the general concept of H.R. 41, believing that it is in the public interest for the Government to require public disclosure of certain financial information by many organizations soliciting charitable contributions from the public. Such a disclosure requirement, patterned after the truth-in-lending public disclosure requirements, would permit the public to better evaluate competing requests for charitable contributions. Furthermore, such a requirement is reasonable since many charitable organizations have special privileges granted by the Government which should entail some responsibilities to the public, such privileges being organizations' (1) use of tax deductible contributions, (2) tax-exempt status, and/or (3) use of special nonprofit mail rates.

However, charitable organizations which do not solicit tax deductible contributions, which do not have tax-exempt status, or which do not qualify for special nonprofit mail rates should not have to bear the burden of having their solicitations regulated. Granted no special privileges nor any special status by the Government, these organizations should have no special responsibilities to the public.

Simple use of the mails for solicitation of funds is insufficient reason to commence regulation of these heretofore unregulated voluntary organizations of all stripes; indeed it would seem that the Constitution's guarantee of freedom of association might be infringed upon if such regulation were imposed. The sometimes oppressive arm of Government regulation would ill serve the health of a nation made strong by its ubiquitous, local, voluntary citizen efforts.

On a practical vein, if this bill or a similar one is enacted, it is also suggested that the Government's regulatory agency will have its hands full simply trying to effectively implement the disclosure requirement regarding the 691,627 tax-exempt organizations registered with the Internal Revenue Service, not to mention the additional organizations which may benefit from special nonprofit mail rates. Can you imagine the implementation problems and the costs if many more of the 6 mil-

lion estimated voluntary organizations in the United States had to be brought under IRS or another regulatory agency's scrutiny?

Probably churches and their integrated auxiliaries should also be exempted from the proposed regulation. Excessive entanglement between churches and government surely would result from the latter's attempt to enforce the proposed requirements for public disclosure of certain financial information, and this surely would present problems with the Constitution's first amendment.

The National Committee for Responsive Philanthropy is pleased that H.R. 41 does not legislate limitations on fundraising and administrative costs (as a proportion of the gross revenues or of contributions). Some charitable organizations have benefit of cost-efficient fundraising mechanisms, such as in-plant solicitation and payroll deductions. Other organizations are not so favored by the powers that decide on such matters. These latter organizations therefore must resort to more expensive forms of fundraising, for example, direct mail. Costs for "prospecting" for new contributors often run well beyond the contributions initially received back. New, developing organizations must experience these high costs or never hope to survive to a point of being supported principally by the public rather than being dependent on government or private foundations' grants. Especially new, developing organizations fighting for unpopular causes must experience these high costs, whether the causes have appeal to left, right, blue-collar center or white-collar center.

The National Committee for Responsive Philanthropy supports the fundamental concept of H.R. 41, that public disclosure of certain financial information should be required at the time of initial solicitation, rather than only upon request from the potential contributors. Simple financial information, that is the proportion of fundraising and administrative costs to total contributions, should be provided at the time of initial solicitation. In time the public probably will learn that organizations using certain fundraising methods have higher expenses, and the public probably will start to evaluate solicitations on the basis of the organizations' comparable purposes and expected fundraising and administrative expenses, rather than indiscriminately on some arbitrary percentage figure.

It should be recognized, however, that this requirement, even if not as tough as a requirement limiting fundraising and administrative costs, will nevertheless create severe problems for new, developing organizations. As noted above prospecting for new contributors or members is quite costly. Until the contributing public learns that these high initial costs are essential for many legitimate, new organizations to get off the ground, the beneficiaries of disclosure at the time of initial solicitation will be the large, entrenched, nonprofit institutions (which either offer the public charitable services rich in the wisdom of experience, or, not infrequently, rigid in the ways of yesteryear). New nonprofit organizations serve the vital function of identifying, exploring, and developing the issues surrounding changing public needs; they experiment with how to meet the emerging needs; oftentimes they undertake to meet the needs head-on. The more role new organizations in the private, voluntary sector can play in helping the American public to assess its changing needs and how to meet them, the less effort and the less money government has to spend to do so.

The language of section 3012(a) (4) regarding reporting of fundraising, management, and general costs is helpful in recognizing that new, legitimate, nonprofit organizations do need some breathing space in which to develop. Eighteen months before making a first public disclosure of fundraising and administrative costs isn't much time to develop a broad base of public support, but it is better than nothing. We suggest, however, that additional language be added to the bill to explicitly recognize that new, legitimate, nonprofit organizations will not be expected to report fundraising and administrative costs as a proportion of total contributions until after their first 18 months of existence.

Furthermore, if H.R. 41 or a similar bill eventually is enacted, the Government should carefully study its impact on new, legitimate, nonprofit organizations, as well as on fraud-inclined operations, to ascertain if the law makes it more difficult for new, legitimate, nonprofit organizations to come into existence and survive.

Required public disclosure of detailed financial information should only be upon request from potential (or actual) contributors. It would simply be too costly to provide detailed financial information at the time of initial solicitation. However, it might also become very costly for some organizations to provide detailed financial information upon request, if many people make requests; therefore, an organization should be permitted to charge—at or below cost—for providing requested information—perhaps within a \$1 limit.

Small organizations, with total gross revenues under \$100,000 should be exempted from the proposed regulation, or organizations which solicit from less than 1,000 individuals or organizations per year, or which receive contributions from less than 500 individuals and organizations per year, should be exempted. Malvern J. Gross, Jr., of Price, Waterhouse & Co., is a noted CPA regarding nonprofit financial matters. During 1974 he and his staff studied the audited financial statements of all Illinois organizations which file with the State attorney general's office. Gross reported that 95 percent of all contributions were raised by the organizations with contributions of \$100,000 or more. Furthermore, he reported that the costs of fundraising were exactly the same (13 cents for every \$1 raised) both for all organizations studied and for all organizations with contributions of \$100,000 or more. In another recent study, this time of organizations which filed audited financial statements with the State of New York, gross reported similar findings. He reported that 94 percent of all contributions were raised by the organizations with contributions of \$100,000 or more, almost exactly the same as the Illinois study. In the matter of the costs of fundraising, Gross found a similar pattern in New York as in Illinois, although there were a difference between the fundraising costs of organizations with contributions under \$100,000 (17 percent) versus the costs of organizations with contributions over \$100,000 (11 percent).

These data strongly suggest that nationwide it is quite possible that the overwhelming bulk of contributions are being collected by organizations which receive \$100,000 or more in contributions annually, and that organizations receiving smaller amounts spend only a little more on fundraising. If these are accepted as valid presumptions, then cost and efficiency requirements for Government would suggest that

the Government would best serve the public interest by concentrating its regulatory efforts on organizations which receive annually \$100,000 or more in contributions.

In the alternative exemption proposed above, it was proposed that organizations which solicit funds from less than 1,000 individuals or organizations per year, or which receive contributions from less than 500 individuals and organizations per year, should be exempted from the proposed regulation. This would be designed to exempt the many local, citizens groups whose work is often known to the communities in which they solicit funds and to exempt other organizations which primarily solicit money from a small membership and/or from private and governmental sources, rather than from the public at large. The proposed regulation would only be a nuisance to these organizations, and would serve little purpose in protecting the general public. Consider, for instance, that an organization receiving an average contribution of \$10 from 500 individuals would only gross \$5,000, hardly enough for the Government to be very concerned, if cost and efficiency requirements for Government are to be served.

Federal regulations of public disclosure of solicitation of charitable contributions by mail should preempt State regulation. As of 2 years ago there were reportedly 31 States with some form of charitable solicitation statutes. To add on top of this existing State legislation a layer of Federal Government legislation, without any regard for the careful interstitching of the two layers, is a heavy and costly burden to foist upon national- or regional-scope charitable organizations already confused and feeling abused by having to meet so many different, and therefore costly, disclosure requirements and accounting requirements, State to State, not to mention several States' limitations on fundraising costs. While understanding the Congress reluctance to upset the attorneys general who take their regulatory job seriously in several key States, as well as those who take their prerogatives seriously, if not their regulatory function, it would be irresponsible for Congress to enact H.R. 41 or a similar bill without preempting State charitable solicitation legislation.

The National Committee for Responsive Philanthropy is pleased that H.R. 41 does not require that solicitation material should be submitted to the regulatory agency for approval before it is sent out by the soliciting organization. While this does not appear to be an issue in H.R. 41 it was an issue in former Senator Mondale's proposed Truth-in-Contributions Act and in the Treasury Department's legislative proposals submitted to Congress January 18, 1977. Therefore, it seems appropriate to suggest that a procedure requiring prior approval of solicitation material might cause far more disruption in the free communication necessary between charitable organizations and the public than it would add in the way of additional Government oversight capability. The National Committee for Responsive Philanthropy alone this past year has sent out at least two dozen individually tailored solicitations of funds (although none to the public at large). Should each of these have needed approval by the regulatory agency, it would have added substantially to our now minimal fundraising costs, because of the time it would have taken to follow up the requests for approval through the labyrinth of the regulatory agency's bureaucracy. A prior approval procedure would also clearly add substantially to the Gov-

ernment's regulatory costs, as each individual piece of solicitation material would have to be processed separately rather than batch processed once a year.

Exemptions from regulation for membership organizations, whether bona fide or not, and for schools, colleges, and universities are unreasonable. Absolutely no case has been made why these exemptions are contained in H.R. 41. Furthermore, the proposed definition of "membership" raises far more questions than it puts to rest. Referring back to section III of this testimony, if membership organizations and educational institutions benefit from privileges granted by the Government, be they tax-exempt status, use of tax-deductible contributions or use of nonprofit mail rates, then these benefits entail responsibilities to the public which partially can be met by public disclosure of financial information in connection with solicitation of charitable contributions from the public. Small membership organizations and schools can properly be exempted as suggested in section VII for all small organizations.

Federated fundraising organizations—such as United Way and Combined Health Appeal Drives—should be required to include the fundraising and administrative costs of their membership organizations—that is, those organizations which receive funds from a central allocation body—in the calculation of their overall fundraising and administrative expenses. H.R. 41 as it stood on January 4, 1977, is correct in containing section 3012(a)(5) which embodies this concept, because all the funds distributed by federated fundraising organizations do not, in fact, support strictly "program" activities; the funds also support membership organizations' administrative costs and, in the case of Combined Health Appeal Drives, also support additional fundraising costs. A distorted unfair picture would be presented if only the fundraising and administrative costs of federated fundraising organizations were disclosed without reference to similar expenses of these organizations' member agencies.

Uniform accounting standards should be set with full participation by the private certified public accounting profession, by representatives of the various kinds of charitable organizations to be regulated, and by the Government. Any less comprehensive approach to determine accounting standards would ignore the fundamental, perhaps life and death importance to regulated organizations of future regulatory decisions based on the accounting standards eventually chosen. While some major national social welfare, health and educational institutions, in conjunction with the private CPA profession, have advanced a long way toward developing uniform accounting standards for their fields, Government must play a key role in defining what constitutes fundraising and administrative costs, as a proportion of total contribution or gross revenues, if Government is properly to exercise its regulatory function concerning public disclosure.

The IRS is preferred as the regulatory agency over the Postal Service since all tax-exempt charitable organizations already have to file annual reports with the IRS, and little modification of such reports probably would be required to accommodate new regulatory requirements regarding solicitation of charitable contributions by mail. Little additional manpower/womanpower would be needed by IRS to perform the proposed regulatory function. On the other hand, if the

Postal Service were to perform the proposed regulatory function and to perform it as actively as the IRS is now equipped to perform it, the Government would clearly have to hire and train a whole new set of auditors, that is, undertake an unnecessary, very costly staff expansion. Surely jurisdictional problems can be overcome to place this proposed regulation where it belongs.

In summary, the National Committee for Responsive Philanthropy supports the general concept of H.R. 41, believing that it is in the public interest. We humbly suggest that charitable organizations which do not solicit tax deductible contributions, which do not have tax-exempt status or which do not qualify for special mail rates; that is, those organizations which do not have the privileges of certain benefits or status granted by the Government, should not have to bear the burden of having their solicitations regulated.

We are pleased that H.R. 41 does not legislate limitations on fundraising or administrative costs nor require prior approval of solicitation material before the soliciting organization sends it out.

We support the fundamental concept of H.R. 41, that public disclosure should be required at the time of initial solicitation. The public will become informed and indeed will make the proper judgments of what charities should be supported.

However, we stress that this requirement, even if not as tough as other requirements, will nevertheless create severe problems for new, legitimate, developing organizations and we have suggested additional language for the bill to make it explicitly clear that these organizations will not be expected to disclose fundraising and administrative costs until 18 months after they have been created.

Finally, we think that small organizations with total gross revenues under \$100,000 should be exempted from the proposed regulations or that organizations which solicit from less than 1,000 individuals or organizations per year or organizations which receive contributions from less than 500 individuals or organizations per year should be exempted.

Thank you, Mr. Chairman.

Mr. WILSON. I noticed a report that your organization had, in which you mentioned soliciting opinions from a group of different organizations. Are those members of your group, all of those who were solicited? I don't know if that is in this statement or not.

Mr. BOTHWELL. Let me state for the record that input for our testimony was solicited from all 22 members of our board of directors, and I would be happy to submit a list for the record. In addition, we solicited two dozen or so other public interest organizations. Altogether, I would say, input was received from 15 separate public interest organizations. I will list some of these organizations, but I must indicate that only informed input was received from them to help make up this position, and that I'm in no way representing these organizations as their official representative:

Public Citizen, Common Cause, Center for Community Change, Sierra Club, Council on Public Interest Law, Grantsmanship Center, Consumers Union, Rural Advancement Fund, National Sharecroppers Fund, National Council of La Raza, Day Care and Child Development Council, Japanese-American Citizens League, and N.O.W. Legal Defense and Education Fund. Fund raisers who worked with other public interest fundraising organizations also provided input.

Mr. WILSON. I'm trying to determine what the status of Common Cause would be under this legislation. It seems to me that most of their solicitation is from memberships, isn't it?

Mr. BOTHWELL. I believe it is.

Mr. WILSON. They have different degrees of membership?

Mr. BOTHWELL. I do understand that Common Cause may be submitting a separate written statement; it would be advisable if Common Cause spoke for itself. However, as far as I know the organization does prospect for and solicit new members; therefore, they send mail to the general public to recruit new memberships.

Mr. WILSON. We thought the Sierra Club was included in this. The Dirty Dozen, each year, would probably give statements each year giving support?

Mr. BOTHWELL. The issues we include cut from left to right and include the center. One of the principal distinctions in fundraising costs is in the method of fundraising. One of the more established, nationally known charities is the United Way of America. Because of its operation United Way can manage to obtain in-plant solicitation privileges which permit the employees of a local business or of the Government while on the job to solicit money from other employees. This gives United Way national fundraising costs of something under 5 percent. This looks tremendous.

The problem is that it's hard for anyone else to get such privileges. Other organizations have to resort to more expensive means of raising money, like direct mail. A standard in the industry is now that in your first mailout to even a qualified list you can expect perhaps to get only enough money back to pay for the cost of the initial solicitation. For an organization that intends to be in business for a long time, that kind of cost is worth it, because the organization will have obtained a clear and qualified listing of people who want to support that organization in the future. The organization can amortize its initial high costs.

On the other hand, charlatan organizations are not interested in survival. So after the contributions have come into their pockets for a year or two, these organizations can fold their tents and leave the scene, leaving behind the very abuse that provoked this legislation.

I'm not sure how you deal with distinguishing between the legitimate new organization with high costs and the charlatan organization. In considering input from the various organizations I previously mentioned, we came to feel it was important to support the principle of initial disclosure as provided in H.R. 41, with backup, detailed information to be provided afterward. But we also have recommended that there should be serious consideration and serious governmental study as to what the impact of such an approach would be on new legitimate organizations as well as on fraudulent organizations.

Mr. WILSON. I would be interested in hearing your reasons for dealing with membership groups and schools or universities that solicit alumni and parents groups, and why they should not be exempted.

Mr. BOTHWELL. The reasons are simple. We have not seen any justification for those exemptions. The only exemptions that appear to us to be justified are for small organizations, for organizations which do not now have the privileges of either tax-exempt status, use of tax-deductible contributions, or use of nonprofit mail rates, and, finally, for churches—because of severe possible first amendment problems.

The small organizations are what we consider to be most important. I think an exemption for small organizations would cover membership organizations like local Elks Clubs and others like them.

In a practical vein, if this bill or a similar one is enacted, it's suggested that the Government's regulatory agency will have its hands full by trying to effectively implement the disclosure requirement regarding the 700,000 tax-exempt organizations registered with the IRS, not to mention the additional organizations which benefit from the special nonprofit mail rates. Can you imagine the implementation problems and the costs if many of the rest of the estimated 6 million voluntary organizations had to be brought under IRS or Postal Agency scrutiny? Smaller membership organizations which draw their support from local communities maybe should be excluded. But larger membership organizations—why do they need an exemption? Why should colleges and universities be exempted? There are no reasons to justify these proposed exemptions.

Mr. WILSON. Were you here when Congressman Koch was speaking this morning?

Mr. BOTHWELL. Yes, sir.

Mr. WILSON. He gave the two or three examples, I think, of charities, where fundraising had resulted in greater costs than money brought in. They would not come under the bill because, as I understand, they were not soliciting contributions to be sent by mail. They were big affairs, Madison Square Garden, Astrodome, maybe a rock music concert, or something like that.

But how do you get to organizations like that, that set up, assuming they did use the place to solicit for the causes they were supporting? That could be a small group originally.

Mr. BOTHWELL. It could indeed, Congressman. I'm not sure I have an answer.

Mr. WILSON. They probably never file for tax-exempt status or anything, and it's a one-shot deal for them.

Mr. BOTHWELL. That's probably true. I urge on you and the committee to consider that there are 6 million voluntary organizations around this country, and in many observers' eyes—both scholars as well as public figures—it is these voluntary organizations which contribute mightily to the health of this country and, in fact, are an important third sector next to business and government.

What I'm worried about and the members of our committee are worried about is how the sometimes heavy hand of Government regulation might work to cut off any of these that become controversial in a local area, while simply having little effect on controlling the kinds of abuses which Congressman Koch related. I think it's a balance we are looking for.

If, in fact, 95 percent of the contributions are being collected by organizations with contributions over \$100,000, it would seem that efficiency and cost requirements dictate that the Government should regulate those charities, rather than the ones that are smaller.

Mr. WILSON. Thank you very much, Mr. Bothwell. You have been very helpful.

We will now adjourn and resume our hearings tomorrow morning. [Whereupon, at 12:50 p.m., the hearing was adjourned, to reconvene Wednesday morning, March 30, 1977.]

CHARITY DISCLOSURE LEGISLATION

WEDNESDAY, MARCH 30, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON POSTAL PERSONNEL AND MODERNIZATION,
Washington, D.C.

The subcommittee met at 10 a.m. in room 311, Cannon House Office Building, Hon. Charles H. Wilson, chairman of the subcommittee, presiding.

Mr. WILSON. We continue this morning with hearings on H.R. 41, the charity disclosure bill.

We move into discussion this morning of possible exemptions from the bill. I think three points are to be emphasized.

H.R. 41 is not regulatory in nature. It is a disclosure bill. Nothing in the legislation in any way whatsoever dictates how an organization should raise funds or spend contributions received.

We will not allow the Postal Service to create accounting practices which do not conform with generally accepted accounting principles, nor will we allow the Postal Service to extend the scope of authority given by H.R. 41 to build a new bureaucracy which would burden responsible charities.

Mr. Davis of the Postal Service confirmed yesterday that his organization is in full accord with this stated intent and appropriate technical modifications to underscore these principles can be made in the subcommittee markup.

H.R. 41 does not have any filing or professional audit requirement or plans for any group with intent to raise costs. It is exempting bona-fide membership organizations, including local churches soliciting their members.

I am confident that we will continue to have the kind of positive, thoughtful discussions of these important issues that has characterized our first days of hearings.

There does seem to be some misunderstanding about some of these things I have just mentioned, and that is my reason for emphasizing them again, because it is an old game here in Washington to try and misrepresent the facts and mislead people as to what legislation actually does, and I hope we all understand these things.

This morning we have several religious organizations and representatives of various hospital groups, and representatives of the Public Broadcasting Service.

Our first witness will be Rev. Edwin Dill, National Catholic Development Conference.

STATEMENT OF REV. EDWIN DILL, THE NATIONAL CATHOLIC DEVELOPMENT CONFERENCE

Reverend DILL. Mr. Chairman, members of the subcommittee, I thank you first of all for having the opportunity of being here today and presenting our case.

My name is Edwin Dill and I am a Catholic priest, and the mission procurator of the Mission Servants of the Most Holy Trinity, a Catholic missionary religious order.

Mission procurator simply means that I am the one charged with procuring the material wherewithal for our missionary work here in the United States and Puerto Rico. In short, I am a missionary fundraiser. I am not an attorney or an accountant, and I ask your indulgence for my lack of expertise in these areas of concern which my testimony will necessarily touch upon.

I am here today as the president of the National Catholic Development Conference, an organization of fundraisers and development officers representing a wide range of religious orders, hospitals, educational institution, dioceses, and mission centers.

The National Catholic Development Conference is opposed in principle to legislation in any way imposing itself upon religious fundraising. This reflects our deep belief that almsgiving and alms-asking are essentially acts of religion. We believe that we should have an unencumbered right to communicate with people, especially with our co-religionists, in whatever way seems fitting, without being compelled by law to include fragmented information about our total apostolate.

This is not to say, obviously, that in the name of religion we claim the right to defraud, or that we have a special right to lie to and cheat our fellow Catholics. Religious fundraising should be regulated by ethical principles which spring from the faith proclaimed. And in those few cases where the human qualities of stupidity or greed assert themselves, religious authority should step in and remedy the situation.

The National Catholic Development Conference has recently beefed up its "Precepts of Stewardship," which I might add date from 1968, with new "Guidelines to Improved Accountability."

The National Conference of Catholic Bishops, in conjunction with the two conferences representing religious orders of men and women, are in the process of approving a set of "Principles and Norms for Catholic Fundraising in the United States."

Our belief that fundraising in the name of religion should be completely unencumbered is not based on the fact that we can or should be able to regulate ourselves. It is based purely and simply on the traditional attitude of the Government vis-a-vis religion, an attitude which we believe leans firmly on constitutional guarantees.

At this juncture I believe it is fair and timely to note that in 1969 the validity of exemption from financial disclosure by religious organizations was examined and reaffirmed by Congress. Admittedly, this disclosure was to a governmental agency, and H.R. 41 speaks of disclosure to the public. But when such a disclosure is mandated by Government and regulated by an agency given broad powers, we see little, if any difference. I refer, of course, to the House and Senate deliberations on the Tax Reform Act of 1969.

Specifically, the Congress laid aside the suggestion that religious organizations be required by law to file financial statements with the

Internal Revenue Service. he point of conflict with the first amendment rights was the critical factor then. Certainly the intent of the first amendment and the protections it grants have not changed in these 8 years.

No need for me to elaborate on the importance of the first amendment, but permit me to quote from a speech by Dean Kelley :

In writing the first amendment, the founders of our nation took the calculated risk that some hanky-panky might go in the name of "religion" that otherwise would have been exposed; their choice has proven wise, since the number of insincere exploiters of people's religious trust—despite the notoriety of a few—has been very small compared to the vast number whose genuine religious ministry has been furthered by the shield of the first amendment.

"Hanky-panky" as mentioned above, is undoubtedly part of the reason, the commendable reason, behind H.R. 41. The Pallottines were even mentioned in the introductory statement to the bill.

I have been asked, "If a Pallottine situation can happen once, shouldn't legislation intervene to assure that nothing like it can happen again?"

No matter what the outcome of the continuing investigations, my answer is and will be "No." There are, I believe, more than sufficient forces at work both to expose and to remedy aberrations in fundraising and to protect the interests of both the public and legitimate charities.

Besides the vigilance of the press, the nonprofit authentication process of the Internal Revenue Service, the existing statutes on postal fraud and the peer pressure and codes of ethics of religious and secular groups of fundraisers, there is this one all-important fact; donations to charity are by definition, free will. here is no tax-like force compelling people to give. Every individual has the right not only to give or not to give, but to ask for whatever information he or she desires as personal criteria of authentication for that charity, and to make his or her judgment accordingly.

Now it is said that H.R. 41 simply aids in this freechoice process by providing minimal information which allows an individual to make a more knowledgeable decision. I would now like to address this point and, without prejudice to our above "in principle" opposition to the bill, to speak of other specifics.

First of all, I commend Mr. Wilson and his staff for having the wisdom not to attempt to set a fundraising cost limitation. Such percentage limitations are always perforce arbitrary. Such limitations spring from ignorance of legitimate fundraising realities and, sometimes, I fear, from the influence of fundraising organizations which are confident their costs will always be comfortably below the prescribed limitation.

But it is our opinion that even the disclosure requirement the heart of H. R. 41, does not serve either the donor or the beneficiary in a charitable exchange.

Let me first explain something of the varying nature of charitable needs and how these differences affect their respective fundraising efforts.

Some causes, as you know, have great and general appeal because they touch problems common to all. Health organizations which combat diseases threatening all of us are among these. United funds have broad appeal because of the variety of causes they serve, and because of the variety of causes they serve, and because these are based in the

local community. These and like groups can raise funds with relative economy because of their broad bases and, in many cases, abundant volunteer help.

Other causes are less popular, and must spend more time and money simply identifying who their giving public is. How do I find enough people to support, for instance, a "Save the Whales" campaign?

This problem manifests itself also in subgroups. Whereas most Catholics, generally speaking, may be willing to support their local parish activities, relatively few of them are interested in mission causes or the specialized apostolates of religious orders. Willing donors to these causes must be found on a regular basis, and this takes money.

The percentage reporting requirement of H.R. 41 presumes, it seems to me, that percentages are a good basis for comparing charities or for judging a charity on its own.

Neither could be further from the truth. The differing natures of fundraising causes and the necessity for different funding approaches makes comparison by percentages a useless and dangerous exercise.

Cost of fundraising, expressed in hard figures or percentages, is of itself a very bad criterion of the worth of a charity. To judge a charity by costs would be equivalent to judging the value of a manufactured product by the profit made.

Local charities with, let us say, 10 percent costs, will use the 90 percent to pay for health services, medical research, social services, or whatever. These professional services are generally purchased at the fair market value. We can say then that a donor provides 90 cents worth of service for every dollar given.

A foreign missionary organization, on the other hand, may have a 50-percent fundraising cost because of, as I mentioned earlier, the specialized nature of the work and its limited appeal. But, because these organizations have dedicated personnel working at well below the market value of their services, some at no salary whatsoever, the actual value of the services rendered is greatly augmented. The 50 cents out of the \$1 may well purchase service with a true value of 90 cents or more.

I make this comparison to show that percentages far from forming a basis of judgment, actually place certain types of charitable organizations in an unfair and unfavorable light and say absolutely nothing about value.

Some organizations, legitimate and worthy, have and always will have higher fundraising costs not because they are inefficient or mismanaged, but simply because their cause is different.

The real measure of the worth of a dollar given to charity can only be given in terms of what services that dollar delivers.

It is true that under H.R. 41 every organization would be left free to explain its costs, but to introduce yourself with qualifications and explanations is certainly an ineffective introduction.

Then, too, the emphasis on percentage, the fact that such would be required by law, and the convenience of any easy, albeit inaccurate handle—all this would create a *prima facie* and strong impression that costs are all important and would reinforce an already wide lack of understanding of fundraising cost factors in the total evaluation of a charitable cause.

The relationship that exists between benefactors and charities, especially religious ones, is complex and should not be tampered with

by simple solutions. There is faith and trust, there is motivation based on humanitarian and religious ideals. There are lofty impulses to give, warring with temptations to selfishness.

But the result, to give or not to give, is arrived at in freedom. To begin a charitable relationship with a disclosure mandated by law would, I believe, upset this bond and drag it down to the lowest level.

Our objections to the financial disclosure required by H.R. 41 are not so much the idea of disclosure itself, but its nature, method and timing, and the as-yet-undetermined, but all-important method of calculation.

We religious charities have been especially at fault for not disabusing our donors of the notion that fundraising does not cost anything and for not being generally open about financial matters. These faults are being remedied under pressure from current events, peer and professional groups, and religious authority.

These changes, I believe, will develop with the greatest benefit to all without the enforced change by legislation.

In short, it is my judgment that an up-front disclosure requirement is unfair to a large segment of legitimate organizations, gives unbalanced and noncomparable facts to donors, can effectively prevent donor development and will eventually lead to the demise of some worthy charitable causes.

Another important shortcoming that we find in H.R. 41 is that it would apparently not preempt any State laws in the area of charity regulation or disclosure. Since it does not, it simply adds to the administrative burdens of charitable organizations already beleaguered by forms and standards, and, in some cases, annual changes in procedures.

I wouldn't want it assumed that as for as religious organizations are concerned, we find any real distinction between the encroachment of H.R. 41 upon first amendment protections, and a similar encroachment by State laws. There is, in fact, a strong likelihood that member organizations of NCDC and other religious groups may bring an early demanding disclosure.

To my knowledge, Maryland is the only State which directly involves itself in religious fundraising, but I am told that other States are considering either new laws or amendments that would attempt to encompass religion.

But aside from that, these laws are burdensome to all whom they touch. I was recently shown a CPA's invoice for almost \$9,000. The services were rendered to a nonreligious organization and were all in conjunction with the necessary annual auditing and filing of forms with six States. And this says nothing of the nonfinancial administrative hours and headaches occasioned by the multiplicity of laws.

The lack of preemption on the part of H.R. 41 makes it simply another burden and adds to the already existing tangle of rules and regulations. The amount of additional burden depends largely on the regulations to be developed, but I feel that for small organizations especially, this could be considerable.

Fundraisers are by and large highly motivated and want to do the right thing. They are intelligent enough to read handwriting, especially when written large on the wall. I, and we of the National Catholic Development Conference, believe that the changes that must take place will take place, but that they will grow with the greatest health and effectiveness in a climate of freedom, freedom from legislative

force, and along with that freedom which donors have always had to make up their own minds.

And that, Mr. Chairman, ends my formal statement.

Mr. WILSON. Thank you very much, Father Dill.

I appreciate your appearance and the fine statement you have given to us.

I find it difficult to understand how you come to the conclusion that H.R. 41 would add greatly or in any way whatsoever to the additional administrative responsibilities of charitable organizations, religious groups or anyone else. There is nothing required in this bill that you would have to file with the Postal Service or whatever regulatory agency may have the enforcement provisions given to them.

All it does is require that you put a disclosure statement, very simple disclosure statement, in the mail that goes out soliciting the contributions.

This doesn't require any new auditing or anything of this sort that I can see.

Can you explain why this would cause so much problems to you financially or any other way?

Reverend DILL. We, a large part of the burden, Mr. Wilson, is really yet to be determined. It is not definite what it would be.

My own experience, for instance, since we are based in Maryland, is in trying to bring our organization into compliance with Maryland law. We have not yet filed any statements and it has already cost us over \$2,000 simply to bring our bookkeeping into line with what they require.

Now our bookkeeping before that was such that it was in very good order and was subject to an annual audit, an unqualified audit, an unqualified opinion. But, because of the requirements of this law, we had to spend that much money.

I am thinking in terms of smaller organizations which may be even less sophisticated than we were.

Mr. WILSON. Well, we heard from the American Institute of Certified Public Accountants, and we are in agreement with them that there are accepted auditing practices and principles which would certainly—we would expect to be utilized, and we wouldn't expect anybody to do anything that is not a proper auditing procedure at the present time.

Again, I don't know why anyone, if they are audited properly today, would have any difficulty. Now, if we had perhaps passed legislation similar to this several years ago when Mr. Van Deerlin first tried to do a much simpler bill than this, where all it did was require that the charitable organization give information when it first wrote for it—but even that was objected to by the people who are objecting—perhaps many of the States would have passed laws, but none have passed them.

It seems to me we have got to get a handle on this thing and we have got to start someplace.

If we find that preemption is going to be required later on, perhaps we could get into it at a later time. We never have a perfect bill to begin with, and the legislation is always going to the bill to improve or to bring about corrections, and to improve upon laws.

Every charitable organization, not only religious charitable organizations, but reputable groups, have all stated that they feel em-

phatically that there should be no exemption whatsoever of anybody. Then religious organizations, as well, should be included.

You just don't feel that there is a need for the law, is that right?

Reverend DILL. That is true, Mr. Wilson. I am speaking for religious organizations.

Mr. WILSON. Yes. But why should religious organizations be exempted? We will not worry about the Constitution. They can, of course, let the courts decide that.

So many times we have legislation in Congress where we get so many curbstone lawyers' opinions about what is constitutional and what is not constitutional. That is for the courts to determine at some later date.

I think it would be worthwhile for you, if you feel that the Maryland law is unconstitutional, infringes on the first amendment rights, that you should test this. That is the place to determine these things.

I hoped that these other organizations would be here this morning and would have legal opinions, because I think that they are in error. I am not a lawyer, but we also have legal opinions on it. We had it drafted by the Library of Congress and with their assistance and their Legislative Bureau in the Library of Congress. And we asked them to be sure and consider the first amendment and the constitutionality of any legislation.

So I guess it is just a case of which lawyer you talk to.

You have got almost as many opinions as you have got lawyers.

Reverend DILL. I am sure that is the case.

Our feeling is not so much from our legal expertise. The NCDC does not even have counsel. It is just our feeling for the traditional separation, and the incident that I mentioned of the recognition of this separation by Congress in the 1969 tax reform law.

Mr. WILSON. Of course, the Supreme Court, long before that, has ruled, in a ruling of the Supreme Court, the wording is:

In general regulation in the public interest of solicitation which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not oblatting constitutional objection, even though the collection be for religious purpose, such regulation would not constitute a prohibitive previous restraint on free exercise of religion, or interpose an inadmissible obstacle to its exercise.

Now what the Senate and the House did in 1969 I don't think changes the Supreme Court. I think perhaps religious pressure urged them to exempt religion at the time, and there are Members of Congress who are very subject to religious pressure.

Perhaps there will be enough religious pressure that my bill won't get anyplace. They were able to keep it bottled up in the Rules Committee last year.

I am going to try very hard to get a ruling this year on it, and let us determine for ourselves—it just seems to me there is a need for this type of thing, and I hope that they will let us have a crack at it on the floor of the House.

Father, Mr. Lott had to leave temporarily. He is interested in the religious aspects of the legislation, himself.

I have no further comments or questions, unless you would like to add something. But I do want to express again our appreciation for your appearance, and for the Congress, for your appearing at these hearings.

Reverend DILL. I would like to make one final comment. Mr. Chairman, I think that regarding the whole question of legislation regarding charity—and I do think that your bill represents an advancement in many ways—but I think there is much misunderstanding, or lack of understanding of the whole fundraising or philanthropic community. This was brought out I think in the Filer Commission—Commission on Private Philanthropy and Public Needs. Mr. John Filer himself mentioned that this was a great unknown, and I think that part of the problem in formulating legislation to regulate charity, whether it affects religious organizations or not, is simply that there has been no thorough study of the whole philanthropic community from this point of view.

Mr. WILSON. Mr. Taylor apparently had a series of questions he had intended to ask. Let me ask them for him, if it is all right with you, Father Dill.

On page 1 you mention that religious fundraising groups should have a right to unencumbered communication with people.

Is there any way, in your opinion, that Congress could require some type of disclosure for charity fundraising costs and still leave you completely unencumbered?

Reverend DILL. I would imagine that in some way allowing the Postal Service greater access through inspection, to beef up their fraud regulations. Something like this.

I don't really know, Mr. Wilson. I haven't given that much thought to it.

Mr. WILSON. If the disclosure requirement of this bill, does not serve either the donor or the beneficiary, which you state on page 4, who does it serve?

Reverend DILL. Well, I don't think the disclosure requirement of this bill serves anyone because of its nature and its timing. Because the disclosure is one of percentages, as I explained earlier, I think that this gives a biased view, depending on the type of charity one is involved in.

I think that the type of disclosure that would serve everyone is the type of disclosure that a donor asks for and receives from a charity to whom they want to or have been giving.

Mr. WILSON. Is there any type of disclosure requirement that would serve either the donor or the beneficiary, or both, in your opinion?

Reverend DILL. That type of disclosure I just mentioned.

I think that every charitable organization has an obligation to tell donors what they want to know about the costs, and to tell them not in a cold, purely financial way, but to tell them in conjunction with what is being done with that money.

Mr. WILSON. Would someone be able to contact your organization, for example, and ask for information about the particular fundraising effort taking place in any one of the organizations taking place within your umbrella?

Reverend DILL. The NCDC is not at this time a clearinghouse for that information, but we do urge and we have in our improved accountability regulations, that members should be giving reports to their donors.

And the Principles and Guidelines for Fundraising, being developed by the National Conference of Catholic Bishops, I believe, state this very clearly.

Mr. WILSON. Now, let's see. Mr. Taylor had another question.

You expressed your feeling of displeasure that percentage reporting requirements is not a good basis for comparing charities, on page 5.

What would be a good basis for comparison? Is there any?

Reverend DILL. The only basis for comparison that I believe in is much more total knowledge of the charity, and not simply the cost involved.

Like the example I used of a manufactured product. Mr. Wilson, you can't compare the products by the cost; certainly not by the profit margin; you can compare it by what it does, how useful it is.

And so you have to know the whole thing, what it is and what it costs.

Mr. WILSON. Well isn't that generally what is done when solicitations are made, with an explanation of the work that is done, the purpose of the work?

Actually, again, this is Mr. Taylor's question as I indicated, it is not the purpose of the legislation to have comparison of charities. I don't know, maybe everybody is on the same mailing list. If they are, then they would get—if the law were passed—would get disclosure information on various charities, and I suppose they could compare them.

But don't people ordinarily contribute to what their particular interests are? If they had a cancer death in their family they are strong on cancer; maybe they contribute to the Heart Fund for some particular reason; or they are interested in Orphans Overseas and they will contribute to the Save the Children Federation.

Isn't that really what motivates people more than anything else?

Reverend DILL. Yes. Certainly the solicitation does explain something about the organization. But it is my contention that there is no one piece of literature that can completely explain this, especially in relationship to the cost. And certainly it cannot be explained by the percentage, which as I explained, is something that, of necessity, is different for different organizations.

You mentioned the comparison. I think you mentioned in the introduction of this bill on January 4 of this year, that donors could use this percentage as a comparison. And that is what my remarks really were addressed to.

Mr. WILSON. Mr. Myers, do you have any questions?

Mr. MYERS. No, Mr. Chairman.

I would just like to thank the Father for his testimony. I am sorry I came in late, Father. However, I was able to read your testimony and consider it, and I thank you.

Mr. WILSON. Thank you very much, Father.

Reverend DILL. Thank you very much.

Mr. WILSON. I am going to ask Mr. John W. Baker of the Baptist Joint Committee on Public Affairs to come next. He has a plane he has to catch, I understand. So we will accommodate him and let him go first.

**STATEMENT OF JOHN W. BAKER, ASSOCIATE DIRECTOR IN CHARGE
OF RESEARCH SERVICES OF THE BAPTIST JOINT COMMITTEE ON
PUBLIC AFFAIRS**

MR. BAKER. Mr. Chairman, I hope you will excuse my grabbing my bags and running just as soon as we finish here.

I do appreciate the opportunity of testifying, and I heard with interest the things that you said at the beginning, and I don't think we are talking on different sides.

I don't think we are in basic disagreement on those things and yet I do have some serious reservations about the bill itself.

I am John W. Baker, associate director in charge of research services of the Baptist Joint Committee on Public Affairs.

The Baptist Joint Committee on Public Affairs is composed of representatives chosen by eight cooperating Baptist conventions and conferences in the United States with a combined membership of almost 27 million. They are: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention.

A major responsibility of the Baptist Joint Committee is to interpret Baptist concerns for religious liberty and proper church-state relations both to government and to the constituencies of our supporting denominations. Because of the democratic organization of Baptist churches and their conventions or conferences, the Baptist Joint Committee on Public Affairs does not purport to speak for any one Baptist or for all of them. However, there is a high degree of unanimity among Baptists that government may not either aid or inhibit religion by administrative or legislative action.

The general thrust of H.R. 41 as well as its specific wording creates serious problems. H.R. 41 was precipitated by a single flagrant abuse in the solicitation of contributions. The application of a general law to cover all religious and nonreligious charities in response to a single abuse is bound to produce inequities. We find H.R. 41 unacceptable because it does produce these inequities—even within the religious community itself—and because it violates the constitutional requirement that church and state be separated.

We agree with the U.S. Supreme Court that freedom of religious belief is absolute and that governmental regulations of religious practices must be based on a state interest which is clearly demonstrated and which is highly compelling. It is our conviction that H.R. 41 falls short on both of these counts.

There is good reason to believe that almost all Baptists would agree with our objections which are covered in more detail below.

SPECIFIC OBJECTIONS

H.R. 41 is almost identical to H.R. 10922 which was in the House Rules Committee when the 94th Congress adjourned. Because H.R. 10922 cleared the House Post Office and Civil Service Committee without a negative vote it is safe to assume that Report 94-1135 which

accompanied the bill expressed the intent of the committee. H.R. 41, when read with Report 94-1135, alarms us for a number of reasons. The following list of specific concerns is to be taken as illustrative rather than exhaustive. Thus, our objections to H.R. 41 cannot be cured by minor changes of wording.

One, the bill seems to create inequities between churches—we include temples, synagogues, mosques, et cetera in the term "church." H.R. 41 apparently does not take into consideration the fact that churches have different organizational forms. These include a hierarchical system, a presbyterial system, and a congregational system. In Baptist polity each individual congregation is an autonomous unit. Membership to Baptists is only in that individual congregation and not in an all encompassing body. Individual churches cooperate in associations, conventions, and conferences to achieve goals which they hold in common—for example, home or foreign missions—but no hierarchy has control over a local church. Thus a bill which exempts solicitation of bona fide members, as does H.R. 41 at page 6 line 8ff, would seem to control solicitations by such agencies as the Southern Baptist Foreign Mission Board because that board is a cooperative mission effort of churches and is not a membership organization per se. However, an identical agency in an hierarchical church would be able to claim all members of the larger church as automatically members of the agency also. Therefore, its solicitations would seem to be exempt from coverage by the bill.

Further, the Southern Baptist Convention, the largest Protestant denomination in the United States, is not a membership organization per se. Consequently, its solicitations for exclusively religious activities would seem to be covered by H.R. 41 while those of hierarchical churches would probably not be.

Two, page 1 lines 7-10 of H.R. 41 when read in conjunction with page 8 of Report 94-1135 is unclear and bothersome. The report states:

If a solicitation asks for contribution and includes an address, it is seeking remittances by mail and would be covered by the legislation.

Pushed to a logical and plausible extreme, this wording could mean that if a local minister on a Sunday morning encourages the congregation—which usually contains nonmembers—to give to church operations or causes and if the offering envelopes have the church address on them, that solicitation would be subject to the regulations and sanctions of H.R. 41. So too would be those portions of the funds raised which are sent on to State and/or national conventions or conferences. This would put a Government agency in the role of supervisor of these offerings and monitor of the way they are distributed and accounted for. We cannot believe that the subcommittee intends such a result.

Three, the requirement to compile and publish financial information as set forth on pages 2 and 3 of H.R. 41 and the requirements and sanctions provided for throughout the bill would serve to inhibit the exclusively religious activities of churches by putting burdens on the collection and disbursement of funds used in the religious mission of the churches. A local church—whether as the result of the lack of adequate information or the unavailability of adequate legal counsel—might well fail to solicit funds for eminently worthwhile religious programs for fear that the church would not be in compliance with

the act. A church could also be inhibited in its solicitations by a desire not to disclose the internal financial affairs of a congregation to nonmembers, even though such information is made available to members at regularly scheduled business meetings of the church.

Four, the term "contribution" on page 7 is defined to include the promises, grants, gifts, or pledges made for "any * * * religious * * * purpose." This is in potential conflict with the free exercise clause of the first amendment and would put those who make and enforce the rules and regulations in the position of having to distinguish between that which is religious and that which is not. Under the first amendment this is not the role of Government. Even though this subcommittee may not intend to put Government in that role, we know what regulatory agencies can do to congressional intent. A case in point which makes the churches fearful of bills such as H.R. 41 is that of the recent IRS rules which define the term "integrated auxiliaries" of churches as used in section 6033(a)(2)(A)(i) of the Internal Revenue Code. To us this IRS definition is an example of administrative misinterpretation of statutory intent. Because the new IRS rules have produced what we consider a violation of the separation of church and state, we are uneasy about the potential interpretation of this subcommittee's intentions in H.R. 41. Rewording, short of excluding solicitations by religious charities entirely, would not be reassuring.

OBJECTIONS ON LEGAL-PHILOSOPHICAL GROUNDS

The Constitution has placed religion and religious charities in a unique position vis-a-vis the nonreligious charities.

The U.S. Supreme Court has consistently held that Government, in its dealings with religion, must not inhibit religion, must remain neutral toward religion, and must not become excessively entangled with religion.

H.R. 41 with its standardized accounting, compulsory reporting to nonmembers, and the sanctions provided for would have a profoundly chilling effect on solicitations of funds by churches generally and would have an even greater effect on congregational churches. The problem of membership has been discussed above. The lack of membership structure in a national Baptist convention or conference would, under H.R. 41, circumscribe fundraising for national and international religious causes. The chilling effect of such circumscription would be an unconstitutional inhibition of the free exercise of religion in the absence of a compelling State interest.

Because the various religious denominations have such disparate organizational structures, a uniform application of the provisions of H.R. 41 to all of them would inevitably result in an unequal treatment of those denominations. The Court has held that such an unequal treatment violates the establishment clause of the first amendment.

In *Walz v. Tax Commission*, 397 U.S. 664 (1970), the Court said, "We must also be sure that the end result—the effect—is not an excessive Government entanglement with religion." H.R. 41's provisions for the establishment of uniform accounting systems and the development of procedures to assure compliance with the act would, beyond all reasonable doubt, result in excessive Government entanglement with religion.

CONCLUSIONS.

We have argued against H.R. 41 being made applicable to churches from the legal, administrative and public policy points of view.

The nonreligious public charities are competent to make their own case either for or against H.R. 41. However, our position is that churches, associations, and conventions of churches should be excluded from coverage by the bill. If it is the opinion of the subcommittee that the nature of the problem of charitable solicitations makes it impossible or impractical to sever the religious from the nonreligious charities, we would have to object strenuously to the passage of H.R. 41. Our commitment to the separation of church and State would compel us to do so.

Thank you.

Mr. WILSON. Thank you very much.

I want to assure you first, that this legislation was not created because of one particular case. We keep referring to the *Pallottine* case.

Mr. BAKER. I said it was precipitated, in our formal testimony. I think this was a precipitating factor.

Mr. WILSON. We have overdone mentioning the Pallottines, because there are so many other groups. This is just one that has been publicized the most.

I think we have mentioned that case much too often, and this legislation has been under consideration for many, many years, long before the *Pallottine* case.

Mr. BAKER. I realize that. That is why I said "precipitated" rather than "being brought about" by.

I think this was a precipitating factor, perhaps, in a bill that had been under consideration for quite some time.

Mr. WILSON. Another thing, of course, in section 2 to your page 3, I think you did extend the application of the bill much further than what was intended, or what the bill does say when you say that possibly it could affect the collections taken up in a church meeting or church service.

Mr. BAKER. That is why I said this is a logical extension, if you push it to the logical extremes.

I think it is still possible and I think the churches are smarting pretty thoroughly under these IRS rules on integrated auxiliaries. And when the intention of Senator Bennett in changing the mandatory exclusions of church conventions, and associations of churches, added the word "auxiliaries"—churches and their auxiliaries—the conference committee came out with "integrated auxiliaries" as a term.

In 1969 the churches did not think seriously of it because Mr. Bennett had said, "We are intending to broaden the mandatory exclusions."

Now the IRS came along on January 4, 1977, and said, "No that isn't really what Mr. Bennett, who is no longer here, said or intended."

So we are a little gunshy and I think we do look to the possible extreme positions, because we have known regulatory agencies too long not to know that they do look for these things.

Mr. WILSON. Well it is certainly true that we have case after case of departments of Government or agencies that have misinterpreted what Congress intended when the legislation was adopted.

The only other thing I have to say, Mr. Baker, and I do appreciate your statement very much, is this continued reference to separation of church and State.

I think that should be evenhanded. And when a particular religious group, for example, attempts to get Congress to adopt a constitutional amendment on abortion or something, I think we are involving ourselves. I think the church has not separated itself from Government in that case.

MR. BAKER. May I say that the religious community is not in agreement on the abortion issue. Some of them have supported antiabortion amendments. But the churches are not in agreement on this issue. But I think there is a good deal of agreement on an issue like charitable solicitations.

No; I don't think that we always do what we speak. I think that our agency has tried to make pretty sure that we do what we speak in terms of separation of church and state.

MR. WILSON. Why shouldn't the general public have a right to certain financial information from churches that they know nothing about?

For example, when you receive a solicitation from Father Dill's mission, what knowledge would you have to go on, in evaluating the legitimacy of this organization?

But in any event, I think that there are problems, and Father Dill organization does, this is true.

I assume maybe I am being chauvinistic, but I think that if I didn't know something about it, that I wouldn't give money. There are many of them, and I am not on his mailing list—I assume that this is in part because of my own background and the fact that I am not interested. I have more charities than I have money that I can give to.

But in any event, I think that there are problems, and Father Dill touched on it to the extent that he said that there might be a possibility of beefing up the antifraud inspection as far as they are concerned. But I also agree, first of all, that the first amendment does put churches in a different category from, say, the Audubon Society or the American Red Cross or what have you.

Second, it seems to me that we have to realize again what Father Dill said, that just as our criminal law allows some wrongdoers to go free in order to try to make sure that we do not convict those who are innocent, so I think there are also going to be people in the religious community who take advantage of these things.

Now, I don't think that they last very long. I will say this, despite what you said earlier—I think that it is singularly important to know this—that as soon as what the Pallottine Fathers had done became known, and if I remember correctly through newspapers, the church itself took care of that very effectively and very efficiently. I think much more so than maybe a Baptist church would, given our structure, because we have problems structurally.

But I think there are going to be some people who get by, unfortunately, under the name of religion with things that they should not get by with. And yet I think this is part of the freedoms that we do enjoy here.

Maybe a part of the religious community—and I know some that I could mention by name—do bilk the public. And yet, that this is

something that we are stuck with, and I would support their rights here in this instance. I am not speaking for the nonreligious charities at all. I think that they need to speak for themselves.

Mr. WILSON. It would be awfully hard to have a test of a legitimate religious organization, wouldn't it?

Mr. BAKER. Yes; how one determines what is a legitimate religious organization is a can of worms. What we have always said, though—

Mr. WILSON. I have reference, I am thinking right now of the Unification Church.

Mr. BAKER. Yes; and there is an even more far out group, and this is the Universal Life Church, which is pulling a lot of property off local tax roles in upstate New York, particularly, by ordaining by mail and having these people declare their homes to be a church.

I think what we have to do though, and this is important to me, is to work on the problem on a case-by-case basis with these. You get into the inequities that I mentioned even between religions. The IRS knows pretty well what is a legitimate church and what is not, and I think they have to proceed on a case-by-case basis rather than in a general blanket undertaking.

We have serious reservations about any attempt on the part of Government to define "church," because church is just such a different thing to different people.

Mr. WILSON. Mr. Myers, do you have anything?

Mr. MYERS. Mr. Chairman, I have enjoyed the gentleman's statement very much, and I would just like to make some comments.

You object to the issuance of a monthly accounting, and to disclosure of the portions that are given on a monthly basis being made readily available to nonmembers of the church. It has been my experience that it is very helpful to put this in print, because it seems that those that are not giving enough might want to get up a little bit more to give.

So I think that a disclosure bill such as this would be helpful for churches. Therefore, I can't seem to agree with your testimony, but of course, I appreciate it.

Mr. BAKER. Let me just say two things.

First of all, I did make the point, I think, that if you went to my church on any of their regularly scheduled business meetings as a nonmember, you would have access to any of the information that they give out. These are usually mimeographed and handed out, on where we are and what our budget is, and where we are spending this, that and the other.

The other thing is, that while I think you might make the argument that you made that it would be helpful in some ways for this to be made public in terms of information to nonmembers, I don't know of any church that will tell you "We will not divulge this to you."

If you come to the First Baptist Church of Silver Spring, Md. and say, "Hey, I would like to see how you people are spending your money," you would get the information.

I think the point that we have to make is that there is an involvement of compulsion here, and I do not feel that this is a proper role for the state vis-a-vis the church, given the first amendment. I don't think that the church—churches generally—have anything to hide. There may be some that do. I don't know of them.

Granting my own experience is limited, but nonetheless I don't know that any of them do keep these things hidden in closets, and I guarantee you that you come to my church on the next business meeting, and you can have any information you want. We share with members and nonmembers alike. It is the compulsion that we object to.

Mr. MYERS. Well, Mr. Baker, I am certainly not concerned about your church in particular. We are interested in the guys that are raising funds that are not being used for the purposes that you use them. That is the problem.

We have in sections of my district, what we call "bible houses." They throw a shingle out, grab some mail, and then they are gone. A real magician trick.

Mr. BAKER. And there are the radio preachers that I have some real problems with their solicitations.

There are others, as I say I could name.

And yet, I am afraid that my position has to remain, unlike yours, and that is that the separation of church and state that is involved—as the chairman says, it has to be a two-way street—and that we are going to have to suffer "fools for Christ's sake" as the scriptures say. We are going to have to suffer some of these in the name of religious liberty, because I don't like to see opening wedges of government coercion of churches. And this is, I think, a fear that we have.

Mr. MYER. Thank you.

Mr. WILSON. There was an item in the Washington Post yesterday about, in Lancaster, N.H.—you may be acquainted with the case, the World Radio Mission Evangelical Organizations sponsored a New York City radio talk program and crusades to many parts of the world has filed for bankruptcy in the U.S. District Court in Concord.

The Securities and Exchange Commission claims the mission's total liabilities are nearly \$6 million. The SEC has a court case pending against the mission charging, failing to give investors a true picture of its financial condition. SEC officials said the case will be delayed while the bankruptcy case is processed.

Here again it is a rare case, this is the type of thing that you will find fault with yourself. And yet we have situations like this that cause concern.

I don't know that this legislation would prevent this situation.

Mr. BAKER. Two things.

I am concerned over people like this and I do know again, individuals and organizations, that cause me a great deal of concern.

Second, if the SEC is involved, there must have been some stockholders involved and it must be a different kind of an organization than the standard church.

If the SEC is involved, then there may be a different breed of cat that we are dealing with, and I don't know the case nor the story.

Mr. WILSON. Well, thank you very much, Mr. Baker.

Mr. BAKER. Thank you for letting me come out of turn.

Mr. WILSON. Our next witness is Dr. George F. Harkins, general secretary of the Lutheran Council in the United States, on behalf of the American Lutheran Church.

Dr. Harkins?

STATEMENT OF DR. GEORGE F. HARKINS, GENERAL SECRETARY OF
THE LUTHERAN COUNCIL IN THE U.S.A., ON BEHALF OF THE
AMERICAN LUTHERAN CHURCH AND THE LUTHERAN CHURCH
IN AMERICA, ACCOMPANIED BY J. VICTOR HAHN AND ALLAN
CARLSON, LUTHERAN COUNCIL, WASHINGTON OFFICE

Dr. HARKINS. Thank you, Mr. Chairman.

I am George F. Harkins, general secretary of the Lutheran Council in the U.S.A. And the testimony we present is on behalf of the American Lutheran Church and the Lutheran Church in America.

You have copies of the submitted testimony. However, two paragraphs were inadvertently omitted from that typed copy. Consequently we would like to submit corrected copies to include those additional two paragraphs.

Mr. WILSON. I think we have the corrected copy here.

Dr. HARKINS. Joining me today are, on my right, your left, J. Victor Hahn, and on my left, Allan Carlson, both of the Lutheran Council's Washington office.

Instead of reading the testimony which has been submitted, Mr. Chairman, or even excerpting it, I wonder if it would be permissible, in view of the time bind that I know you are in, if I could summarize the testimony.

Mr. WILSON. We would appreciate that very much, Dr. Harkins.

Dr. HARKINS. Thank you, sir.

Other church and church-related groups have submitted statements concerning the proposed charitable disclosure legislation in which they give forceful and extensive attention to some serious first amendment problems which have been raised by H.R. 41.

I do not intend to repeat such statements, but I do want it to be understood that we fully share such concerns.

No. 2: The overwhelming majority of churches and church-related agencies have established and continue to maintain enviable reputations in charitable services and mission projects, as well as in voluntary financial disclosure.

No. 3: The American Lutheran Church and the Lutheran Church in America regret and vigorously oppose the activities of those who violate the public trust, whether they be church related or not.

No. 4: We support the necessary legislation to curb abuses, but we are disturbed by the prospect of Federal legislation and/or regulation which would sweep the entire charitable community into a single net in order to reach and control the acts of a few charlatans or fraudulent operators who solicit financial contributions from the general public.

No. 5: We have serious and indeed crucial problems with any effort by the U.S. Government to define the meaning of the term "church member" and related terms.

Based on their several theologies and histories, churches have different and not altogether consistent understandings of church membership.

We believe that it is not the role of government to force a common understanding of church membership on all churches.

Considering the term "bona fide membership organization," the term "exclusively," the term "members," I would like to say that we believe that H.R. 41 as now proposed, would represent an inappropriate and serious governmental intrusion into the internal affairs of at least five categories of church institutions.

No. 1: Congregations, as they solicit funds from their members and friends who participate in the life and work of those congregations.

Second: National church bodies, as they solicit funds from their congregations and from other subdivisions of church bodies, synods, districts, conferences, and so forth.

Third: National church bodies, as they solicit funds from the members and friends of their local congregations.

Fourth: Regional jurisdictional units of national church bodies, as they solicit funds from their local congregations and the members and friends of such local congregations.

And lastly, church-created and/or approved agencies of national church bodies or their regional districtional units, as they solicit funds from local congregations and the members and friends of such local congregations.

Congregations and their members and friends cannot be considered merely parts of the general public in this context.

Thank you for permission to make that summary statement, Mr. Chairman. I will be glad to respond to your questions.

[The prepared statement follows:]

PREPARED STATEMENT OF DR. GEORGE F. HARKINS, GENERAL SECRETARY, LUTHERAN COUNCIL IN THE U.S.A.

Mr. Chairman, my name is George F. Harkins. I am General Secretary of the Lutheran Council in the U.S.A., headquartered in New York, New York.

This testimony is presented by the Lutheran Council in the U.S.A. on behalf of the American Lutheran Church, Minneapolis, Minn., which has 2,400,000 U.S. members, and the Lutheran Church in America, New York, New York, which has 2,900,000 U.S. members. These two church bodies are composed of over 11,000 local congregations found in every state in the United States.

The Lutheran Council in the U.S.A. was organized in 1966 as a cooperative Lutheran agency. It has among its constitutional functions "To represent the interests of the Council and the interests of a participating body so requesting, in matters that require common action before . . . the national government. . . ."

We are pleased that the subcommittee has made available this opportunity to comment on H.R. 41, a bill which would require the furnishing of certain information in connection with the solicitation of charitable contributions by mail. Since the bill as now written would impact certain stewardship activities of churches and church-related agencies, we believe that it is important for the subcommittee to have access to information on some potentially adverse effects.

Recently, there have been several highly publicized scandals involving charitable organizations which have apparently abused the public trust. Regrettably, a few of these instances have involved church-related or religious groups.

However, we strongly urge this subcommittee to carefully consider the actual scope of the problem which H.R. 41 seeks to address and to weigh the possible adverse effects of the bill before proceeding further.

As the members of this subcommittee know, a majority of the States already have laws and regulations governing charitable solicitation. This fact alone suggests that there should be a very compelling need which can be identified and which can be met only through new federal legislation before such legislation should be adopted.

The overwhelming majority of churches and church-related organizations have enviable reputations in charitable service and mission projects as well as in open and voluntary financial disclosure.

We gladly endorse voluntary reporting of financial operations by church-related and other charitable organizations and we applaud the maintenance of an informed giving public. We condemn instances of abusing the public trust, whether those instances be in the charitable or commercial segments of the private sector.

While aware of legitimate legislative interest in curbing past abuses, we are troubled by the prospect of new federal legislation and regulations which will sweep the entire charitable community into its net in an effort, however well-intentioned, to reach and expose the activities of a very small number of charlatans, "fly-by-nights," and fraudulent operators who solicit money from the general public.

SUMMARY OF PROVISIONS

H.R. 41 provides that "Any charitable organization which solicits, in any manner or through any means, the remittance of a contribution by mail," shall include with such solicitation certain information, including (a) the legal name and business address of the charitable organization making the solicitation, (b) the purpose of the solution and the intended use of the contribution, and (c) the percentage of the previous year's contributions which was devoted to the charitable purpose and to fund raising and administrative costs respectively. The organization would also have to provide more detailed financial information on request and state that such information is available. The Postal Service would be empowered to adopt rules and regulations establishing the accounting methods and procedures to be used by charitable organizations to assure compliance. Postal inspectors would apparently have access to the records of charitable organizations to insure compliance, and would be authorized to issue mail-stop orders against allegedly offending organizations.

Subsection (g) of the bill states that "The provisions of subsection (a) of this section shall not apply to any bona fide membership organization with respect to any solicitation for contributions by mail by such organization exclusively to the members of such organization."

We understand that this subcommittee has before it statements from other groups giving forceful and extensive attention to the serious First Amendment problems which are raised by H.R. 41's requirements with respect to church-related and religious organizations. In the interest of time, we will not repeat similar concerns which we share with other religious groups in this area.

However, on behalf of the American Lutheran Church and the Lutheran Church in America, we wish to draw particular attention to several specific problem areas of H.R. 41 relating to difficulties in definition which, in our view, pose great difficulties.

DIFFICULTIES OF DEFINITION: "BONA FIDE MEMBERSHIP ORGANIZATIONS," "EXCLUSIVELY," AND "MEMBERS"

"Church membership" has different meanings for different churches for various theological and historical reasons. We could not support any effort by the Federal government, through legislation or through regulation, to force a common definition of the term "membership" on the religious community. Such an effort would involve an implicit theological judgment, and would fail to respect the pluralistic nature of the religious community and its diversity of heritage hierarchy.

We understand that the authors of H.R. 41 have so far resisted suggestions that they adopt a precise definition of the term "membership." However, even though the bill appears to have a somewhat inclusive, flexible definition of "membership," we are troubled by some potential problems with the term. Regulations would be promulgated to enforce the bill, and regulatory agencies often adopt elaborate and subtle definitions which go beyond the intent of Congress, even where the Congressional intent is clear. In short, we are troubled by the prospect of federal bureaucrats in the business of line-drawing and defining terms such as "church membership" and "bona fide membership organization."

SUMMARY OF SPECIFIC OBJECTIONS

In our view, serious problems exist in any bill which fails to exempt clearly from its coverage the following activities:

Local congregations soliciting formal status members and friends of the congregation who participate in the life of that congregation.

A national church body (such as ALC and LCA) soliciting funds from local congregations and other subdivisions of the church body.

A national church body soliciting funds from the individual members of local congregations of the church body.

An agency or other subdivision of a national church body, or an interchurch agency approved by participating church bodies, soliciting local congregations of those church bodies, or individual members of those congregations.

THE IMPACT ON LOCAL CONGREGATIONS OF THE LUTHERAN CHURCHES

It has been suggested that H.R. 41 would not seriously affect local churches, or parishes, in their normal stewardship campaigns because subsection (g) of the bill specifies that solicitations by bona fide membership organizations exclusively to the members of that organization are exempted from the bill's coverage.

We find such suggestion less than reassuring and are very troubled by the fact that rigid adherence to the term "exclusively" would pose serious problems at the local level.

There are many instances of persons who, for one reason or another, are active in a local congregation and support the congregation financially, but who have chosen not to assume formal status on the membership roles of that congregation. The pastor of the church legitimately views them as coming under his or her pastoral care; they may participate actively in all services and activities; yet they would not be on a formal membership list. An example of this would be a person who was reared a Lutheran, but married outside this confession. While being an active participant in the local Lutheran church, such person might feel obliged by a spouse's sensitivities and sensibilities not to assume formal membership in the local congregation. In other cases former members of a church who have moved to other neighborhoods or towns often continue to support their former churches financially and continue to receive stewardship materials from their former churches.

In the above instances, we do not see any sense in which such persons can reasonably be considered part of the "general public" with respect to the stewardship activities of the local congregations to which they are committed. In fact, local Lutheran congregations are already accountable to persons who support them financially—both persons on membership rolls and "friends of the congregation." Financial contributions to Lutheran churches are characterized by a regularity and frequency not shared by all charitable organizations. This close relationship with donors assures that Lutheran churches already have a special accountability to their contributors. For example, persons who participate in the life of the church, whether or not they are on the formal membership rolls, contribute on a regular, even weekly, basis. Such a relationship carries with it a special degree of accountability.

In short, we cannot support legislation which would force local congregations to single out for special treatment friends of the congregation such as those noted above, and which could require local congregations to submit to regular audits of finances and examination of membership rolls, and comply with expensive and inappropriate standardized fund-raising cost accounting measures. Such a bill, in our view, raises a serious constitutional question of governmental entanglement in the internal affairs of the church. The question of who is and who is not a member of a local congregation is not a proper subject for governmental decision.

EFFECTS ON THE NORMAL FINANCIAL OPERATIONS OF NATIONAL LUTHERAN CHURCH BODIES

In our view, the bill's use of the terms "bona fide membership organization," "exclusively," and "members" pose serious problems for the national church bodies as well as for local congregations.

The Constitution of the American Lutheran Church states in its chapter on membership that "The membership of the American Lutheran Church shall consist of congregations. The requirements of membership shall be: (a) the profession of a common faith; (b) the acceptance of the Constitution and its Bylaws; (c) participation in the program of activity of this church."

The Constitution of the Lutheran Church in America specifies that its membership includes both congregations and ministers.

Operating relationships of national Lutheran Church bodies and local congregations

In our view, a national church body must be viewed as a "bona fide membership organization" in relation to its constituent congregations, and we could not sup-

port a bill which does not clearly recognize that relationship. We presume that the Congress does not intend to place the Postal Service or any other federal agency between a national church body and its local congregations or to subject the internal relationships of the national churches and their local congregations to government control. Yet, we are troubled by the lack of clarity of the bill on this question. For example, we note that subsection (i) (5) of the bill defines "written solicitation" in reference to recipient individuals.

We presume that H.R. 41 is intended to regulate solicitations of the general public and that a solicitation of contribution by one organization from unrelated organizations would be subject to the bill's requirements. Accordingly, we urge the subcommittee to consider whether there is any reasonable basis for considering a local Lutheran congregation to be part of the general public with respect to relationships with its parent church body. We believe there is no such basis.

Operating relationships of national Lutheran Church bodies and individual members of local congregations

We are similarly troubled by the impact of H.R. 41 on the relationships of individual members of local congregations to the national Lutheran church bodies.

The Constitution of the American Lutheran Church states in its chapter on "Authority and Power":

4.13. Congregations, in associating themselves with this Church at its several levels of organization, pledge themselves to assure it the human authority, power, and resources needed to carry out its purposes as set forth in this Constitution. The American Lutheran Church pledges itself to use its authority, power, and resources both to serve its congregations directly and to serve their interests in those spheres where congregations cannot act effectively alone. Thus there exists a pledged mutuality of authority, power, and resources between the congregations and The American Lutheran Church."

The Constitution of the Lutheran Church in America, in its section on "The Nature of the Church" states:

"SECTION 2. The Church exists both as an inclusive fellowship and as local congregations gathered for worship and Christian service. Congregations find their fulfillment in the universal community of the Church, and the universal Church exists in and through congregations. This church, therefore, derives its character and powers both from the sanction and representation of its congregations and from its inherent nature as an expression of the broader fellowship of the faithful. In length, it acknowledges itself to be in the historic continuity of the communion of saints; in breadth, it expresses the fellowship of believers and congregations in this our day."

Both the American Lutheran Church and the Lutheran Church in America, through their districts and synods, their biennial conventions and through their elected boards and officers, stand accountable to their member congregations and to the individual members of those congregations.

Given this accountability factor, and given the constitutional protections found in the First Amendment, the interposition of the federal government between a national church body and the individual members of its member congregations would again seem unreasonable, unnecessary and of questionable constitutionality.

In short, we could not support a bill which fails to exempt from its requirements the dealings of national church bodies with their members—both congregations and individuals. Clearly, more problems would be raised than solved if the government were to seek to involve itself in regulating the manner of conducting stewardship and mission operations of parishes and of national church bodies relative to their member congregations and individual persons in those congregations. Once again, we ask the subcommittee to consider whether there is any reasonable sense in which an individual member of a Lutheran congregation can be said to be a part of the general public relative to the activities of the parent national Lutheran church body. We strongly believe there is no reasonable basis for such a contention.

Operation relationships of agencies of national Lutheran Church bodies and inter-Lutheran agencies with local congregations and their individual members

Just as we are concerned over the impact of H.R. 41 on the normal operations of local congregations with persons participating in the life and work of the congregation, and the operations of national church bodies relative to their member congregations and the individual members of those congregations, so too are we disturbed by the potential impact of the bill on the normal mission

activities and stewardship campaigns of recognized agencies of a Lutheran national church body and of inter-Lutheran agencies.

A stewardship campaign by an agency approved by a national Lutheran church body, or an inter-Lutheran agency approved by the participating Lutheran church bodies may enlist the support of local congregations of the Lutheran church and of individual members of those congregations. Again the key question is: who is the "general public" with respect to such activities? We oppose any effort to label persons affiliated with local Lutheran congregations, or the congregations themselves, or other subdivisions of a national Lutheran church body as part of the general public with respect to such activities.

CONCLUSION

We urge the subcommittee to move with caution in this area and to consider carefully the impacts of H.R. 41 on the internal operations of the church. We do not believe that the bill as drafted deals appropriately with the difficulties noted above. And we oppose deferring these difficulties to the Postal Service for resolution at the regulatory level.

This statement has focused on specific instances of Lutheran church operations which would be adversely impacted by H.R. 41 as now written. However, we believe that more fundamental issues are at stake; namely, should the federal government be involved in the business of (1) defining who is and who is not a member of a church, (2) structuring the manner in which churches must deal with members and non-members as those terms would be defined by the government. We believe that these questions are most serious and require thorough study by the subcommittee before approving federal legislation governing the religious charitable community.

We appreciate this opportunity to place our concerns before the subcommittee, and I am ready to answer any questions you might have.

Mr. WILSON. Thank you very much, Dr. Harkins.

Now, if H.R. 41 included a more specific definition of membership and church papers, only for the purpose of qualifying for a membership exemption from the provisions of the bill, would the legislation be more acceptable to you through the council?

Dr. HARKINS. It would be difficult for me, Mr. Chairman, to respond to an iffy question like that.

One of our difficulties is that typically, our churches and their agencies do not appeal to the general public. We appeal to members and friends; friends being those who attend worship, participate in other activities of the churches, support the churches financially, and are considered, except in the most formal sense, members of the church. We appeal to them.

But we do not appeal to the general public, typically.

Mr. WILSON. In connection with the first amendment question, isn't it true that the disclosure requirements of H.R. 41 meet your test because they do not regulate the beliefs of religious solicitors under the enforcement provisions involved in evaluating particular religious beliefs.

Dr. HARKINS. That may be true, Mr. Chairman. I do not know. But as we said earlier, even this morning, it is difficult to believe that once a regulatory action is taken, whether this is considered regulatory or not in the minds of some, it is difficult for me to understand that some processes will not be set at work which will impose some regulations on the churches.

I hardly think that is possible. There would need to be some examination of the membership rolls, for instance, and then a determination as to whether this person is or is not a bona fide member. And if so, under what category.

Mr. WILSON. Now you indicate in your statement that you gladly endorse voluntary reporting.

Dr. HARKINS. Exactly.

Mr. WILSON. But the Better Business Bureau tells us that they have more difficulty getting voluntary information from religious affiliated charities than any other category. In fact, 40 percent of the organizations in noncompliance with the request of the Better Business Bureau are religious organizations.

They list the names of charitable religious organizations which voluntarily send information about their charities, and that is a service of the Philanthropic Advisory Service of the Council of Better Business Bureaus here in Washington, D.C.

Why would that situation be, I wonder? Why would religious organizations have difficulty sending voluntary information to the Better Business Bureau?

Dr. HARKINS. I cannot understand that, Mr. Chairman.

As you know, there are more than 200 denominations of various sorts in this country. Those which I would hesitantly say are main line churches, would not have any difficulty in reporting to the Better Business Bureau or to anyone else.

Mr. WILSON. I didn't notice whether your organization was on here or not, but you probably aren't aware if it is either. They have quite a list of those that haven't sent in the information.

Mr. Myers, do you have anything?

Mr. MYERS. I just have one question, Mr. Chairman.

Dr. Harkins, what percentage of your fundraising is through the mail?

Dr. HARKINS. What percentage is through the mails?

Mr. MYERS. Yes.

Dr. HARKINS. I really have no idea.

First of all we have the congregations which solicit from their members. And sometimes that is through the mail; for instance, pledges against the budget for the upcoming year.

We have the synods, or districts which sometimes make appeals through printed materials, to the congregations and to the members and friends for the programs of the synods and districts and the national church body and its agencies.

All these use the mails to a degree, not necessarily as the first front, but in support of the first front activities and solicitations.

I suppose one could say that 100 percent is related to mail solicitations, but that is not the first front of our solicitation.

Mr. MYERS. Thank you.

Mr. WILSON. Thank you very much, Dr. Harkins. We appreciate your statement.

As I understand it, there probably is no way that we could fix this bill up to make it agreeable to you. Your church, like the other groups that have appeared so far this morning, is opposed to this type of legislation?

Dr. HARKINS. I do not see any way, Mr. Chairman, that it could be repaired to meet all our objections. However our staff in Washington would gladly welcome the opportunity to work with you, representatives of other church groups, and your staff to examine the present

provisions of H.R. 41 and to ascertain if any corrective measures which would eliminate our objections can be agreed upon.

Mr. WILSON. Thank you very much.

Mr. HARKINS. Thank you, sir.

Mr. WILSON. Our next witness is Mr. Marvin B. Johnson, vice president of the University of Arizona, who is representing the Council for Advancement and Support of Education.

Mr. Johnson, I believe you have the floor.

STATEMENT OF MARVIN D. JOHNSON, VICE PRESIDENT, UNIVERSITY OF ARIZONA, CHAIRMAN OF THE COMMITTEE ON GOVERNMENTAL RELATIONS, COUNCIL FOR ADVANCEMENT AND SUPPORT OF EDUCATION, ACCOMPANIED BY BRUCE R. HOPKINS, BAER MARKS & UPHAM, SPECIAL COUNSEL TO CASE

Mr. JOHNSON. Mr. Chairman and other members of the House Subcommittee on Postal Personnel and Modernization, I am Marvin D. Johnson, vice president of the University of Arizona, and chairman of the Committee on Governmental Relations for the Council for Advancement and Support of Education, known as CASE.

CASE, as you may know, is a nonprofit organization of more than 1,800 universities, 4- and 2-year colleges and independent schools.

Our institutional members are represented by about 7,800 member representatives—professionals in the fields of alumni administration, educational fundraising, government relations, public relations, public information and publications, and executive management.

Mr. Chairman, we have sent a lengthy statement to the subcommittee. I am speaking on behalf of 11 organizations, and I wish to inform the subcommittee that the Association of Jesuit Colleges and Universities does not wish to be included in sponsoring my testimony this morning.

In the interest of time, with your permission, sir, I would like to have the subcommittee accept the statement, and if I may, I would like to highlight some of the pertinent points that we wish to make this morning.

Mr. WILSON. Certainly.

Mr. JOHNSON. Let me introduce my colleague, Bruce R. Hopkins, who is special counsel to CASE and will participate with me this morning.

CASE applauds your efforts to protect the American public and responsible charities from the injurious effects of fraudulent fundraising schemes and financial mismanagement of charitable donations.

With the introduction of H.R. 41 and the ensuing debate on the issues raised by the provisions, you have called attention to the need for Federal legislation in the area of charitable solicitation.

As you know, Mr. Chairman, the American people have generously supported worthy causes and need straightforward information that would help them to make a more educated judgment about which organizations to give to.

CASE believes in full disclosure of charities' financial records and purposes and programs. We know that we are speaking for the education community as a whole when we assert that we wish to hide nothing from the public.

Representatives of many educational institutions have followed with keen interest the evolution of this bill.

In response to your statement at the opening to receive any constructive proposal which will improve the bill, the American Council on Education, CASE, and others have expressed their reservations, raised questions, and recommended modifications and amendments.

We are pleased that some of our earlier statements have been incorporated in H.R. 41, and we welcome the opportunity to continue our dialog and announce this morning that while we may disagree on certain points, we share your belief that strong, voluntary support for philanthropic enterprises is one of the best indications of our spirit as a nation.

This legislation as written may be reasonable for certain charities, namely, those that rely only on annual fund drives, and those that distribute their net income to individuals and institutional recipients.

The legislation as written may be unreasonable to other charities, namely, charities that conduct fundraising on a continuing basis and charities that use their net income to extend their own services.

This latter group of charitable organizations are operating charities which, in addition to schools, colleges, and universities, include hospitals, libraries, and museums.

In the balance of our time this morning, we will show how the prominent display of the percentage of fundraising as devoted to the cost of solicitation will seriously cripple our efforts.

We will also show that annual costs for solicitation, rather than a moving average, treats our institutions unfairly.

The prominent display of the percentage of our costs used for solicitation purposes will create significant problems for us. We will be glad to provide all information on our fundraising activities in the annual report to our benefactors, which, incidentally, should be available to the press.

We will also be glad to add an appropriate disclaimer to our mail solicitations similar to that which candidates for Federal office make on each solicitation piece; that is, that information on the cost of fundraising is available upon request.

A requirement in the law that we publish the percentage of our gross income that is used for solicitations will have serious consequences in the following manner:

Various charities will compete for the lowest percentage, opening the door for public misunderstanding and confusion.

The responsible Federal agency will promulgate rules and regulations that may or may not clarify what should and should not be included as a part of the cost of fundraising. In any event, it is certain that Federal guidelines will burden already harassed administrators with new paperwork and reporting responsibilities.

At the very least, it is our hope that your committee will specify that existing accounting standards, such as those published in 1974 in the "College and University Business Administration" by the National Association of College and University Business Officers be adopted as the guidelines of Federal agencies.

And finally we feel that there is too much emphasis on one small factor of an institution to determine the percent that will be placed in such a prominent manner. If, in the wisdom of Congress, the percentage will be used, we would appeal that we be permitted to calculate

it and publish the percentage of our receipts that are used to raise funds over a 4-year moving-average period.

With respect to this 4-year average percentage, that figure more accurately represents our costs, because our fundraising campaigns are multiyear events. Inevitably the first year of the campaign is the most expensive. But more than that, in any given year we are subject to unusual expenses that may be generated by the purchase of new equipment, the institution of new accounting procedures, training of new personnel, or institutional reorganization. Any one or more of these events would give an institution a black eye if it had to report that in the year in which done.

It is appropriate to note for the record that Congress has legislated a moving-average rule for determining charitable organizations' level of public support in relation to private foundation rules.

Also there is the question of jurisdiction. As you know, Mr. Chairman, educational institutions already provide the Federal Government with considerable data concerning their finances and philanthropic activities. Most of this information goes to the Department of the Treasury and the Internal Revenue Service, which over the years have acquired extensive expertise in the matter of charitable organizations.

For the objectives inherent in this bill, we believe that the IRS would be the appropriate principal Federal administrative agency.

Moreover, the tie-in between disclosure, annual reports, and the retention of organizations' tax-exempt status would give true force to the legislation and would discourage creative accounting to reflect ostensible minimal fund-raising costs.

Hopefully, jurisdictional questions will not stand in the way of effective and efficient government implementation.

Finally, Mr. Chairman, if we are to be subject to Federal law, we appeal for relief from State and local statutes. Such preemption would be a very positive provision of this legislation. At the very least, perhaps our multistate campaigns would be governed exclusively by Federal laws rather than a multitude of State and local statutes.

Thank you, Mr. Chairman and members of the subcommittee, for affording us this opportunity to present our views.

We are sincere in our hope that we have helped make Congress and the Nation realize that the goal of a strong voluntary sector should not be blemished by the faults of a few.

Mr. Chairman, with your permission I have asked Mr. Hopkins to touch on several legal and technical aspects of the bill.

MR. HOPKINS. Mr. Chairman, before addressing ourselves to any questions that you may have, I did want to focus basically on two legal aspects of the bill; the first one being the preemption question.

Nearly every witness at these hearings has advocated that any Federal charitable solicitations law preempt any State and local law in the field. And, as Mr. Johnson indicated, we do ask that a preemption provision be added to H.R. 41.

By my count, there are at least 31 States, plus the District of Columbia, that have solicitation regulation statutes; at least 3 other States have laws which could prompt enforcement in this area; and countless counties, cities, and towns have ordinances in this area as well.

One example I am aware of, for example, in Seattle, Wash., a charity soliciting in that city has to register separately with the city, register

separately with surrounding King County, register separately with the State of Washington; and, of course, if H.R. 41 is enacted, it would have to comply with that as well. And at least 12 States are considering enactment of a charitable solicitations statute.

And some of those States that already have such statutes are simply making their existing laws more burdensome.

We are certain that most of these laws are well intentioned, but the process of complying with them presents totally excessive burdens. The regulation and reporting forms are different, the due dates are different, accounting principles are different, and other requirements are different.

In fact, in two or three States, a charity is required to actually formally register to do business before a solicitation can take place.

Frankly, the only aspect of this hodgepodge of law that makes it at all tolerable, is that most States are simply not enforcing their statutes.

Now we think with the advent of Federal law in this field, there is a rare opportunity presented to remedy this with the preemption requirement. As I noted, most of the witnesses at this hearing have requested this kind of relief, and I should also note that those who do advocate preemption are not in any way trying to curb the appropriate regulatory authority of the State attorneys general. Even with preemption they would have jurisdiction over cases involving charitable fraud and the like.

All we are requesting is some form of relief to resolve the multiplicity of registration and reporting requirements so as to insure that the maximum amount of dollars are devoted to charitable purposes.

As part of the appendix of our testimony we have drafted for the subcommittee's consideration, a preemption clause. And in lieu thereof, if preemption is not deemed appropriate or possible, we have drafted—really we didn't initiate this because it is part of Mr. Mondale's bill, but we have put forth again his provision which would allow charities to use the Federal form in complying with the various State and local reporting requirements.

The other legal aspect of the bill—there are many, of course, but the other one that I want to specifically address your attention to is the mode of disclosure of fundraising costs.

As we have indicated, we certainly advocate full and complete disclosure of all charitable and educational organizations. But we don't think disclosure should be done in a way that is duplicative of existing requirements, or in a way that is overly costly, and I would particularly request that the provision by which fundraising costs would be reduced to a single percentage be eliminated from the bill.

Now the reasons for this are manifold and many of these have been touched on before.

Probably the principal reason is that the fundraising costs are not a fair means of comparing diverse types of charitable organizations. If a percentage requirement is deemed appropriate, at least it would be better to stress the amount of money that is given or spent for charitable purposes.

An example comes to mind of a charity that spends 5 percent on fundraising, 5 percent on administrative costs, 5 percent for charitable purposes, and invests the balance of the 85 percent, the remaining 85

percent in some questionable investments. This type of charity on forms would look just as good with the 5-percent fundraising cost as a charity that has spent 5 percent for fundraising and 5 percent for administration and devoted the other 90 percent for a charitable purpose.

Another problem is that I am convinced that this percentage requirement will lead to a price war among charitable organizations, or a batting average as a type of comparison, where the competition for charitable dollars will be based solely on numerical rating of organizations.

I should also point out that at present there are no standards for ascertaining fundraising costs. And I think that reducing this element to a single percentage is an open invitation for great abuse and would be counterproductive to the objectives of the bill.

There has also been much testimony about the adverse impact of this requirement on charitable groups that are just starting up, and I won't dwell on that.

I would also like to point out that there are different types of fundraising and the bill, while it properly focuses on the typical annual campaign, does not fairly account of such other types of fundraising endeavors as capital campaigns, deferred giving programs, receipts of pledges, extensive use of volunteer time, and the like.

If the subcommittee decides that a percentage approach for reflecting fundraising costs is necessary, we would ask that serious consideration be given to an averaging scheme rather than using a 1-year percentage. Congress has done this on other occasions in the charitable field. This would be particularly appropriate for colleges, universities, hospitals, and other organizations that engage in capital campaigns where, even though the overall percentage is quite low—as Mr. Schwartz testified yesterday—most of the expenses are incurred the first year. And that would be a terrible burden on colleges and other operating organizations; if they had to show the 1-year percentage factor, it would not be fair for the overall scope of the campaign.

Mr. Chairman, those are the two points I want to make.

Mr. Johnson and I will be happy to answer any questions.

Mr. WILSON. Thank you very much, Mr. Hopkins.

You mentioned there would be a price war developed because of the comparison of percentages used for solicitation purposes.

I don't know that this would happen. We have had a disclosure law in effect in the city of Los Angeles for several years. To my knowledge there has never been any price war. In fact, I have never heard any complaint from any charitable organization about any excesses or any problems that they have been confronted with as a result of the Los Angeles law.

I am not sure what exemptions there are in the Los Angeles law. I have had considerable solicitations myself in the area and the information—as a matter of fact, Mr. Rees—contrary to those who think that we started this because of the Pallotine situation, Mr. Rees introduced the legislation because of the Los Angeles experience, and his belief that some type of Federal law should be enacted to do what they are doing in Los Angeles.

And it is because of the success of that law that we have there that he thought there could be no harm in a Federal law similar to it that would provide its own disclosure.

Mr. JOHNSON. May I speak to that.

You might be correct. I am not familiar with the one you have cited, Mr. Chairman, but I would imagine it is in the same metropolitan area that the information flows.

Let me give you an example of my State, what would occur if this requirement happened to be in Federal legislation.

As you know, my institution is in the Tucson, Ariz., metropolitan area. There is a State university in Arizona called the Northern Arizona University located in Flagstaff, a much smaller community, with much smaller competition for jobs.

A recent study of the salaries of university personnel between these two institutions showed that you can hire people at a far cheaper rate in Flagstaff than you can in Tucson. And there is no question that if this becomes law, and if these two institutions solicit, it is going to be cheaper to raise money at the Northern Arizona University than it is at the University of Arizona for that point of fact alone, in that you can hire clerks and stenographers at a cheaper rate in Flagstaff than you can in Tucson. And that is known to be inherent in what we are talking about this morning.

Mr. HOPKINS. Not only that, Mr. Chairman, but I think it is one thing to speak of a municipal ordinance, but I think coupled with the considerable amount of attention that has been given this area in the last 2 years, a national statute would be much more likely to have the impact that we fear, as opposed to a single regional law.

My own view is that a percentage requirement, as we said, would be such an easy guide for someone to solicit saying, our fundraising costs are low, and someone else may even have a publication list of charitable organizations in inverse order of their fundraising costs, so as to simply convey the idea to the public that that is the best way to gage charitable organizations' operations.

And I think this is not only inaccurate, but I think such a requirement in the bill would be so misleading as to probably end up being counterproductive to the overall objectives of the legislation.

Mr. WILSON. Is it your position that you prefer no bill at all?

Mr. JOHNSON. No, sir.

Mr. WILSON. You feel there is a need for some type of legislation?

Mr. JOHNSON. We certainly think that it can be processed in a lot of ways.

In the percentage procedure, we think that does not give an accurate measure of what the objectives are.

Mr. WILSON. Those are the principal objections you have to the bill as now written, the preemption and the percentages?

Mr. JOHNSON. The highlight of that percentage requirement is that we think it can be manipulated not to the benefit of the giver or the receiver.

Mr. WILSON. Our problem in any kind of legislation that is complex like this—I would like a beautiful bill that everybody just loved. I think some are trying to kill us with kindness here. I am just afraid if we put the preemption clause in, and I am inclined to agree that eventually you may have to do that, then you can see all the local governments coming up in arms to fight us and contact all of their representatives to tell us that we are interfering with the rights of local governments, and so forth.

If we satisfy one group, we pick up another group of opponents. So we have to try and figure out if we are going to have anything at all, how the best way to do it is, to keep the most solid support that we can for the legislation.

Haven't we actually, by exempting alumni solicitations and parents of students, which at least it is our intention to have done in the bill, taken care of the problems of the universities or educational institutions very well?

Do you go beyond parents and alumni?

Mr. JOHNSON. I appreciate that exemption, but we have trouble with that, Mr. Chairman. Let me give you one example that came to mind as I reviewed the legislation, sharing again a local experience, which I think is certainly appropriate to other institutions that we are representing this morning across the country.

We developed a bull station in order to improve the caliber of cattle in our State. And we went on a mail solicitation to individual ranchers and farmers within Arizona. Now that group is certainly not covered in the legislation as it is currently written, and they are not a part of the solicitations available—often we will target a group within the State with the expectation that they may be interested in this. And if we move forward in this, we would certainly be in conflict as the bill is currently written; we did not include what the bill calls for.

Mr. HOPKINS. Mr. Chairman, in further response, I would like to point out that there may be some misunderstanding about this particular provision because it has been said throughout the hearings that colleges and universities have been exempted from the bill.

I would simply like to point out for the record that all the exemption does is exempt colleges and universities and their solicitations, as far as the bill is concerned. The exemption extends only from the point-of-solicitation requirements. The colleges are not exempt from any other provision of the bill.

The exemption is much more limited, somewhat, I think, and certainly is not a total exclusion of that kind of solicitation from the measure.

I might also add in response to your other question, we have taken the liberty of appending to our formal statement of testimony, a draft of a measure which picks up some of the points that were made in the statement. The essence of this requirement being full disclosure, including fundraising costs and the like. We certainly prefer the approach whereby there would be full or complete annual reporting with those documents made publicly available and with the notice on the solicitation made a part of the solicitation of the availability of that information.

We think this approach makes much more sense and would be much less costly and burdensome than the point-of-solicitation approach that is embodied in H.R. 41.

Mr. WILSON. I think you recommended that the annual reports be available upon written request rather than the way we have it in the bill. And if we have the New York State experience which just tells us that people don't write for reports.

And as a consumer protection bill, which we intend this to be, it does no good as far as the consumer is concerned to the person who is

being solicited, just because people are too lazy to write letters, even though they have the freedom to do so and they have the right to do so under the New York law.

Mr. HOPKINS. Mr. Chairman, we thought about that quite a bit. I know this came up yesterday. Under the New York law—I know there has been some discussion of the statistics of the degree of response to that statute to the New York Social Welfare Board, but under the New York law an individual can write either to the New York authorities, or to the organization itself. And, of course, apparently no one has any statistics about how many people have actually written to the organization itself over and above those that have written to the New York agency.

But, in many cases in the solicitation, a piece of paper, a card, has to be sent back transmitting the pledge, or to give any way. And it would be very simple to simply have an opportunity for that kind of an individual to check a box on the mailing in seeking that additional information, without having to go to the trouble of writing a formal letter.

And finally, we think that the real importance of this kind of disclosure is not the number of people that may write back in the context of any solicitation, but first of all the person who gets the solicitation knows that he or she can get that information if it is wanted. What we think is much more important, that it would open up the charitable organizations, and this would certainly include colleges and universities and schools, open up those organizations to inquiries from the media, from the Government agencies, organizations like the Council of Better Business Bureaus, and we think that is ample disclosure and ample access to the information that would be required.

Mr. WILSON. Thank you very much.

I think there are some very fine suggestions you have, and I understand, Mr. Hopkins, you and Mr. Cavanagh will be working together, and he has told me that you have been extremely cooperative. There are some modifications, I think, that you are already in agreement with and you have discussed with him.

As far as the auditing procedures, I don't think we have any problems there because we are talking about the same thing.

And we are in agreement with Mr. Gross, the Certified Public Accountants organization, that accepted auditing procedures that are now used by organizations—and I think the one you mentioned, Mr. Johnson, is one that has been approved, is one that they have suggested is the type that would be used. So I don't think we have any problems there.

Mr. JOHNSON. Yes, sir.

Mr. WILSON. We are going to have to get into this preemption thing a little more, apparently, because there have been many people indicating they feel that this should be done. And I agree, for a national fundraising organization or a charitable organization that solicits nationally it does create a tremendous burden on them to have to comply with different laws in every State, and there are many States that have laws.

So, I think that hopefully we can come up with something that will not be too disagreeable and where we can work out some of those problems.

I want to thank you very much.

Mr. Johnson. Thank you.

Mr. Hopkins. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF MARVIN D. JOHNSON, VICE PRESIDENT, UNIVERSITY OF ARIZONA, CHAIRMAN OF THE COMMITTEE ON GOVERNMENTAL RELATIONS, COUNCIL FOR ADVANCEMENT AND SUPPORT OF EDUCATION; ACCOMPANIED BY BRUCE R. HOPKINS, BAER MARKS & UPHAM, SPECIAL COUNSEL

Mr. Chairman and the other members of the House Subcommittee on Postal Personnel and Modernization, I am Marvin D. Johnson, Vice President of the University of Arizona, and chairman of the Committee on Governmental Relations for the Council for Advancement and Support of Education (CASE). CASE, as you may know, is a non-profit membership organization of more than 1,800 universities, 4- and 2-year colleges and independent schools. Our institutional members are represented by about 7,800 member representatives—professionals in the fields of alumni administration, educational fundraising, government relations, public relations, public information and publications, and executive management.

Appearing with me today in behalf of other education associations is Bruce R. Hopkins of Baer Marks & Upham, special counsel to CASE. Joining us in presenting this testimony are the following associations: National Association of Independent Schools; American Council on Education; American Association of Community and Junior Colleges; National Association of College and University Business Officers; American Association of State Colleges and Universities; California State Universities and Colleges; Council for the Advancement and Small Colleges; National Association of State Universities and Land-Grant Colleges; Association of Governing Boards; National Association of Independent Colleges and Universities; Association of Jesuit Colleges and Universities; and Association of American Universities.

Mr. Chairman, CASE applauds your efforts to protect the American public and responsible charities from the injurious effects of fraudulent fundraising schemes and financial mismanagement of charitable donations. With the introduction of H.R. 41 and the ensuing debate on the issues, you have helped the higher education community and others to recognize the need for renewed attention to this vexatious problem and for federal legislation in this field.

Representatives of many educational institutions and associations have followed with keen interest the evolution of this bill. In response to your stated openness to receive "any constructive proposal which will improve the bill," the American Council on Education, CASE, and a few others have expressed their reservations, raised questions, and recommended modifications and amendments. We are grateful that some of our earlier suggestions have been incorporated, and we welcome the opportunity to continue our analysis and discussion, knowing that while we may disagree on certain points, we share your belief that "strong voluntary support for philanthropic enterprises is one of the best indications of our spirit as a nation."

THE IMPORTANCE OF VOLUNTARY GIVING

For three centuries, American society has benefited from the public's generous support of colleges, universities and private secondary schools. Today, private support of education amounts to more than \$2.4 billion annually, according to the "Survey of Voluntary Support of Education." And gifts to private educational institutions represent about 20 percent of their total educational expenditures. Because donors provide these funds with no expectation of personal benefit, they help to assure the independence and the "critical margin of excellence" that characterize the American system of higher education. Just as education has always maintained a spirit of openness to ideas, so has it been open and responsible about providing financial information to donors, to the government and to the public at large.

H.R. 41 appears to be designed for those organizations that solicit, collect and disburse funds for charitable causes primarily through direct-mail campaigns to the general public.

Candidly, legislation that is tailored to expose and eliminate abuses found in certain types of charities is not always applicable to all charities.

The bill presents difficulties when applied to operating charities and educational institutions. By that term, we mean not only schools, colleges and universities (as defined in Internal Revenue Code Section 170(b)(1)(A)(ii)), but also entities such as hospitals, libraries and museums. In the course of our testimony you will see that these difficulties manifest themselves in many ways.

Briefly, our concerns have to do basically with (1) the difficulties posed by requiring certain narrowly-defined pieces of information at the time of solicitation; (2) problems associated with identifying and allocating administrative and fund-raising costs; (3) accounting procedures that vary considerably from one type of charity to another; (4) assuring that the proposed law and regulations apply only to solicitations of the general public and not to solicitations of membership groups or to appeals to identifiable constituencies; (5) jurisdictional questions that relate to regulating charities at the federal level; and (6) the question of pre-emption of state and local law in this field.

We believe that educational institutions do have an obligation to inform the public about their fund-raising programs, including an explanation of how much of the money raised goes to the purpose of the solicitation, and how much is spent on the solicitation and general administration.

PERCENTAGE DISCLOSURE POSES PROBLEMS

As presently written, the bill provides that charities furnish certain information, including their fund-raising cost percentage, at the point of solicitation whenever they solicit donations. Apparently the supposition is that prospective donors would not make the effort to request such information. We have doubts about the reliability of the supposition as well as the effectiveness of this technique. The very awareness that charities are mandated to provide such information on request would assure a sense of security among donors. Moreover, simple access to information would serve to enhance the investigative and information dissemination functions of organizations such as the Council of Better Business Bureaus and the media—and, of course, the government.

When making a solicitation, it is extremely difficult to convey an accurate portrayal of an organization's finances and activities. The fund-raising percentage would not give the prospective donor enough information to make a reasoned decision. To present a fair picture to the prospective donor, a charity would be obliged to present an overwhelming amount of background information as part of the solicitation literature. In our view, this would be an unreasonable, unfair and costly requirement. Merely providing isolated snippets of information can frustrate the objective of stemming the flow of misleading information. Therefore, we urge that proposed Section 3012 (a) and (b) be deleted from the bill.

The bill's requirement that charities insert on the face of their mailed solicitations the percentage of fund-raising costs for the previous year seems to us ill-advised. Because fund-raising activities and administrative costs vary so widely among the organizations and institutions that would be covered by this bill, the percentage figure—particularly when it is compared with other percentages recorded by very different kinds of charities—would be misleading and confusing to prospective donors.

A statement of a fund-raising cost percentage in isolation gives undue prominence to only one aspect of an organization's overall record. We are concerned that this focus may detract from what ought to be the public's concern—namely, the organization's objectives, activities and methods. Further, there are at present no definitive guidelines for ascertaining and reporting fundraising costs. This would afford those organizations which are the target of the bill an opportunity to calculate and publicize misleadingly low fundraising cost percentages. Charitable groups that make fair assessments of fundraising costs, and the general public receiving such information, would suffer. Thus we suggest that if the point-of-solicitation approach is retained, proposed Section 3012(a)(4) of the bill be deleted.

COMPLEXITIES OF FUNDRAISING COSTS

Schools, colleges, universities and other operating institutions cannot easily identify and allocate relevant administrative costs. Costs such as salaries of deans, department heads and secretaries, classroom maintenance and student registration area, in a narrow sense, "administrative"; but they are essential to the effective functioning of the institution, above and beyond any consideration of fundraising activities, and thus should be considered charitable and educational expenses. On the other hand, consider the example of a college president

addressing a Rotary Club and receiving a pledge from one of his listeners. What percentage of the president's salary should be designated as a fundraising cost? Suppose further that the pledged contribution is made a year after the event. For what budget year is that fundraising cost allocated—the year of the speech or the year of the donation? A requirement of disclosure of single categories of costs outside the context of a complete annual report could result in a distortion of the organization's overall financial status and could contribute not to enlightened judgment but to misunderstanding.

In place of the percentage disclosure requirement, we would propose that organizations engaged in public charitable solicitation activities be required to publish an annual report, outlining major activities and goals, and including audited financial statements in accordance with generally accepted accounting principles. Such a report—similar to the type that major corporations present to their shareholders—would be made available to prospective donors on request. Notice of its availability would be recorded on the mailed or media solicitation. This approach (which would be accomplished by modification of proposed Section 3012 (d)) would ensure the provision of meaningful information to the general public without detracting from the purpose of the solicitation. Both the Commission on Private Philanthropy and Public Needs and the Treasury Department have recommended that most charities with gross receipts of at least \$100,000 be required to make available to the public an annual report on their finances, programs and activities.

LONGER REPORTING PERIOD NEEDED

Unlike charities that merely conduct annual fund drives, operating educational and charitable institutions would be severely hampered by a requirement to disclose a percentage figure for fund-raising costs over a brief time segment. Moreover, such a requirement would limit rather than enhance the public's understanding of the operating charity's managerial and financial acumen. The typical development office, as maintained by virtually all colleges, universities and schools, does more than raise money on specific campaigns. Bequests, which often take many years to ripen, represent a substantial percentage of individual giving—30.8 percent in 1975-76. If an institution were to mount a long-range capital campaign or a drive for a major academic program, the administrative costs for the first year or two would be appropriately but disproportionately high; income would be relatively low for the same period. Presented with what would be a large fund-raising cost percentage calculated for a short time period in the early stages of a campaign, prospective donors would be getting an adversely biased view of the organization and its activities. This view would likely contribute to a substantial reduction in the level of giving. Such a requirement could sound a death knell for newly-created charitable organizations with worthwhile causes but with understandably high initial fund-raising costs. At the same time, it would tend to favor those organizations that enjoy substantial volunteer assistance; and

If the Subcommittee should decide that the use of a fund-raising cost percentage is necessary, consideration should be given to a rule whereby the percentage would be computed on the basis of receipts and expenses over a three- or four-year (moving average) period rather than simply the previous year. This approach by no means would resolve all of the dilemmas posed by the percentage format but, on balance, would be preferable because a moving average would eliminate some of the distortion inherent in the data for a single twelve-month period. We note that, in the charitable field, Congress has previously legislated a moving-average rule for determining charitable organizations' levels of public support in relation to the private foundation rules (see Internal Revenue Code Sections 170(b)(1)(A)(vi) and 509(a)(2)).

ACCOUNTING PRINCIPLES VARY

We strongly urge the Committee to make clear in its report that the administration of the disclosure provisions must take into account the existence of separate accounting principles for the different categories of charitable, educational and other organizations. We believe this concept is embodied within the language of proposed Section 3012(e). Educational institutions, for example, would conform—as many already do—to rules published in 1974 in "College and University Business Administration," by the National Association of College and University Business Officers.

IDENTIFYING MEMBERS

We appreciate the provision in the bill (proposed Section 3012(h)) to exempt solicitations by an educational institution of its regular constituents—students, alumni, faculty and so forth. Unfortunately, this omits the friends of an institution who are not in the “immediate family” but who are nevertheless knowledgeable about the finances, goals, programs, successes and failures of the institution. These individuals form a very small minority of those who give to education, and like those encompassed by the exclusion, are not part of the “general public.” The friends of an institution might include the mayor of the local community, a businessman who regularly visits the campus and hires graduates, a farmer in almost-daily contact with the county agent, or the leadership of major civic groups. When an institution seeks support from these individuals as well as from its alumni and the like, it is communicating with its educational community—persons who already receive more information about the institution than any solicitation law could reasonably require. It is appropriate, then, to regard such persons as part of the “bona fide membership” of the institution. Consequently, we request that the Committee report on this bill make evident that the measure is designed to encompass solicitations of the general public and not solicitations of identifiable groups, such as a school’s friends.

THE QUESTION OF JURISDICTION

As you know, Mr. Chairman, educational institutions already provide the federal government with considerable data concerning their finances and philanthropic activities. Most of this information goes to the Department of the Treasury and the Internal Revenue Service, which over the years have acquired extensive expertise in the matter of charitable organizations. For the objectives inherent in this bill, we believe that the Internal Revenue Service would be the appropriate principal federal administrative agency. The tie-in between disclosure, annual reports and the retention of organizations’ tax-exempt status would give true force to the legislation and would discourage “creative accounting” to reflect ostensible minimal fundraising costs.

The approach we prefer would be to require an amplification of the reporting by charitable institutions to the Internal Revenue Service and Treasury Department. This could be achieved by expansion of the information required in the annual information return (Form 990) filed by nearly all charitable entities (including colleges, universities and schools) and/or by imposition of a requirement of a separate annual report. This document would also be made available to the general public upon request, as proposed earlier. A virtue of this approach is that, by confining reporting to the Internal Revenue Service and the Treasury Department, it would eliminate costly and duplicative reporting by philanthropic institutions. While the additional reporting requirement to the Internal Revenue Service might result in increased compliance costs, the increase could be more than offset by having the states accept the same document in lieu of separate, disparate reports as discussed below.

Pursuant to this design, the Department of the Treasury, in a minor expansion of its present role in this area, would promulgate regulations governing the definitional and exemptive components of the bill, the reporting and information dissemination requirements, and the pertinent accounting principles. We submit that this functional consolidation with the Internal Revenue Service could fulfill the legislative intent without draining the pockets of charities and taxpayers alike to pay for redundant layers of government regulation.

At the same time, however, we do envision the opportunity for cooperation between the Postal Service and the Internal Revenue Service in the enforcement area. While loss or denial of tax-exempt status is a meaningful enforcement tool, the mail-stop is certainly an effective weapon against fraudulent and otherwise unlawful fund-raising activities. The Postal Service should have the authority to, on its own initiative or otherwise, revoke the mailing privileges of a charity that willfully violates this law.

THE NEED FOR PREEMPTION

Once legislation is developed that both achieves the objectives so urgently sought by this Subcommittee and is responsive to the legitimate concerns of charitable and educational institutions, we would request that it be preemptive of the diversity of state statutes and local ordinances which present nearly insoluble problems to the philanthropic community. To accomplish this end, we

would suggest that this legislation be considered concurrently or sequentially by the House Interstate and Foreign Commerce Committee, with a provision for pre-emption prepared in that Committee.

We should keep in mind that all but a few institutions conduct their fund-raising programs across state lines. It would be a cruel irony if, in pursuit of the worthy goals inherent in this legislation, we were to achieve, more than anything, new highs in the disparate recordkeeping and reporting and the attendant costs that already beleaguer college administrators.

If preemption is not a realistic expectation right now, consideration should be given to the development of a system by which a charitable organization soliciting funds on a multi-state basis could meet the individual states' and localities' reporting requirements by filing copies of the most recent federal report. Though we prefer outright pre-emption, this alternate approach would reduce the present confusion of law throughout the states. Also, it would minimize the cost and administrative burden of preparing and filing numerous reports with their varied accounting standards and due dates.

We should recognize that much of the information which this legislation seeks to place in the public domain already is being collected and disseminated by most responsible charitable organizations. Congress should avoid any needless intrusions in the affairs of entities that have shown themselves to be responsible and efficient in managing and regulating their own activities over prolonged periods of time. What is private and voluntary in nature, providing itself to be effective and productive because of these very attributes, should be preserved in its essence as far as possible. Most government action in this freedom-loving country has been supportive of private philanthropy. In recognition of the need to constantly encourage charitable works and giving, we respectfully request that this disposition continue as this Subcommittee seeks to regulate solicitations and to require detailed disclosure of financial information from charities so disparate that uniform data collection and reporting requirements may be beyond realization.

Thank you, Mr. Chairman, and distinguished Subcommittee members, for affording us this opportunity to present our views. We are sincere in our hope that these proposals may help Congress and the nation realize the goal of a strong voluntary sector unblemished by the follies of a few.

APPENDIX TO CASE TESTIMONY

The following is a proposed revision of new Section 3012 (39 U.S.C. § 3012) to read as follows:

(a) Chapter 30 of title 39, United States Code, is amended by adding at the end thereof the following new section:

§ 3012. Soliciting charitable contributions by mail

(a) Any charitable organization which solicits, in any manner or through any means, the remittance of a contribution by mail, shall, no later than 30 days after the receipt of a request from any person receiving such solicitation, furnish to such person a legible copy of the most recent return required to be filed by it pursuant to Section — of the Internal Revenue Code of 1954 or, in lieu thereof, the following information:

(1) the legal name and the principal business address of the charitable organization making the solicitation;

(2) the purpose of the solicitation and the intended use of the contribution solicited;

(3) a pertinent financial statement prepared in accordance with generally accepted accounting principles, for the most recent complete fiscal year of the organization, which is reasonably sufficient to verify any information included in the solicitation involved, and which includes (and not by way of limitation) a statement of the organization's fundraising costs during such year, provided, however, that if the solicitation involved is made during the 6 month period immediately following the close of the most recent complete fiscal year of the charitable organization, the financial statement required by the preceding clause may be based upon the fiscal year preceding such fiscal year; and

(4) in the case of a federated fundraising organization, the portion of all contributions distributed or allocated by such organization to its member organizations, during the most recent complete fiscal year of the organization which remained for direct application by such member organizations to the charitable

purpose involved, after deducting all fundraising and management and general costs during such year, provided, however, that if the solicitation involved is made during the 6 month period immediately following the close of such fiscal year, information relating to such portion of contributions may be based upon the fiscal year preceding such fiscal year.

(b) Any charitable organization, other than an organization described in subsection (e) of this section, which makes a solicitation which requests the mailing of contributions and which is subject to the provisions of subsection (a) of this section shall include with such solicitation a notice of the obligation of the organization to furnish information in accordance with the provisions of subsection (a) of this section.

(c) (1) In the case of a written solicitation which requests the mailing of contributions and which is subject to the provisions of subsection (a) of this section, the notice required by subsection (b) of this section shall be presented in language which is readily understandable by those persons to whom the solicitation is directed, shall be located in a conspicuous place on such solicitation, and shall appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on such solicitation.

(2) In the case of a solicitation which is subject to the provisions of subsection (a) of this section and which is made through the use of radio or television communications, the notice required by subsection (b) of this section—

(A) shall be presented in language which is readily understandable by those persons to whom the communication is directed;

(B) in the case of a radio communication, shall be clearly audible; and

(C) in the case of a television communication, shall (i) appear in lettering of sufficient size to be readily legible to the viewer; (ii) be shown against a background which does not impair the legibility of such communication; (iii) remain in view for a period sufficient to enable the viewer to read such communication; and (iv) if presented in audio form, be clearly audible.

(3) Any solicitation which is made through the use of radio or television communications and which does not exceed 60 seconds in duration shall not be subject to the provisions of subsection (a) of this section.

(d) Any charitable organization which makes a solicitation which requests the mailing of contributions and which is subject to the provisions of subsection (a) of this section, or any charitable organization which receives any grant or allocation from any federated fundraising organization which requests the mailing of contributions and which is subject to the provisions of subsection (a) of this section, shall furnish to the Postal Service a legible copy of the return which the organization has filed with the Internal Revenue Service pursuant to Section — of the Internal Revenue Code of 1954, at the time of the filing thereof, to enable the Postal Service to ascertain compliance with subsections (a), (b), and (c) of this section.

(e) The following organizations are referred to in subsection (b) of this section:

(1) Any bona fide membership organization which makes any solicitation for contributions by mail exclusively to the members of such organization.

(2) Any school, college, or university which makes any solicitation for contributions exclusively to its students, alumni, faculty, other employees, members of governing boards and appointed committees or a member of the family of any such individuals, and any charitable organization which is authorized by and exclusively makes expenditures to or for the benefit of a school, college, or university with respect to any solicitation for contributions made by such organization exclusively to any such individuals.

(f) The Postal Service shall adopt rules and regulations to assure compliance with the provisions of this section.

(g) For purposes of this section—

(1) The term "charitable organization" means any person (including any individual, organization, partnership, association, trust, society, foundation, group or corporation, or any combination of them) which is organized, or which claims to be organized, for any charitable, benevolent, philanthropic, humane, patriotic, scientific, medical, religious, or educational purpose, or for the prevention of cruelty to children or animals, or for any other eleemosynary purpose;

(2) the term "contribution" means the promise, grant, gift, or pledge of any money or property of any kind for any charitable, benevolent, philanthropic, humane, patriotic, scientific, literary, medical, religious, or educational purpose, or for the prevention of cruelty to children or animals, or for any other eleemosynary purpose;

(3) the term "federated fundraising organization" means a charitable organization established for the purpose of raising and distributing money for and among affiliated charitable organizations in any case in which affiliation with, or membership in, such organization does not confer operating authority and control by any individual charitable organization upon any other individual charitable organization;

(4) the term "membership" does not include any case in which an organization confers a membership on any person solely as a consideration for making a contribution; and

(5) the term "written solicitation" includes any request for the remittance of a contribution which is made through the use of any letter (other than a letter to any individual with whom the individual transmitting such letter is personally acquainted), circular, notice, brochure, advertisement, or other written material which is (A) mailed or delivered by any means to the individual receiving the solicitation; or (B) displayed in any newspaper, magazine, or other periodical or printed matter, or which is displayed on any billboard, poster, or other device for the display of written, printed, or graphic matter.

(h) The provisions of this Act, and any similar enactment as part of title 26, United States Code, and of any rules promulgated thereunder, supersede and pre-empt any provision of State law with respect to disclosure or regulation of any solicitation which is subject to subsection (a) of this section.

(b) The table of sections for chapter 30 of title 39, United States Code, is amended by adding at the end thereof the following new item:

§ 3012. Soliciting charitable contributions by mail.

Sec. 2. Section 3005(a) of title 39, United States Code, is amended by inserting immediately after "means of false representations" the following: "or for a charitable purpose without complying with the provisions of section 3012 of this title."

Sec. 3. (a) Except as provided in subsection (b), this Act shall take effect 3 years after the date of the enactment of this Act.

(b) The authority of the United States Postal Service to adopt rules and regulations to carry out the provisions of section 3012 of title 39, United States Code, as added by subsection (a) of the first section of this Act, shall take effect on the date of the enactment of this Act, except that such rules and regulations shall not take effect before the close of the period specified in subsection (a) of this section.

Note: The foregoing assumes the enactment of legislation comparable to much of H.R. 41 as part of Federal tax law. Such legislation would contain, *inter alia*, provisions for expanded reporting to the Internal Revenue Service (including the information presently stated in proposed Section 3012 (a) and (c) in H.R. 41) and for accounting methods and procedures (including the provisions in H.R. 41 presently the subject of proposed sections 3012 (e) and (f)). If pre-emption of state and local law is not desired, the comparable tax statute could include the following provision:

"The Secretary of the Treasury shall encourage the appropriate officers of state and local governments to accept copies of reports made to the Secretary by charitable organizations under Section — of the Internal Revenue Code of 1954 in satisfaction of the requirements of state and local laws of similar reports from such organizations."

Mr. WILSON. Our next witness is Dr. Leo J. Gehrig, representative of the American Hospital Association.

Dr. Gehrig?

STATEMENT OF LEO J. GEHRIG, M.D., SENIOR VICE PRESIDENT, THE AMERICAN HOSPITAL ASSOCIATION, ACCOMPANIED BY BREWSTER TERRY, DIRECTOR OF DEVELOPMENT AT WASHINGTON HOSPITAL CENTER, WASHINGTON, D.C.

Dr. GEHRIG. Mr. Chairman, I am Leo J. Gehrig, M.D., senior vice president of the American Hospital Association; and I have with me Mr. Brewster Terry, the director of development at the Washington Hospital Center here in Washington, D. C.

Our association represents more than 6,500 member institutions, including most of the hospitals in the country, extended and long-term care institutions, and mental health facilities, hospital schools of nursing, and over 24,000 personal members. We appreciate the opportunity to present testimony at this hearing on H.R. 41.

The purpose of this legislation is to provide the American public with information concerning the expenditure of funds solicited for charitable purposes. In support of this goal, the bill requires freer access to financial data about those organizations that use the mails to obtain donated funds. The American Hospital Association supports this intention, and the goal of full financial disclosure, as enunciated in an official AHA policy document, "The Statement on the Financial Requirements of Health Care Institutions and Services," which serves as a set of guidelines for our member hospitals. In this document, the association states that "health care institutions have an obligation to disclose to the public evidence that all their funds are being effectively utilized in accordance with their stated purpose of operation." Thus, we support disclosure efforts that will protect the American public from dishonest fundraising practices.

However, we do not believe that every method of accomplishing this laudable objective is appropriate. Controls on charitable fundraising activities must be equitable, based on specific experience, and consistent with the promotion of philanthropy in our country. It is our position that H.R. 41 deals inappropriately with hospitals, and we respectfully recommend that hospitals be exempted from the provision of H.R. 41 for the following reasons:

First, as we perceive it, this bill is directed primarily toward organizations which receive almost all of their revenues through mass appeals to the general public. Unlike such groups, hospitals receive the preponderance of their total revenues from payments made for services rendered to patients. Philanthropy plays a relatively small role in hospital total revenues. Also relevant in response to the provisions of H.R. 41, the philanthropic funds which hospitals receive are raised largely through means other than mass solicitation by mail. Hospitals generally appeal to specific groups which are quite familiar with hospital operations and services, including hospital medical staffs, boards of trustees, members of hospital-related committees, former patients, and residents of the community served. In addition, hospital appeals usually involve a great deal of personal contact, often on a person-to-person basis. For example, the hospital's director of development through personal discussions with the members of the hospital's board and prominent citizens of the community seeks their financial commitments. Only a limited number of hospitals solicit through mass mailings, and generally only as a supplement to their other modes of solicitation. It is our opinion that the requirements of H.R. 41 are relevant primarily to mass appeals to the general public and not to the development programs operated by individual hospitals.

Second, we are unaware that any hospitals have been found to be involved in the detrimental activities at which this bill is aimed—fraudulent or excessively inefficient fundraising practices. The bill is designed to help prevent fraud and to disclose fundraising inefficiency. We submit that hospitals conduct their fundraising activities with both integrity and economy, so that inclusion of hospital development

activities under H.R. 41 would be likely to increase the costs of fundraising without commensurate gain toward the objectives of the legislation.

While we believe that hospitals should be totally exempt from coverage under H.R. 41, at a minimum they certainly should be accorded the more limited exempt status of schools, colleges, and universities, as provided in subsection (h) of the bill. In other words, if hospitals are not excluded from this bill, we request that an exemption be made for solicitations by hospitals to specific target groups—former patients, boards of trustees, medical staff, members of the community served. Hospitals typically send to these target groups their annual reports, newsletters, and other materials which reveal to the interested individual a wealth of financial and other information concerning the hospitals' operations. Such information, added to the personal familiarity these groups have with the hospitals, and the other knowledge that members of these target groups invariably gain, place them in a good position to make informed, rational judgments as to whether the hospital is efficient and worthy of their charity.

We maintain that in fundraising activities hospitals are engaged in activities similar to those of schools and universities for which the bill makes special exception. The members of the schools' target groups—alumni, boards of trustees, faculty, friends, members of the schools' appointed committees—do not differ substantially from the target audiences of a hospital. The level of knowledge of the target groups of one does not vary significantly from that of the other.

In order to include such an exemption for hospitals, we recommend the addition of a new subsection following subsection (h) which would state:

(i) The provisions of subsection (a) of this section shall not apply to any hospital, freestanding clinic, or other health facility with respect to any solicitation for contributions made by such an institution exclusively to its former patients, medical staff, board of trustees, appointed committees, a member of the family of any such individuals, or the community the facility serves, nor to any charitable organization which is authorized by and exclusively makes expenditures to or for the benefit of a hospital, freestanding clinic, or other health facility with respect to any solicitation for contributions made by such organization exclusively to any such individuals.

The remaining subparagraphs of the subsection should be relettered accordingly.

Based on our review of the specific provisions of H.R. 41, we would like to make additional observations and recommendations, as follow.

REPORTING PERCENTAGE OF CONTRIBUTIONS AVAILABLE FOR DIRECT APPLICATION FOR THE CHARITABLE PURPOSE AT THE POINT OF SOLICITATION

The reporting of the percentage of contributions available for direct application for the charitable purpose presents special problems for hospitals because of the characteristics of such operations in hospitals and variations in the types of gifts they receive. The socioeconomic status of the population solicited will determine, in large measure, the percentage of total funds raised that will be required for administration of the fundraising effort. Much of the costs incurred by hospital development offices—salaries, promotional and mailing fees, et cetera—are relatively fixed but, obviously, hospitals located in more affluent

communities raise, on an average, a larger amount per contact than those in less economically advantaged areas. Fundraising costs as a percentage of total funds raised depend on the wealth of the population solicited. Variations in the ratios of fundraising costs to total funds received, therefore, are not measures of efficiency and may inhibit fundraising, particularly in less affluent locales.

The requirement to disclose the percentage of funds collected that is available for expenditure at the point of solicitation will often, in our view, be misleading. An adequate explanation would, in many cases, entail lengthy explanation, adding significantly to the costs of solicitation. It also would lend a negative note to the solicitations, undermining the positive messages which are so important to successful drives. Ironically, this requirement would increase the very expenses that the bill intends to moderate.

Another problem in this bill's methodology arises from the fact that the financial reporting would be limited to expense incurred by a hospital during its most recent fiscal year. Each of the years of a capital drive conducted over a period of time generally have fairly constant costs, while income may vary greatly from year to year, with the major portion of the income typically coming late in such a campaign. Consequently, if the subcommittee decides that the reporting of a percentage of funds available for the charitable purpose is essential, we believe that it would be much more equitable if, when applied to hospitals, the institutions had the option to base the percentage on a 3- to 5-year average of their costs, rather than on 1 year's cost—a basis that can seriously distort the hospitals' experience and jeopardize fundraising efforts.

Additional problems arise in the proposed calculation of this percentage. Hospitals typically receive a substantial portion of their contributions in the form of deferred gifts. While considerable expense may be incurred in generating such gifts, the gifts cannot be counted as revenue until the hospital receives unrestricted use of the bequests. Consequently, a hospital which concentrates heavily on this type of contribution may find that, under the provisions of this bill, its fundraising costs will be disproportionately high until such bequests become unencumbered.

The bill also could create some technical problems related to accounting and recordkeeping. Hospitals would have difficulty in isolating the costs attributable to fundraising from certain other costs incurred by the institution. Staff involved in fundraising usually have other basic responsibilities in patient care and hospital administration. Therefore, the problem is one of isolating the costs of fundraising from certain other costs.

Moreover, while we believe that hospitals have an obligation to disclose their fundraising costs to the public, we also believe that a convenient and equitable way to satisfy this obligation should be allowed. Rather than supplying such data at the point of solicitation and in percentage form, we propose that, if this bill does apply to hospitals, that the hospitals be permitted to include with their solicitations a notice that data on fundraising costs and other financial data are available upon request. Such data would include the annual financial statement of the hospital—including the data on the 990 form which is already being submitted by institutions to the Internal Revenue Service—and the fundraising costs attributable to the specific campaign.

This approach would be more meaningful than the required statement of a fundraising cost percentage now included in the bill.

The requirement to present a fundraising cost percentage may encourage fundraising organizations to seek accounting adjustments which tend to disguise true fundraising costs. It may also discourage some productive development programs if their short-term impact could result in disadvantageous percentage figures.

A point which concerns us but which is not dealt with in the bill is the need to take into account the difference between the operations and the accounting procedures of hospitals compared with counterpart activities in other enterprises. The enforcement agency should not expect to find identical operations and reporting processes in all organizations involved in fund raising, regardless of the appropriateness of fund raising to the organizations involved.

PREEMPTION OF STATE AND LOCAL LAWS

This bill proposes to extend Federal regulatory efforts to a field already regulated on a State and local basis. To avoid conflicts and regulatory excesses, we recommend that the bill preempt the reporting requirements of all State and local disclosure laws for charitable solicitation. Thirty-one States and numerous localities currently have such laws. Our hope is that any new Federal legislation would not add to this burden by creating further duplicative and uncoordinated regulations.

There ought to be Federal preemption of State laws. We, in fact, as the university has indicated, are subject to disclosure and accounting on a host of hospital activities, not only at the local and State level but to the Federal Government, not only in IRS but in major Federal health programs. So that we are quite aware of duplicative problems in these areas and we would hope, to the extent it is feasible, and I think you very well describe the problems, to be moving into the preemption area. But I would suggest, Mr. Chairman, you have a reputation of not ducking an issue, so I only reiterate that we also place this before you.

In summary, Mr. Chairman, the American Hospital Association strongly urges that hospitals be exempted from the provisions of this bill. If such exemption is not granted, hospitals should be permitted at least limited exemption similar to that already provided in the bill for educational institutions when they direct fundraising efforts at target groups.

I thank you for this opportunity to present our statement.

Mr. WILSON. Thank you very much, Doctor.

Does this bill really present a problem to the hospitals? I am on the board of a hospital out in Torrance, Calif. And it seems to me that most fundraising efforts there are as you describe them. Principally, you have a finance committee, and you call on the business leaders, the large industrial friends in the community, and I cannot recall any mass mailing programs that we have had. Perhaps there have been some, but I am not aware of it. But I am just wondering if the bill as written presents that much of a problem to the hospitals.

Dr. GEHRIG. Mr. Chairman, I think your experience is really the sort of thing that we are portraying. I would agree with you that the vast majority of the hospital approach is a very targeted community

approach, often on a one-to-one basis. But there is also evidence that even in this area there would be follow-on mailings to the same target groups. And we would hope in looking at this, as you have already looked at the problems in universities and educational institutions, that under these circumstances, where there is a follow-on mailing to these target groups, that these, too, could be exempted because it is the same group as you point out in your very intimate knowledge of the hospital in Torrance County.

It seems to me that, similar to educational institutions, a requirement of the bill to apply to our follow-on mailings to target local groups, No. 1, does not serve, I do not think, the basic issue of your bill.

But it does increase our problems for the various reasons that I have indicated. Not only the percentage problem of statement at the initiation of solicitation and so on, to the extent these occur at these targeted groups. We think that it poses a significant problem.

We would hope there that you would be able to put us under the same assumption.

Mr. WILSON. Actually as I read your exemption, it does go much further than we have done for universities.

We might be able to sit down and try to work something out that would be similar to what we were trying to do with them.

Dr. GEHRIG. We would be appreciative of an opportunity to work with you.

I think, and I am not sure—may I ask the chairman a question?

Because you indicated that you thought we went far beyond the education exemption, and I do not wish to appear ignorant, but I wondered what your area of concern was?

Mr. WILSON. Well I think it goes beyond, it goes into the public pretty much which is what we are—but we have this problem too, that apparently, well I mention the experience, my personal experience in Torrance that the hospital associations belong to these fundraising groups. And we have a concern that the public when there are actual solicitations made are probably entitled to know how much—whether something goes off the top for fundraising effort to a fundraising organization.

You have the Danny Thomas St. Jude Hospital, I guess there are some like that that are strictly mail, that are principally mail solicitations.

Dr. GEHRIG. I think, Mr. Chairman, if I may observe, because you are quite right, that is an example quite unlike what I am speaking of. And I would expect that in that sort of mass mailing, the target groups that I have defined as the hospitals community to which it provides service, or its staff, board of trustees, et cetera, would place such a mailing outside the purview of an exemption, and would be subject to the requirements of the bill.

So I am not discussing that example. I do think, as we have to be accountable to our community generally, in the totality of our operation because the vast majorities of hospitals are nonprofit institutions. But, in fact, in the local community area, we are able to provide to the community generally a real understanding of what is going on, and obviously we will have information available for them at any time—a disclosure of what we are doing.

Mr. WILSON. Is your office located in the city?

Dr. GEHRIG. Yes, sir, I am in Washington and we would like to work with Mr. Cavanagh and yourself in trying to work this out.

Mr. WILSON. Fine. Why don't we see if we can work something out that will be reasonable and solve the principal problems that we have. I think we ought to be able to do that.

Dr. GEHRIG. I certainly think we will be delighted to do that.

Mr. WILSON. Mr. Lott, do you have any questions?

Mr. LOTT. No questions, Mr. Chairman, I would just like to say we appreciate your taking the time to come and present your testimony.

Dr. GEHRIG. My pleasure, thank you.

Mr. WILSON. Thank you.

We have Lynn E. Kandel, now director of development of the South Miami Hospital, South Miami, Fla., who is also representing the National Association for Hospital Development.

Mr. Kandel?

STATEMENT OF LYNN E. KANDEL, PRESIDENT OF NATIONAL ASSOCIATION FOR HOSPITAL DEVELOPMENT AND DIRECTOR OF DEVELOPMENT AT SOUTH MIAMI HOSPITAL, SOUTH MIAMI, FLA., ACCOMPANIED BY GORDON M. BROWN, CHAIRMAN OF NATIONAL ASSOCIATION FOR HOSPITAL DEVELOPMENT'S GOVERNMENTAL AFFAIRS COMMITTEE AND DIRECTOR OF DEVELOPMENT AT METHODIST HOSPITAL OF BROOKLYN, BROOKLYN, N.Y., AND RICHARD A. STRANO, EXECUTIVE DIRECTOR OF NATIONAL ASSOCIATION FOR HOSPITAL DEVELOPMENT

Mr. KANDEL. Mr. Chairman and members of the subcommittee, the National Association for Hospital Development is a not-for-profit membership organization of more than 800 individuals and institutions that represents the development phase of hospital activities throughout the United States.

We greatly appreciate this opportunity to testify before you.

I am Lynn E. Kandel, president of National Association for Hospital Development and director of development at South Miami Hospital, South Miami, Fla. Accompanying me today are Gordon M. Brown, chairman of our association's governmental affairs committee and director of development at Methodist Hospital of Brooklyn, Brooklyn, N.Y.; and Richard A. Strano, executive director of our association.

Our membership is cognizant of the financial requirements and payment mechanisms of hospitals and is committed to seeking financial support for the patient care, research, and educational programs carried out by hospitals.

The National Association for Hospital Development recognizes and supports the general purpose of H.R. 41, which, we believe is to protect the American public from those in the fundraising business who have preyed on the unsuspecting by the use of questionable and abusive practices and who have profited mightily as a result.

At the same time, we are unaware of any instance, involving an accredited voluntary hospital and its development programs, where there have been any methods used in connection with fundraising that have not been wholly reasonable and open, or any forms of deceit or fraud practiced.

H.R. 41 has been justifiably designed to apply to organizations which have as their principal purpose the collection and disbursement of money for a variety of charitable purposes.

These organizations normally derive their financial support from the general public, usually as the result of mass appeals by means of direct mail campaigns.

By contrast, not-for-profit hospitals have as their primary function the provision of quality health care to those in need of their many professional services and thus serve a community purpose. Fundraising by these institutions is not among their principal activities and, when done, is usually confined to the particular community and is for a specific purpose or program involving direct patient care, research, education, necessary new equipment, or expanded facilities. This specific form of fundraising is seldom one that involves great costs.

The record through the years of public understanding and support of fundraising for hospitals is largely based on this unique relationship between an institution and its community. In fact, the voluntary hospital system was developed on the strength of community support with a large measure of volunteer participation in the various institutions as they were founded throughout the Nation.

The value of this level of local involvement has constantly grown through the years in conformance with this original concept; it has proven without a doubt to be deeply rooted in the lifeblood of hospitals in the United States. It remains unchanged to this day. Local participation in the activities and efforts of hospitals have given them their boards of directors, their thousands of hours of volunteer services, and the credibility that has been a mainstay in seeking the financial aid of their communities.

This tremendous amount of personal involvement from the young candy strippers to the policymaking bodies has served to benefit both the voluntary hospitals and their communities.

Further, voluntary hospitals have traditionally been at the forefront of organizations in the charitable field that practice full disclosure of their activities and financial position. Certainly, voluntary hospitals have nothing to hide as respects the facts and figures of their operations. This fact is reaffirmed on a daily basis by the many requirements of a variety of Federal and State regulatory agencies that are constantly monitoring the activities—including financial activities—of all voluntary hospitals.

Indeed, these institutions are maintaining an informed public as the result of dissemination of their annual reports and other means of disclosure in great volume and with great frequency.

Finally, the application of the requirements of H.R. 41 to not-for-profit hospitals will, we submit, only create additional expenses for them without any commensurate increase in the flow of information concerning their activities and finances. Social scientists and organizational analysts have long known that hospitals are among the most complex organizations, and cost finding in hospitals is far from the simple matter it might be in less complex organizations.

The National Association for Hospital Development believes that application of such a law to voluntary hospitals will result in yet another paperwork burden that will frustrate a system that has been credible and that has served the national interest for 200 years.

For these reasons, the National Association for Hospital Development requests that H.R. 41 be amended to exempt voluntary hospitals from compliance with its requirements. Because of the nature of these institutions and of their fundraising efforts as described here, such an exemption would not detract from the general thrust of the bill. Also this exemption could be similar to the exemption presently in the bill which provides for solicitations by an organization of its members.

Such an exemption would also be consistent with the overall scope of H.R. 41, which is to promote disclosure and other practices by charitable organizations that target their fundraising appeals to the general public. However, few not-for-profit hospitals solicit the general public for charitable support, and they rarely depend on direct mail appeals as the mainstay, on a nationwide scale.

Instead, as noted, solicitations for financial support for these institutions are normally restricted to their particular communities which, of course, are well aware of their general purposes and charitable works, or to former patients and friends who might reside elsewhere. Consequently, inasmuch as the bill does not appear to be applied to charitable solicitations of an organization's constituency or of private groups, the National Association for Hospital Development believes that not-for-profit hospitals should be exempted from the purview of H.R. 41.

In addition to this primary recommendation, the National Association for Hospital Development respectfully submits the following additional comments with respect to H.R. 41:

At the present, the law on this subject is embodied in over 30 statutes in various States and the District of Columbia and in countless local ordinances. For the most part, these laws are poorly enforced and impose varying requirements, forms, due dates, exemptions, and the like. It is next to impossible for a charitable organization to be fully aware of, let alone comply with, these differing and conflicting laws.

Therefore, any Federal law that purports to regulate, supervise, or monitor the solicitation of charitable contributions in interstate commerce should preempt State and local law. If formal preemption cannot be obtained at this time, a system should be devised whereby a charitable organization would file with the various States a copy of the Federal report in lieu of a separately prepared State report.

The National Association for Hospital Development also urges that the point-of-solicitation approach for the transmission of information by a soliciting charity to the public be deleted from the bill. It is not feasible to provide meaningful and balanced information about a charitable organization as part of the solicitation materials. Only bits of data can be provided in this fashion and information presented in such a restrictive format can be as misleading as the provision of no information at all—or perhaps more so—and, therefore, we perceive this requirement to be counterproductive to the general purposes of the bill.

The public would be amply protected, and investigative groups amply aided, by a requirement that charitable organizations that solicit financial support prepare a complete annual report, including adequate financial data—such as fundraising costs—that this report be made available to anyone upon request; and that a notice of the availability of this report appear on the solicitation materials.

The proposal to display fundraising costs as part of the point of solicitation approach and to express such costs as a percentage is particularly unwarranted. Such an emphasis on fundraising expenses at the expense of more meaningful information is also counterproductive to the dissemination of full and fair information about an organization.

This is particularly the case where there is no agreed upon standard by which fundraising costs in hospitals are to be ascertained. Our fear is that the requirement to reduce an organization's characteristics to a fundraising cost percentage will quickly evolve into a rating system of charities, replete with many unavoidable distortions and unfairnesses.

Further, the fundraising cost percentage approach can not take account of the many varieties in the ways hospitals raise funds by way of individual gifts. Hospitals receive pledges, bequests, and different types of other deferred gifts, both monetary and material, where there is no effective way to correlate receipts and the attendant fundraising costs, particularly on an annual basis.

Also the percentage approach cannot appropriately account for hospitals' capital campaigns, which by nature have relatively high costs usually at the outset of the campaign, even though the campaign will range over a much longer period, such as 5 years. This approach will also discriminate against the hospital which is just commencing a fundraising effort and make it even more difficult for the fund drive to succeed. In fact, H.R. 41 as proposed will make already difficult fundraising drives, such as those conducted by hospitals in rural communities and in the inner cities even more difficult to conduct, without any compensating contribution to the public welfare.

Therefore we respectfully urge that fundraising costs not be reported as a percentage, irrespective of the nature of the report, and that the disclosure-on-demand concept be substituted for the point-of-solicitation concept.

Finally the National Association for Hospital Development endorses the proposal of others that the Postal Service be empowered to impose a mail-stop with respect to those organizations that solicit funds in the States in violation of a Federal law but believes that the principal administrative functions, including the requirement of annual reporting and the development of regulations including accounting principles, more properly belong with the Department of the Treasury and the Internal Revenue Service because of the experience and expertise these agencies have developed in the field of tax-exempt organizations.

Mr. Chairman, we thank you for this opportunity to present the views of the National Association for Hospital Development on H.R. 41.

Hospitals today are among the most regulated organizations, and we are most concerned that well-intentioned proposals will inadvertently lead to an unnecessary increase in this regulation and impinge upon the charitable aspect of their overall operations. We hope that our recommendations will enable the subcommittee to fashion a bill that will achieve its principal objectives without unduly adding to the administrative and cost burdens of America's not-for-profit voluntary hospitals or inhibiting the private sector's willingness to support these hospitals.

Mr. WILSON. Mr. Kandel, is there a difference between your organization and the American Hospital Association? Do you have a different membership? Do you have different problems?

Mr. KANDEL. Yes; our organization encompasses individual members and hospitals that are primarily involved with raising support for hospitals. Some of our members are members of the American Hospital Association, but we have two different organizations.

Mr. WILSON. Your objections seem to be more than those of the American Hospital Association. Actually, you do not like the bill at all, do you?

Mr. KANDEL. Our feeling is that hospitals should be exempt from the bill because of the reasons that I have stated.

Mr. WILSON. It is very difficult for me to understand the reasoning or what the feel is.

They have the one case and the only one who has volunteered this information to us, that is the Save the Children Federation who have initiated a disclosure program after the introduction of this legislation, better to see how it worked and what problems it would bring and various other reputable charities have done the same thing. And they almost doubled the amount of money that came in. They encountered no difficulty at all, and it has not presented problems.

I just do not know why the hospitals would have any more problems than a reputable charitable organization.

Mr. KANDEL. Our feeling is that the bill is directed primarily to those organizations that are of national scope and raise their funds on a national level.

We feel that hospitals are local, that they are complex, and in an effort to provide simple information to our prospective donors that this is a difficult task because of the complexity of the hospital and its financial operation.

Mr. WILSON. This is possible. I just still do not know what the complexities are; I know it is difficult to finance hospitals and to do the things you want to do. Buying the equipment you have to is terribly expensive. But I just cannot see how this type of legislation throws any roadblocks in your way.

How many hospitals are there like St. Judes, Childrens Hospital that Danny Thomas is affiliated with, are there many that utilize the direct mail approach to the extent that they do?

Mr. KANDEL. I think there are a number of hospitals that use the direct mail approach but on a very small scale.

Mr. WILSON. Well, thank you very much, I appreciate your testimony. You have heard my dialog throughout the hearing and as we have indicated, there are some difficulties that we can probably take care of.

When Mr. Van Deerlin had his simple bill that just required written request and compliance with the written request by the charitable organization, and the roof fell in on him, and he got so discouraged he would not do anything with it. Now that is what everybody is asking for in preference to this.

I do not know why this is so much more difficult, unless some of us are just imagining things that might happen. I know that that is a problem we have with much legislation. The legislation has developed because of problems that are created out in the communities of the country. We do not try to think up things just to harass people. Our

very purpose is to try and assist where serious problems have developed, and that is generally the reason for most legislation.

I would certainly like to assure you that our intentions are good and we will continue to work with every organization that has reasonable requests.

Mr. KANDEL. Thank you very much.

Mr. WILSON. Thank you.

Our next witness is Mr. Robert J. Turley, representing the Shriners Hospitals for Crippled Children.

STATEMENT OF ROBERT J. TURLEY, GENERAL COUNSEL OF SHRINERS HOSPITALS FOR CRIPPLED CHILDREN, ACCOMPANIED BY WILLIAM LEHRFELD, SPECIAL COUNSEL OF WASHINGTON, D.C.

Mr. TURLEY. Thank you Mr. Chairman.

My name is Robert J. Turley; I am from Lexington, Ky. I have our special counsel from Washington with me, Mr. William Lehrfeld.

I serve as general counsel of Shriners Hospitals for Crippled Children, the administrative offices of which are located in Chicago, Ill. I very much appreciate the opportunity to discuss H.R. 41 with you and the members of this subcommittee.

Shriners Hospitals for Crippled Children operates 19 orthopedic hospitals and three burns institutes which are located in 15 of the United States, as well as in Canada and Mexico.

We have two hospitals, Mr. Chairman, in your State; including one in Los Angeles with which I am pretty sure you are familiar.

Mr. WILSON. I am.

Mr. TURLEY. During the past 55 years, we have cared for more than 220,000 crippled and burned children at an approximate cost to us of \$410 million. In our hospitals, the children are treated wholly free of cost to themselves or their parents. Beyond this, either on our own or in affiliation with several universities, we are engaged in many medical research and teaching programs.

We neither ask for nor receive any financial support from the United States Government or any State. Neither do we receive any insurance moneys.

Our support is derived from the earnings of our endowment fund, fundraising events such as circuses and football games, sponsored by Shriners, contributions from the general public, and an annual levy on nearly 1 million Shriners.

In 1976, Shriners Hospitals for Crippled Children received \$61 million in contributions, most of which came from testamentary bequests. According to our broadest understanding of the term, we expended only \$89,000 which can be classified as "fundraising costs." This included \$48,000 for public relations and \$41,000 for expenses incurred by unpaid volunteer Shriners serving on our endowment wills and gifts committee.

Stated in terms of percentages, only fifteen one-hundredths of 1 percent of our contributions went to fundraising costs. Our total administrative costs; that is, the expenses of running our national office, were \$1.4 million, or 2.3 percent of the contributions we received.

You can see, Mr. Chairman, that we have nothing to fear from public disclosure of these facts. Indeed, we report these facts annually to

the Shriners of North America, through their elected representatives—and we have done so for more than 50 years. We have always complied with requests from prospective donors for financial information concerning our charity.

We have carefully followed the congressional hearings with respect to regulation of charitable solicitations. We have gained the very definite impression that misconduct and abuses in the field of charitable solicitations are related to the use of third-class bulk mail on a prodigious scale by so-called charities and their professional fundraisers.

We have not perceived any general or pervasive misconduct by legitimate charities such as our own. Candidly, we see no need for Federal regulation of our charity or those many charities like ours which have served the public well for many years.

Therefore, we believe that the focus of any legislation directed to a solution of this problem should be directed toward charities which abuse their preferred third-class mail privileges.

Parenthetically, Mr. Chairman, we do not engage in any widespread mail solicitation. We do not use any "blind" solicitation by mail or otherwise.

Mr. WILSON. You realize this is to a regulatory bill. There is no regulation included in the bill.

Mr. TURLEY. I believe, Mr. Chairman, I understand the nature of the bill.

While no thoughtful person could object to public accountability by any charity which depends upon public support, we have an understandable apprehension concerning legislation which directly affects those of us who are in no sense a part of the problem which the Congress is attempting to solve.

In terms of alternative legislation, we clearly prefer legislation having as its purpose disclosure rather than regulation. Even so, we must voice a concern that legitimate charities such as ours be fairly treated. Therefore, we have the following comments with respect to H.R. 41:

Incidentally, Mr. Chairman, in speaking with other witnesses this morning, you have expressed some concern as to why we should be afraid of the bill. We are not so much afraid of the bill itself, as we are afraid of some regulation that might be issued pursuant to authority granted by the bill.

We are afraid of what the American Institute of Certified Public Accountants might do if they are permitted, as I will get to later on; so we do have what we believe to be a legitimate fear.

First, we believe that there is a worthwhile and legitimate purpose in the creation and maintenance of endowment funds by public charities such as Shriners Hospitals for Crippled Children. Endowment funds provide the stability which assures our donors, our medical staff and, indeed, thousands of crippled and burned children that Shriners Hospitals for Crippled Children will be strong and viable in years to come.

There is a distinction to be made between institutions such as ours and those charities which use or pay out the funds which they have collected shortly following receipt. Consequently, we were very much concerned to hear a suggestion made by Mr. Malvern J. Gross, Jr., in

testimony given before this subcommittee on March 24 that the text of subsection (a) (4) of H.R. 41 be changed in such a fashion as to make no distinction between charities having endowment funds and those which do not.

He asked that percentages be computed on the basis of contributions actually expended, rather than on the basis of funds available for the charitable purpose. We have a marked disagreement with the philosophy implicit in his suggestion; and we vigorously urge that his suggested change be not adopted.

We understand, Mr. Chairman, that in testimony given yesterday by Mr. George C. Davis, Assistant General Counsel in charge of the Consumer Protection Office of the Postal Service Law Department, he concurred with Mr. Gross' suggestion. This, Mr. Chairman, is one of the reasons we have some fear with regard to H.R. 41.

There is a natural, and obvious danger in the enactment of any legislation which vests in an administrative agency the power to enact regulations which have the force and effect of Federal law. Offices, agencies, and bureaus proliferate when well meaning but zealous civil servants are empowered to regulate the citizenry.

We, therefore, urge amendments to H.R. 41 which will insure that the Postal Service does not, by regulation, create a monster which will hamper the charitable activities of legitimate organizations such as our own. This may be accomplished by a provision in the bill that the adoption of any rules and regulations under the authority of subsection (e) will be accomplished only in accordance with the Administrative Procedures Act, and after notice and ample opportunity for public hearings.

Furthermore, we suggest that section 2 of the bill provides for sanctions which are disproportionate to the evils sought to be corrected. As I have mentioned, the problem here addressed could better be solved by allowing forfeiture of an offending charity's third-class mailing privileges. To empower the Postal Service to order a complete "mail stop" for less than a willful violation of this proposed legislation would afford a means by which even legitimate charities could be virtually destroyed. Even if section 2 were to be retained in its present form, there should be some provision in the bill to insure that due process hearings would be afforded to any charity accused of willful noncompliance with this legislation.

Furthermore, Mr. Chairman, we respectfully suggest that the phrase "generally accepted accounting principles", as used in subsections (d) and (e), should be stricken from the bill.

This phrase has a technical and wellknown meaning in the accounting profession. It means adherence to standards and guidelines published by private agencies, that is, the Financial Accounting Standards Board and the American Institute of Certified Public Accountants. We know of no other Federal statutes which, in their effect, would empower these private agencies to enact Federal law by promulgating standards and guidelines within the parameters of which the Postal Service would then have to enact any regulations it enacts under the terms of this bill.

Please understand, Mr. Chairman, that Shriners Hospitals for crippled Children publishes an audited financial statement which complies with the Hospital Audit Guide and which is certified by our in-

dependent certified public accountants to have been prepared in accordance with "generally accepted accounting principles." But we vigorously object to any Federal legislation which would require us to do so, upon the penalty of losing our right to use the U.S. mails should we fail to comply with any standards promulgated by private agencies.

We object for three reasons. First, we doubt the constitutionality of the provision in subsection (e) which would confine the Postal Service in its rules and regulations to standards adopted by a private agency, not answerable to the people.

Second: We fear the adoption of standards in ignorance or disregard of our legitimate interests; and our fear was crystalized last week when Mr. Gross expressed his opinion concerning the accumulation of contributed funds.

Third: Many of our 180 Shrine Temples have relatively small charitable funds which they use to provide braces for crippled children, transportation of children to our hospitals, and other like services. It is neither practicable nor economically feasible for them to conform to "generally accepted accounting principles" in the maintenance and preparation of their financial records.

Again, Mr. Chairman, in the discussion draft with respect to principles suggested by the accounting profession for nonprofit organizations, the subcommittee which advances that draft has conceded that there are numerous small nonprofit organizations for which complex accounting procedures may be neither practical nor economical. The subcommittee says they can simply report saying that they do not use "generally accepted accounting procedures"; but if this bill is enacted, they immediately fall afoul of H.R. 41.

Finally, Mr. Chairman, we commend you and your staff for your interest in private charities. We are confident that you and the members of your subcommittee have a sincere desire to protect and preserve private charities such as Shriners Hospitals for Crippled Children, which are manifestly an important part of our national personality. We express the hope that our views as here presented will be given serious consideration and that our suggestions will be helpful in revising this bill so that it will meet a true legislative need without encroaching upon the liberties and functions of truly legitimate and worthwhile public charities.

If we may do so, Mr. Chairman, we will supplement this oral testimony with a more detailed written statement for the record and your further consideration.

Mr. WILSON. We will be happy, Mr. Turley, to have you supplement this with anything that you would care to and will include it in the record.

Actually, the Postal Service now, under their own laws are required to proceed in matters that you express concern about, in accordance with the Administrative Procedures Act. And after notice of ample opportunity of public hearings, it is not necessary to include that in the bill because it is already a requirement.

Mr. TURLEY. My understanding, sir, is that they do not have to publish their proposed regulations in the Federal Register as do Federal agencies, but simply refer to the postal manual and put it on display at the post offices.

I may be wrong about that, but that is my understanding of the present situation as it differs from the practice of other Federal agencies under the Administrative Procedures Act.

Mr. WILSON. We will check into that and verify it because we are certain this is a reasonable request.

You are the first witness who has expressed concern about generally accepted accounting principles. Everyone else felt that that was a worthwhile part of the bill, that they were concerned, but others had been concerned, that the Postal Service or some of them might develop some unusual accounting principles for them to follow that are not generally accepted. And so I find it rather strange, now, that you are telling us today that you do not feel that that is the best approach.

I do not know whether you have some fight with Mr. Gross and his organization, or what the problem is.

Mr. TURLEY. Mr. Chairman, I have never met Mr. Gross. I did hear him testify here last week. He told this subcommittee the other day that he is as much concerned with the receipt of charitable funds which are not expended, that is, at the time they are received, as he is with the costs and expense of fundraising itself and with administrative costs.

Now our organization, like many hospitals, and like many educational institutions, depends for its financial support, in great measure, upon wills, testamentary trusts, and other deferred giving. These contributions become a part of our endowment fund and insure the stability of our organization for the future.

In budgeting, we cannot rely on some estimate of how many people will die and leave us money in their wills. If our organization is going to be stable, if it is to continue to operate these hospitals as we have for over 50 years, it must not only maintain, but increase, our endowment funds.

The chairman is well aware of the rising costs of medical care. We do not pass these costs on to our patients or their parents or insurance companies or the Government. We must absorb all of these rising costs ourselves.

Also, in order to insure that in our inflationary economy we can operate these institutions, our temples of mercy, 5 years from now or 10 years from now, we must be permitted to increase the size of our endowment fund without being unfairly compared with other institutions who gather money and then distribute it during the year in which it is gathered, principally to other institutions.

Mr. WILSON. Well, how much actual mass mail solicitation do the Shriners have, I am not aware of any?

Mr. TURLEY. We do not have any, Mr. Chairman; we do not even have a professional fundraiser.

Mr. WILSON. Well, I do not see, again, why you are concerned about the bill, because it probably is not going to have any application to you.

Mr. TURLEY. We do not do any unsolicited mass mailing, and we do not use the third-class mailing privilege for blind mailings at all. But we do use the mails, and we do correspond with prospective donors, and we have pamphlets that are distributed at our hospitals or through many of the million Shriners in the United States. We could be injured in our efforts by regulations adopted by the Postal Service, or by the

promulgation of other generally accepted accounting practices by the institute or by the FASB, with which Mr. Gross has a great deal of influence, being the chairman of its Subcommittee on Non-Profit Accounting.

Mr. WILSON. Assuming that some miracle happens and we are able to pass this legislation, would you agree that anybody should be exempt from it?

Mr. TURLEY. That anybody should be exempt?

Mr. WILSON. Religious organizations should be exempted; do you think anyone is entitled to an exemption other than the limited ones where exemption is provided for, where you are soliciting money from your own members, local churches, and this type of thing?

Do you think any other religious organization should be exempt or any educational institution completely exempt? Or do you think everybody should be treated the same way who uses the mail to solicit charitable contributions?

Mr. TURLEY. Mr. Chairman, from the suggestions I have heard from other witnesses, I can see sound reasons why various organizations, each in its own interest, should be exempted from the conditions of the bill; but the bill could soon be eaten up with exemptions if all the different organizations which have reasons for exemption were exempted. We would be more pleased if, instead of having exemptions written into the bill, we were assured that we would not be faced 5 years from now, or 40 years from now, with civil servants who do not understand the intent of the sponsor of this legislation, as we believe we understand it.

We have no quarrel with public disclosure. We believe that publicly supported charities should make public disclosure. We believe that is what the sponsor of this bill has in mind. But, we also recognize, from observation of history, that once an agency of the Federal Government is given authority to administer legislation, certain rules of human nature apply. The offices proliferate, they have a different understanding of the congressional intent than do even the sponsors of the legislation, very often. And we ask you to write into this bill something that will preclude any chance of that happening.

Mr. WILSON. Well, we certainly appreciate your testimony. As I indicated, certainly, we are going to give it very serious attention. Mr. Lott wanted to express his regret at not being able to stay for your testimony; he is a member of the Shriners as I am, and wanted to be here to give you some moral support or something.

Mr. TURLEY. We could use that, Mr. Chairman.

[Laughter.]

Mr. WILSON. But please feel free to forward any other information that you think might be helpful to us.

Mr. TURLEY. We would like very much to do that, and we would like to cooperate, if we can, with the subcommittee staff and perhaps at another time discuss with them some of the changes that we think would be helpful to the bill.

Mr. WILSON. Fine, thank you very much.

Mr. TURLEY. Thank you, Mr. Chairman.

Mr. WILSON. Our next witness, Mr. Chalmers Marquis with the Public Broadcasting Service.

STATEMENT OF CHARLES MARQUIS, VICE PRESIDENT OF THE PUBLIC BROADCASTING SERVICE, ACCOMPANIED BY NEIL MAHRER, VICE PRESIDENT, PUBLIC BROADCASTING SERVICE; HUDSON STODDARD, VICE PRESIDENT OF DEVELOPMENT, WNET, NEW YORK AND NEWARK, ACCOMPANIED BY ROBERT FREEDMAN, WNET GENERAL COUNSEL; AGNES SCOTT, DIRECTOR OF DEVELOPMENT, WTVS, DETROIT, MICH.

Mr. MARQUIS. Thank you, Mr. Chairman.

I am Chalmers Marquis, vice president of the Public Broadcasting Service. With me here are some persons who can offer experienced comments to you on H.R. 41.

Mr. Neil Mahrer, vice president of the Public Broadcasting Service, Mr. Hudson Stoddard, vice president of development, WNET, New York and Newark, and with him Robert Freedman, WNET general counsel, and Ms. Agnes Scott, director of development of WTVS in Detroit.

Mr. Mahrer and I have been active in raising funds for public television, he in Jacksonville, Fla., Schenectady, N.Y., and Cleveland, Ohio, and I in Chicago. Mr. Stoddard and Ms. Scott are members, and Ms. Scott has long been chairman of our PBS national elected Development Advisory Committee. Each of these few persons has a brief statement for you and then we will be happy to answer questions. First, Mr. Mahrer.

Mr. MAHRER. The Public Broadcasting Service (PBS) is the national membership organization of 153 independent local public television licensees, operating 270 public television stations across the country. PBS is governed by representatives of the stations and provides a national program service, and other support services, to its members. Each station is licensed and regulated by the Federal Communications Commission and is exempt from taxes under section 501 (c) (3) of the Internal Revenue Code. Further, each licensee and PBS have been classified as public foundations under section 509 of the Internal Revenue Code.

PBS does not itself raise funds directly from the public. A majority of the 153 PBS-member licensees, however, do seek contributions in their respective communities.

PBS strongly supports the general concept and intent of H.R. 41, to the extent it reasonably contributes to a public better informed about the purposes to which their charitable contributions will be put. Certainly that objective is shared by the licensees. Most of them, as a matter of course, report to their communities—and specifically to their contributors—on station operations and thus on the uses of station income.

There are, however, two aspects of H.R. 41 which PBS cannot support.

One is the provision of the bill which requires on-air disclosure for broadcast solicitations lasting 60 seconds or more. In general, broadcast stations are regulated by the Federal Communications Commission, insofar as such regulation is consistent with the first amendment protection of a free press. This is basic to the scheme established

by Congress for an independent broadcasting system. Thus, any potential regulation of broadcast material must be closely scrutinized in the light of the delicate regulatory structure of the Communications Act of 1934. Because H.R. 41 by its terms exempts all on-air solicitations under 60 seconds, which constitutes the bulk of all such solicitations, its on-air disclosure requirement would affect almost exclusively public television fundraising activities. We have found no evidence of abuse in these activities and believe that any effort to regulate the licensees' discretion to determine what should be broadcast, in the absence of a clear showing that such regulation is necessary, would run counter to the basic structure of broadcast regulation. To repeat, all aspects of broadcast regulation are within the purview of the FCC; and, even more, public television licensees are subject to regulation by other Federal agencies—the Department of Health, Education, and Welfare, for example, in connection with the educational broadcasting facilities program—and by local and State entities.

Then, too, the stations almost invariably follow up pledges received as a result of on-air solicitations with print material that is mailed to the potential donor. Such material could include the disclosures called for under H.R. 41, and PBS has no objection to such a requirement for print materials.

There is a second aspect of H.R. 41 with which we have very serious problems. Subsections 3012(a) (4), (e), and (f), which direct the U.S. Postal Service to establish accounting procedures, cannot be endorsed by PBS in their present form.

The accounting practices of public television licensees are already subject to close scrutiny by the Federal Government, as well as local and State authorities. Public television is supported in part by Federal appropriations through the Public Broadcasting Act. Under the act, a significant portion of the Federal appropriation to the Corporation for Public Broadcasting (CPB) must be distributed to the local stations in the form of unrestricted community service grants.

Further, under the act, Federal funds are appropriated on a matching basis of one Federal dollar for every two-and-a-half non-Federal dollars raised within the system. CPB is thus required to certify annually to the U.S. Treasury the total non-Federal income generated by the stations; and, to accomplish this certification, CPB requires detailed financial reports from all public television licensees.

In addition to the rigors of the Treasury certification, the General Accounting Office has statutory authority to conduct audits of the CPB reports and of each of the public television licensees. This is all in addition to similar local and State processes.

To raise the prospect that the Postal Service should promulgate additional regulations affecting the generally accepted preexisting accounting principles used by the various public television licensees—which are indeed varied in their corporate structures and more than half of which are local or State governmental entities—would seem to us to add an unnecessary layer of bureaucracy on an already closely regulated system. We strongly believe that subsection 3012(e) should be clarified to require that the Postal Service, to the extent it issues regulations, conform to generally accepted accounting principles that are consistently applied, and not impose any one accounting standard or alter any existing generally accepted accounting principles pres-

ently applied by public television licensees. Conforming amendments should also be made in subsection 3012 (a) (4) and (f).

What we are recommending, in sum, are changes that we believe would clarify the intent of H.R. 41 as it affects public television. We are not aware of any abuses by public television licensees; on the other hand, we strongly endorse the principles of full public disclosure.

The public role in public television is a vital one, both in its governance and its support. Public television licensees have always been, and are dedicated to remaining, responsive to their public obligations.

Mr. MARQUIS. Next, Mr. Chairman, I would like to have Mr. Stoddard—

Mr. WILSON. First I would like to comment just a moment. The fund raising event you are talking about, are those specifically for the stations to continue with the public television activities. They are not telephones or anything of this sort? It is for your own operations?

Mr. MAHRER. It is for the operations of each of the stations. PBS itself does not raise funds.

Mr. WILSON. I think we are trying to work something out in this area, aren't we, as far as the number of times a day when you can be involved in a fund raising effort that would not require as frequently as the present 60-second requirement is in the bill. Recognizing the peculiarity of your own things, it is my understanding we are trying to work something out in that regard, Mr. Marquis.

Mr. MARQUIS. That is correct, we had talked about that, but we have studied the matter further and are concerned about the idea of regulation in this area coming from the Postal Service. Therefore, we feel at this point it would be wisest to eliminate this kind of regulation of broadcast material from the bill, inasmuch as there is other information, disclosure information, that is handled in other ways through the mail.

Mr. WILSON. Well, your second question raised, of course we are in complete agreement with you on that and there is no problem in working something out or clarifying it in some way that makes it more definite for you.

I will continue to try to work on the other problem.

Mr. MAHRER. Mr. Chairman, I hope that you also understand that the public television stations do not raise funds for other organizations. We are talking about raising funds to maintain their own programming services to the public.

Mr. WILSON. Yes, sir.

Mr. MARQUIS. If we may continue, Mr. Chairman, a brief statement from Mr. Hudson Stoddard.

Mr. STODDARD. Mr. Wilson, Mr. Cavanagh, I am associated with Educational Broadcasting Corporation, known as EBC, which is the licensee of public television station WNET-TV serving the metropolitan New York-New Jersey-southern Connecticut area, and EBC respectfully submits these comments regarding H.R. 41.

EBC endorses the spirit and intent of the legislation, and believes that the public interest is best served where the public has full knowledge of matters on which they are asked to make decisions regarding their charitable largesse. EBC also underscores Representative Wilson's statement that " * * * undue Government regulations, which could lead to Government control of philanthropy in this country is not a wise course to take."

Public television stations are presently regulated by the Federal Communications Commission under authority delegated by Congress, including the special provisions of the Public Broadcasting Act of 1967. Public broadcasters depend upon funds from governmental agencies, educational institutions, corporate gifts, foundation grants, and public support. EBC, a nonprofit educational, charitable public foundation, has such classification in accordance with the Internal Revenue Code of 1954, as amended, as well as IRS regulations.

As a Federal Government grantee and contractor, EBC must also account for its expenditures to the U.S. Office of Education and the Corporation for Public Broadcasting.

As a not-for-profit corporation, incorporated under the laws of the State of New York, EBC is required to prepare and submit to the State attorney-general's office a financial disclosure statement containing much of the information this legislation that we are considering today requires. This information is available to the public for inspection.

The proposed Federal legislation would now make public broadcasting responsible to yet another governmental agency with resulting regulations. EBC questions whether another layer of Federal governmental regulation is necessary to achieve the purpose of public disclosure.

Section 397 of the Federal Communications Act recognized the necessity of limiting regulations brought to bear on public broadcasting and stated that "Nothing * * * shall be deemed to authorize any department, agency, officer or employee of the United States to exercise any * * * control over educational television broadcasting * * *"

Therefore, Congress has already recognized public television's unique role as a journalistic medium, and its need to be free from layers of governmental involvement, however well intentioned.

Of particular concern to EBC are the sections of the bill regarding radio and television communication. Public broadcasting uniquely relies most heavily on its own broadcast resources to solicit contributions for its charitable purposes. Solicitation by means of broadcast relies heavily on repetition, whereas print solicitation relies upon the longer life of the printed word. Techniques used by public broadcasters such as auctions, pledge nights, and pledge weeks, rely upon solicitations interwoven with programing to raise funds for educational purposes.

The specific rules envisioned by this proposed legislation are particularly burdensome to public broadcasting, and would create an audiovisual clutter that would be detrimental to the maintainance of public television audiences, and thus unintentionally subvert the public purposes of public television.

What we are saying therefore, Mr. Chairman, is that Congress on the one hand has enacted legislation to encourage local support of public television. This proposed legislation cuts into or adds to the precious time with which we seek to obtain that support.

All our experience suggests that this added intrusion will inhibit, not encourage, viewer giving. This proposed disclosure requirement leaves the station with two options, either to shorten the membership appeal to accommodate a full disclosure statement or to lengthen the

time to include it. In both cases, in our opinion, the effectiveness of the appeal is seriously threatened.

But we are so very concerned about the consequences of the broadcast provisions of H.R. 41. To reemphasize, we urge Congress to leave public broadcasting stations with the significant public safeguards which already exist. We therefore request that public television be excluded from the provisions of this bill.

Our 14 years of public broadcasting have indicated to us that our daily on-air broadcast schedule is a visible accounting to our audiences of the charitable activities of EBC. Our growing membership over the years evidences broad public confidence.

EBC respectfully submits that, absent evidence of public concern on this issue, governmental intrusion of broadcast content cannot be justified. We are unaware of any public concern regarding public television's charitable activities, and are therefore skeptical of the need for governmental regulation of the content of our journalistic medium.

The Federal Communications Commission requires broadcasters to maintain "a public file" open to all members of the public during normal business hours. This file contains license, ownership, and program information. It could be readily expended to include charitable solicitation information.

Thank you.

Mr. WILSON. Apparently all of you are not in agreement then. Each of you have a different opinion of the legislation in other words—

Mr. STODDARD. You have not heard us all yet.

Mr. WILSON. Well, the first gentleman has no problem with the bill. There are two problems he has which are not insurmountable, you just do not like it at all. You want to be exempted from it.

Mr. STODDARD. He has serious reservations and has expressed them about broadcast provisions in the act, as do I.

He has said that probably public television, in many cases, could live with the direct mail aspects of it. I happen to disagree in New York's case. I think it is a very onerous requirement, and respectfully disagree with those other stations in our system, which is a Federal one. Each station is entitled to its own view. And I would disagree on that point.

I do believe in disclosure, as do we all, and we feel, as I think we both evidenced so far, that there are adequate mechanisms for disclosure in our small world at the present time.

Mr. WILSON. Fine.

Mr. MARQUIS. We would now like to have you hear from Agnes Scott, Mr. Chairman.

Ms. SCOTT. Mr. Chairman, I am director of development at WTVS, the public television station in Detroit.

Regardless of our market, we are a medium-sized station. We are a community licensee with a budget this year of \$2.2 million dollars of which \$1.8 million must be raised from local voluntary sources. We receive cash contributions from individuals and business firms for annual giving, plus donations of merchandise and services from merchants which are then sold to viewers during our annual television auction.

Like my colleagues, I do not oppose disclosure, as a matter of fact we do it all the time. We are in constant communication with our com-

munity through the newspapers, radio, TV, our own program guide, direct mail, and, of course, our own broadcast air.

Our station is closely scrutinized and regulated by both governmental and nongovernmental bodies. We must report to the Corporation for Public Broadcasting, the Federal Communications Commission, the Attorney General of the State of Michigan, our board of directors, our contributors, the press, community groups, et cetera.

Our product, the service we perform, is very public. It is programs—over 100 hours per week of programs—directed to a wide variety of audiences—ranging through all age groups, ethnic groups, and interest groups.

These viewers are in constant touch with us. They feel very free to express themselves to us by phone, mail, person, every other way. As a matter of fact, we even have phones open during such campaigns and they let us know what they think, frequently. We heard both complaints and compliments about our programs, about our personalities, about the length of our fund-raising pitches and everything else people want to comment about.

With all of this close contact, we have heard virtually no concerns expressed about our use of the contributed dollars. No suspicions raised. I believe that this is because the contributor sees so clearly the results of his contributions in the form of programs on that box in his living room every day.

With all of this reporting, both formal and informal, that goes on in our station and in stations small and large across the country, I am concerned about the burden of expense of yet another level of regulation which would require us to make even more reports than are already demanded of us.

In addition, we cannot agree that authority for what goes out over our air ought to be granted to the Postal Service. We are concerned that we are among the few organizations singled out for regulation of broadcast messages, since we are among the very few whose fund raising messages are more than 60 seconds in length. We believe that this regulation of broadcast messages does not belong in H.R. 41.

I do not find anything especially objectionable about disclosure of information in mailed material, I do it all the time. But I ask that it not be in a form which would add costs to what we send out now. We try to keep our mailings simple, inexpensive and informative. Typically, they are one page letters printed on one side. Printing of both sides of a page or adding pages would impose an additional financial burden not only on us, but especially on very small stations, which are just embarking on this kind of activity.

And I want to thank you, finally, for listening to a representative expressing the concerns that I have heard from stations of all sizes, all across the country.

Mr. MARQUIS. That concludes our formal presentation, Mr. Chairman. We will be happy to answer whatever questions you have now.

Mr. WILSON. I have really no questions.

Again, I think what has been highlighted in these hearings is a lot of distrust of governmental agencies. And apparently there is a fear that so many people have that something is going to happen which we do not want to happen.

I certainly have no intention of allowing it to happen, but apparently previous experiences you have had lead you to believe that it is very likely.

Ms. Scott, I do not know what difference it would make which regulatory agency, or body supervises this. The Postal Service was selected because they do have an inspection service and they have the machinery because of the delivery of mail to do so much of this, but it would become a new project for someone else. Do you have any preference as to agencies?

I know you are under FCC regulation and you are regulated completely and this is not a regulation bill, however, I cannot see what is going to cost you any money to just include a disclosure or any mail that goes out in connection with solicitations or in response to requests.

Ms. Scott. I think that would have a great deal to do with the size and magnitude of disclosures that would be required. If we would have to take up a certain portion of the page to do that, sending a one page letter printed on one side, the very printing of that letter on the other side at a small station could be a considerable additional expense.

Mr. Wilson. One of our stations has a little enclosure that goes with the solicitation request.

Ms. Scott. It costs.

Mr. Wilson. Well it cannot cost too many dollars for the paper, it is mimeographed. I think, again, we are imagining a lot of things, and as I say, I am beginning to understand the fear that so many people have about past experiences with Federal agencies. I regret that type of thing has happened; we certainly want to try to dispel those fears when we proceed with the legislation. We want to have all the protections in it that will guarantee that it would not be the types of things that you would fear.

I want to thank you very much. Do you have any other comments?

Mr. Marquis. No, sir. Thank you.

Mr. Wilson. Thank you, we appreciate your comments.

Our last witness is David D. Shobe from the Arthritis Foundation.

STATEMENT OF DAVID D. SHOBE, VICE PRESIDENT FOR GOVERNMENT AFFAIRS, THE ARTHRITIS FOUNDATION

Mr. Shobe. Mr. Chairman, my name is David Shobe, I am vice president for government affairs of the Arthritis Foundation.

I bring you greetings from our southern California chapter of the foundation.

The Arthritis Foundation has already gone on record in publicly supporting the basic intent and concept of H.R. 41, the purpose of which is to regulate the solicitation of charitable contributions by mail, and we would like to complement the chairman on his initiative.

We particularly note with pleasure section 3012(h) (1) which would have this legislation pertain to the charitable sector inclusively, rather than as in past legislative efforts allowing certain groups to be exempted from regulation. It is obviously necessary when proposing a new regulatory measure of this nature to be as objective as possible in one's pursuit of improved public disclosure and in enforcing an acknowledgment that all charitable groups must regularly self-

examine the validity of their public trust, as well as submit to its periodic examination by others.

The Arthritis Foundation has with most other national voluntary health agencies already standardized its accounting and financial procedures, adopting the recommendations for such standards which have been developed by the National Health Council, Inc., the National Assembly of National Voluntary Health & Social Welfare Organizations, Inc., and the United Way of America.

The foundation publishes an annual report which includes a multifaceted balance sheet showing the types of income received by the national office of the foundation and by our 73 chartered chapters. A copy of our 1975 annual report is appended to this statement. The balance sheet in last year's report comprises five pages. Two other pages list the institutions which received grants from the foundation, the director of the arthritis research program at that institution, and a description of the research being undertaken. Another page lists the research fellows receiving foundation support and the schools at which they are undertaking their postdoctoral fellowship studies. The foundation, by the way, is currently training more researchers in the field of arthritis than is the Federal Government. A ninth page lists the officers of the foundation and of the two professional associations which are members of the foundation, the American Rheumatism Association and the Allied Health Professions, the members of the board of directors, the members of the Medical Administrative Committee, and the executive staff. There is also a note from our auditors indicating that the financial statements presented in the report represent fairly the foundation's position.

We would hope that this or other legislation dealing with the regulation of charitable groups would propose a standardized type of annual report wherein the balance sheets describe in detail the source and distribution of revenue, the amount expended for raising funds and administrative costs, as well as indicate the division of income into restricted and unrestricted funds, endowment, capital improvements, and other standard line items of accounting for the distribution of proceeds by a nonprofit organization. This same report could then hopefully be used to meet regulatory requirements by State and local governments, thereby relieving the charitable groups from overlapping reporting requirements which otherwise would further reduce the money and time available for public service.

Although, as we have stated, the foundation endorses the leadership of Mr. Wilson in this area, we are concerned that H.R. 41 will only deal superficially with the fraudulent solicitation of charitable contributions, and that the enforcement provisos of the bill are sadly lacking. We are uncomfortable, for example, that the U.S. Postal Service, not especially well known for administrative efficiency, has been proposed as the regulatory agency for the Federal monitoring of the provisos of H.R. 41. We would frankly be much happier if the Treasury Department were to expand its Exempt Organizations Division to enable it to deal not only with the review of a 501(c)(3) group's information return—form 990—but also with the regulation of interstate solicitation of charitable gifts, the public disclosure of a charitable organization's financial reports, investments, bank accounts, and payouts of contributions or other assets to finance the espoused charitable purposes of the soliciting organization.

This is not to say that the foundation does not believe the U.S. Postal Service may have a role to play in the regulation of solicitation of charitable gifts by mail, but we do not feel that it should be the principal Federal agency to be concerned with these matters.

It may also be necessary for the Federal Communications Commission to be brought into the picture in respect to the monitoring of statements made by charitable groups over radio and television.

We are particularly concerned about the lack of suasion in H.R. 41, even though we understand that much of this depends upon subsequent regulations to be promulgated. The fact, however, that Federal regulations are not written concurrently with the legislation which proposes that these regulations come into being detracts substantially from one's ability to effectively analyze the impact that this legislation will have on the problem. Even then, of course, the regulatory impact is an unknown until tested.

Our hope is that when legislation is passed to regulate the solicitation of charitable contributions it will effectively eliminate the fly-by-nighters by whom the Arthritis Foundation is constantly plagued. The power to persuade these groups to cease and desist should lie with that Federal or State authority capable of seizing the assets of the fraudulent organization, and bringing criminal action against the officers of the offending group. Since these leeches are strictly in the charitable area for the payoff, and since under the proposed legislation they could escape prosecution by periodically changing their name, and recognizing that much State legislation is obviously inadequate to the task, the U.S. Attorney General may wish to investigate the need for a special prosecutor's office which would collaborate with State attorneys general in the prosecution of malfeasance in the charitable field, including the seizing of assets and the fining or jailing, or both, of the major officers of the errant organization.

Nor in our estimation will the public disclosure of last year's record have any significant effect in dissuading the in-and-outer from a quick ripoff, although it may tend to discourage contributions to newly formed charitable groups whose first years' budgets normally reflect a relatively higher ratio of administrative and fundraising costs to program costs. Some way must be found to permanently discourage those modern claim jumpers from tapping a mother lode, while protecting newly spawned legitimate organizations from being needlessly harassed by the bureaucracy and given short shrift by the giving public because of high fundraising and administrative startup costs.

Legislation in this field should also be careful not to indict the small charitable group which is performing a needed and important local service even though it is regarded as having relatively high administrative costs because of the need to maintain paid staff, an office or offices, and to communicate widely with a heretofore underinformed constituency whose needs this agency is trying to meet in concert with community volunteers. We should not, in other words, legislate out of business a charitable group which is responding to a community need, only to later replace it with a Government agency likely to be less efficient, less responsive, and more costly to the taxpayers.

Also, while recognizing the need to keep the administrative and fundraising costs of a charitable tax-exempt organizations to a minimum, regulatory legislation in this field should, we feel, keep in mind the need to effectively screen and review applications for charitable

funds and to evaluate the use of these funds. The Arthritis Foundation, for example, carefully screens all applications for both its Arthritis Clinical Research Center grants and its fellowships. Center grant applicants are site-visited in addition to being subjected to peer review by committee. We are not as adept in evaluating the use of our funds, but we do work with the American Rheumatism Association in helping to plan and organize their annual scientific meetings at which over 100 research papers are presented and discussed, thereby keeping scientific, clinical, and lay communities au courant on what is happening with respect to arthritis research funds, public and private. It is unthinkable to us that any charitable group could function otherwise with a clear conscience, but this cannot be achieved without an outlay of administrative overhead.

Distinctions should also be drawn between the relatively high efficiency capable of being achieved by a charitable group which undertakes its fundraising from a national base, as contrasted to organizations such as the Arthritis Foundation whose local chapters do the fundraising as well as serve their respective communities. There is bound to be confusion in these instances in respect to the application of section 3012(a)(4) regarding disclosure of the percentage of all contributions which go to charitable purposes. Does this percent refer to all fundraising done nationally, or does it apply on a chapter-by-chapter basis? And, since many local chapters are now required to make public disclosure of certain facts pertaining to their operations in accord with State regulations, will these chapters have to have two such messages, similar but dissimilar, printed on every mailing price used to solicit contributions should Federal regulations be added to, rather than supplant, State regulations in this area? This would seemingly be as confusing to the public as it would be to those charitable organizations which are organized along chapter lines.

Another section needing clarification is 3012(b)(2), which deals with solicitations made over radio and television. It is not specified as to what number of times per hour a public disclosure statement must appear during the course of a telethon, an annual fundraising event for many charities, and a fairly regular occurrence for public television stations.

Separate sections may also have to be developed for hospitals, schools, and other eleemosynary institutions whose solicitations for funds beyond their membership or alumni groups is usually restricted to capital campaigns which cannot be compared on the same basis as annual giving campaigns, nor is it easy to measure the percentage of allocation of these gifts to service-related functions as opposed to administration and fundraising.

Also, H.R. 41 does not affect the street corner con artist with his little can, box, hat, or whatever, nor the storybook doorbell ringer who insistently shakes down the innocent homeowner as part of our free enterprise system.

Nor is there any mention of the questionable practice of including miniature license tags, address labels, or other items in a contributions appeal by mail in an attempt to importune the recalcitrant donor, or to play on one's guilt for receiving something for nothing, even though you didn't order it, don't need it, and can't use it.

Basically then, we believe that if there is to be Federal regulation of the solicitation of charitable gifts, that there be as tight an enforcement as possible of all types of charitable solicitation and of the accounting methods used in the public disclosure of the proceeds therefrom.

Particularly, we feel strongly that it is not only those groups which take their public trust seriously which should be placed under scrutiny, but most especially those miscreant mendicants who pick the public's pocket in the pretense of charity. The question is thus not merely how to regulate those who are willing to be regulated, but how to regulate out of business those who continue to attempt to evade the law and public scrutiny in order to make a fast buck.

Thank you, Mr. Chairman.

Mr. WILSON. Thank you Mr. Shobe.

You do not agree with those who testified earlier that there should be a massive exemption from this potential legislation, do you?

Mr. SHOBE. No; we would not agree that there should be any groups exempt, but we believe that there should be certain sections which would provide recognition of the fact that all groups do not raise funds in the same manner. Such as hospitals, and other institutions.

Mr. WILSON. Actually, you are proposing a much different type bill that would be a regulatory bill rather than a simple disclosure.

Would you feel that in the event we run into such a concept, we should have a preemption provision that has been asked for by many people for the various States?

Mr. SHOBE. Yes; we would certainly think that that should be part of the bill because as it is it would portend a great deal of difficulty for especially small chapters whose staff may only include a part-time director, and whose administrative overload is already obvious.

Mr. WILSON. Do you agree that the ceiling on fundraising costs has affected some States?

Mr. SHOBE. Yes. I think that the ceiling, perhaps, is too high in most instances. Our combined fundraising administrative costs last year approximated 26 to 27 percent, and we estimate that they will be below 25 percent this year. I think most State percentages in these cases are fairly liberal.

Mr. WILSON. Mr. Shobe, thank you very much for your testimony and your recommendations.

You go further than what we had intended to do, but certainly you have given us considerable to think about and the three or four major areas of concern that have been expressed by the witnesses, exemptions of some groups, preemption of State and local laws, one or two other things that seem to be of major concern are all things that we will, of course, give a lot of consideration to in our markup session on the legislation. We want to thank you for your contribution to the hearing.

Mr. SHOBE. Thank you sir.

Mr. WILSON. This will conclude our hearings at this time.

[Whereupon, at 1:25 p.m., the hearing in the above-entitled matter was adjourned.]

[The statements and letters which follow were received for inclusion in the printed hearings:]

STATEMENT OF JOHN J. O'CONNOR, LEGAL COUNSEL OF THE NATIONAL FOUNDATION,
MARCH OF DIMES

My name is John J. O'Connor and I am Legal Counsel of The National Foundation-March of Dimes, the former name of which was The National Foundation for Infantile Paralysis, Inc. The National Foundation was founded in 1938 by former President Franklin D. Roosevelt. For over thirty-nine years it has dedicated itself to the welfare of American children, first in the fight against polio and now in the fight against birth defects.

Because my father was a member of the House of Representatives from New York forty-one years ago and Chairman of your Rules Committee, a feeling of nostalgia comes over me whenever I enter your portals. Consequently, I appreciate the opportunity and the privilege of appearing before your Subcommittee this morning.

Besides appearing here as a spokesman for The National Foundation-March of Dimes, which appreciates the concern of Chairman Wilson and the other members of your Subcommittee about truth in charitable giving and which supports his intention to strive for the enactment of enforceable, yet fair and reasonable, federal legislation requiring the disclosures of certain information from charitable organizations which solicit, in any manner or through any means, the remittance of a contribution by mail, I am appearing here in a personal capacity as a result of my interest in and knowledge of the subject resulting from over nine years service on a number of ad hoc committees pertaining to federal, state and local laws regulating the solicitation of funds for charitable purposes.

As a member of these ad hoc committees, several of which were ad hoc committees of the National Health Council, I have prepared a number of "Models" for state legislation regulating charitable organizations, several "Models" for local ordinances regulating charitable solicitations, and several compilations of state statutes and local ordinances on this subject.

The most recent of these ad hoc committees dealt specifically with Chairman Wilson's proposed legislation. Subsequent to Chairman Wilson's introduction in the last session of Congress of his previous proposal to require public disclosure at the time of solicitation of organizations soliciting charitable contributions from the public (HR 10922), the National Health Council, an umbrella organization for eighteen national voluntary health agencies comprising its membership, appointed a Committee of voluntary health agency staff to initiate a positive approach to federal fund-raising legislation, and designated me Chairman of this Committee. As a result of the work of this Committee, in December 1976, ten national voluntary health agencies belonging to The National Health Council unanimously approved public disclosure legislation drafted by my Committee and virtually identical to the refined version of Chairman Wilson's previous proposal being considered by your Subcommittee this morning.

Thus, I appear before you gentlemen this morning generally in support of HR 41, both as a spokesman of The National Foundation-March of Dimes and as an ardent advocate of fair, reasonable and enforceable legislation that will establish an effective mechanism for keeping the contributing public fully informed about the true identity, charitable purposes, intended use of charitable contributions, program percentages and fund-raising costs, and management and general cost percentages of organizations and individuals seeking charitable contributions from the general public.

However, The National Foundation-March of Dimes believes that the federal public disclosure legislation being considered by your Subcommittee this morning should apply to all organizations and individuals which solicit, in any manner or through any means, the remittance of every charitable contribution by mail that is deductible by the donor as a charitable contribution in a federal income tax return. The National Foundation-March of Dimes therefore urges this Subcommittee not to limit the applicability of this proposal to a limited number of organizations, such as voluntary health agencies.

It should also apply to solicitations from the general public by educational institutions. Therefore it hopes that your Subcommittee will not succumb to possible appeals from the educational community to broaden the present educational exclusion beyond the limits already proposed by subdivision (h) of Section 3012, namely, to educational solicitations to students, alumni, faculty, members of governing boards and appointed committees or members of the family of such individuals.

Furthermore, a major concern of the leading national voluntary health agencies has been the recent growing erosion of public confidence in charitable organizations caused by such religious charlatans as the Pallottine Fathers, a concern also vehemently voiced by Chairman Wilson when he introduced HR 41 on January 4, 1977, and by the May 14, 1976 Report of the Committee on Post Office and Civil Service on HR 10922 of the 94th Congress. This is why my National Health Council's Committee's draft of public disclosure legislation contained a provision to the effect that:

"The provisions of subsection (a) of this section shall apply to any solicitation which requests the mailing of contributions for secular purposes made by a religious corporation, trust or organization incorporated or established for religious purposes, where such solicitation is directed to anyone not known by the soliciting organization, to be a member or adherent of the religion of the organization conducting the solicitation."

Although I am not authorized to recommend this suggestion to your Subcommittee on behalf of the other seventeen national voluntary health agencies belonging to the National Health Council, The National Foundation-March of Dimes strongly urges your Subcommittee to give serious consideration to requiring the disclosure provisions of this Bill to apply to religious solicitations for secular purposes, so that future "charity rip-offs" under the guise of the religious "umbrella" will not escape the attention of the millions of generous Americans who contribute yearly about \$25 billion in hard-earned dollars to charities of all types.

Another safeguard proposed by the National Health Council, but omitted from subdivision (a) of Section 3012 of this Bill, was a provision to the effect that any charitable organization which makes a solicitation which requests the mailing of contributions and which is subject to the provisions of subsection (a) of Section 3012 shall—in addition to furnishing to the Postal Service upon request audit reports and accounts—file its most recent annual report with the Postal Service. Thus the annual report of every charitable organization shall automatically become a matter of public record on file with the Postal Service.

I am confident that well thought-out and carefully drafted legislation of the nature proposed by Chairman Wilson, if effectively implemented and uniformly enforced, will give to the potential contributor, for the first time at the national level, a straightforward disclosure so that he or she can make a more educated judgment about which charities to give to.

Thank you, gentlemen, for this opportunity to appear before your Subcommittee.

STATEMENT OF THE AMERICAN BAR ASSOCIATION, SECTION OF TAXATION

(These comments are a composite of individual views of members of the Section of Taxation and are in no way to be construed as representing the position of the American Bar Association or of its Section of Taxation or any committee thereof. These comments were prepared by individual members of the Committee on Exempt Organizations of the Section of Taxation.)

GENERAL COMMENTS

Legislation at the federal level to require disclosure to the public of information by organizations soliciting charitable contributions in interstate commerce appears inevitable. While the number of organizations and fund raisers that are abusing the philanthropic process or are perpetrating fraudulent solicitations appear to be rather small, the publicity given to their exploits is causing understandable concern among the contributing public and to Congress. Administration and enforcement of charitable solicitation laws at the state and local level is inconsistent and has not proved to be an effective remedy for ensuring meaningful disclosure and for minimizing questionable fund raising practices. Present law does not accord any federal agency a specific mandate to expand supervision or regulation in this area.

There seems little doubt of the appropriateness of a law requiring the disclosure of pertinent information concerning a charitable organization to those individuals who have been solicited for a contribution to that organization. Most reputable organizations make such information readily available as a matter of course. The objective, therefore, of additional legislation in this area should be to compel

disclosure by soliciting charities that do not voluntarily do so and to avoid counterproductive cost burdens for those charities that do. Every dollar that is expended in compliance with government regulation is a dollar that is diverted from a charitable purpose.

By necessity, a charitable solicitations bill should be targeted to the direct mail appeals conducted on a nationwide basis. Other types of solicitations, such as by means of radio, television, and the printed media, should probably be covered by such a bill, although they are of less consequence from a regulatory standpoint. Likewise, the legislative history of such a bill should make it clear that the measure applies to solicitations of the general public and not to "private" solicitations, such as solicitations by means of personal contact or communication among acquaintances, of small groups of people, and of bona fide members of the soliciting organization.

SPECIFIC COMMENTS

1. *Point of solicitation disclosure.*—H.R. 41 would require the disclosure of information by a soliciting charity at the point of solicitation. However, meaningful and balanced information about an organization cannot be provided in this manner, at least not without considerable cost. Isolated items of data can be as misleading as the provision of no information at all. This is particularly the case concerning the requirement that the fund raising cost percentage be provided at the point of solicitation (see *infra*).

A more workable approach may be to require charitable organizations to prepare an annual report, with meaningful financial information, and to make this information available upon request. A notice of the availability of such a report could accompany the solicitation. This approach would seem to provide the contributing public adequate protection without overburdening worthwhile charitable groups and enable interested persons, investigative organizations, the media and government agencies to easily gain access to information when necessary.

Nearly all charitable organizations file an annual information return (Form 990) with the Internal Revenue Service. Some have suggested that this return be modified so that it would serve as the annual report document to be publicly disseminated. Others have suggested that a separate annual report be required. In either instance, a principal objective is to avoid a duplicate reporting scheme; thus, a preferential approach would be to utilize existing reporting requirements rather than to create new ones.

2. *Means of reporting and disclosure.*—Full and timely disclosure by charitable organizations is a laudatory objective. However, the point-of-solicitation approach should be abandoned in favor of a notice on the solicitation materials that information about the charity is available under the law. The Subcommittee should seek to develop a system whereunder a meaningful annual report of charities is prepared and made available to the public.

Similarly, another virtue of this approach is that the cost and paperwork burdens on charities would be minimized, by confining the reporting requirement to one federal agency.

It is noted that both the Commission on Private Philanthropy and Public Needs and the Treasury Department in January of this year recommended that most charities with annual gross receipts of at least \$100,000 be required to make available to the public an annual report on their finances, programs, and activities.

3. *Fund raising cost percentage.*—There is no valid reason as to why charitable organizations should not disclose fund raising costs. However, despite the abusive fund raising practices in a few instances, it must be remembered that fund raising expenses are only one type of an organization's expenditures. Other expenditures may include outlays for general administration and management, professional and consultant's fees, investments and the like—as well as expenditures for the charitable purpose. While it is not feasible to provide all of this and equally significant information at the point of solicitation (*supra*), these various costs should be disclosed.

H.R. 41 would require disclosure of fund raising costs at the point of solicitation. The resulting emphasis that this requirement would place on this one type of expenditure is unwarranted. In present-day circumstances, the matter of fund raising costs is too sensitive an issue to be fairly reduced to a single figure. Such a requirement would be quite punitive for the new charitable organization, as to which start-up fund raising costs are relatively high. This type of simplistic requirement does not make the requisite allowances for different types of fund raising practices, such as multi-year capital campaigns, deferred giving programs, or solicitations which rely heavily on volunteer assistance.

Reducing the fund raising cost to a single percentage merely exacerbates the foregoing problem. It is believed that such a percentage figure would quickly become a shorthand guide to giving for most contributors, with the charitable dollars flowing to the organizations displaying the "lowest" fund raising costs, rather than to organizations whose causes, programs, and purposes warrant attention. Also, this requirement could easily generate unnecessary, unproductive, and divertive advertising campaigns among charitable groups as to which organization's fund raising costs are the lowest.

This matter of presenting fund raising costs as a single percentage raises additional concerns because there are no standards at the present by which fund raising costs are to be computed. Therefore, each charitable organization and their accountants have considerable latitude in ascertaining these costs. In the absence of such standards, an organization intent on abusing the philanthropic process can conjure up a low fund raising cost percentage and attract gift support as a result of such a misleading representation—a consequence totally contrary to and a frustration of the purpose of H.R. 41.

Thus, a charitable organization soliciting contributions from the public should be required to disclose its fund raising costs. However, these costs should be explained in the context of an overall financial statement as part of an annual report (*supra*) and not as a percentage prominently stated on the solicitation materials.

4. *Exemptions.*—Not every category of charitable organization or type of solicitation needs to be made subject to a bill such as H.R. 41. As noted, *supra*, solicitations of the general public—rather than private solicitations—should be the focus of the legislation. Thus, exemptions, such as those in the bill, for solicitations by means of personal correspondence, by organizations of their bona fide members, and by schools of their students, alumni, and the like are appropriate.

The abuses in fund raising that have surfaced in recent months have inevitably involved mass appeals using the direct mail approach. Consideration should be given to one or more means by which charitable organizations which are not principally engaged in this type of fund raising are excepted, in whole or in part, from the requirements of the bill. This type of organization includes operating institutions such as schools, colleges, universities, hospitals, museums and libraries, which, as noted, earlier, do not appear to be the focus of the bill. Consideration should also be given to an explicit discussion in the committee report to accompany H.R. 41 as to the status of churches and other religious organizations under the bill.

5. *Administrative agency.*—Under H.R. 41, of course, the administrative and enforcement agency would be the U.S. Postal Service.

A principal concern with H.R. 41 is the provision that would lodge the administrative responsibility for the bill with the Postal Service. The federal agency that has the expertise and experience in the field of charitable organizations is the Department of the Treasury and its component, the Internal Revenue Service. (At the present, in the one area involving nonprofit organizations and the postal laws, namely, mail classification under the second, third and fourth classes, the Postal Service largely defers to the Treasury and I.R.S. rules concerning charitable organizations.)

A preferable approach would be to place the principal agency jurisdiction in the charitable solicitations field with the Treasury Department, as part of the proposal to expand charitable organization reporting to that Department (*supra*). This assignment of jurisdiction to the Treasury Department would locate there the responsibility for developing regulations in such areas as expansion of the statutory language as to definitions and the like, reporting and information dissemination requirements, and accounting standards. At the same time, the Postal Service should have the express statutory authority to impose a mail stop with respect to a solicitation by a charitable organization which is not in compliance with the law.

6. *Accounting standards.*—There are many ongoing current developments in the realm of uniform accounting standards for nonprofit organizations, including the trends toward a federal charitable solicitations law. Such standards are essential if public reporting by charitable organizations is to be meaningful.

In some instances (such as with respect to the determination and reporting of fund raising costs, *supra*), such uniform standards are not available. These standards and other uniform accounting principles should be the subject of regulations. Excellent uniform accounting standards presently exist and consideration should be given to express adoption of some or all of them in the regulations.

Also, the regulations should give express recognition to uniformity of accounting standards as respects basic categories of charitable organizations, rather than attempt to prescribe one set of accounting standards for the entirety of the philanthropic community.

7. *The pre-emption question.*—At the present, 31 states, the District of Columbia and innumerable localities (counties, cities and towns) have statutes and ordinances relating to charitable solicitations. The requirements of these laws (including exemptions, accounting standards and reporting requirements) and the enforcement efforts with respect to them vary considerably. The present legal situation in this regard is sufficiently confusing, to the point that full compliance with all of these laws would be extremely costly and time-consuming and avoidance and violation of these laws is encouraged.

Consequently, consideration should be given, if there is to be federal law on this subject, to pre-emption of this state and local law where the charitable solicitation is made by a means of interstate commerce. If such pre-emption cannot be achieved, consideration should be given to the development of incentives to establish federal, state and local law and enforcement coordination in the charitable solicitation field. Such coordination could include the filing of a federal report in those states where a charitable solicitation is to occur in lieu of separate state reports.

Names and addresses of members of the Section of Taxation who participated in the development of these comments: Bruce R. Hopkins, 1150 17th St., N.W., Washington, D.C. 20036; and Thomas J. Brorby, Fulbright & Jaworski, Bank of the Southwest Bldg., Houston, Tex. 77002.

STATEMENT OF ABE C. VAN DER PUY, PRESIDENT, NATIONAL RELIGIOUS BROADCASTERS, INC.

INTRODUCTION

National Religious Broadcasters, Inc. (NRB) is a non-profit, tax exempt corporation formed in 1944 in order to contribute to the improvement of religious broadcasting so that it better serve the public interest and more effectively minister to the spiritual welfare of the nation. The association has approximately 800 member organizations distributed among the 50 states, District of Columbia, Puerto Rico, and Guam. The membership of NRB consists of (1) broadcast station licensees and their associates, (2) producers of religious programs for television and radio stations and cable television systems and (3) performing artists and others related to broadcasting. It is estimated that there are more than 600 organizations, including those that are not NRB members, which produce religious programs on a non-profit basis for presentation on hundreds of television and radio broadcast stations and cable systems throughout the country.

Among the more widely known religious programs produced by NRB members for broadcasting are Billy Graham's Hour of Decision, the Lutheran Hour, the Baptist Hour, the Methodist Hour, Christian Broadcasting Network's 700 Club, PTL Television Network's FTL Club, Back to the Bible, Light and Life Hour (Free Methodist), Revivaltime (Assembly of God), Words of Hope (Reformed Church of America), Vespers (American Lutheran Church), Morning Chapel Hour, Herald of Truth, and scores of others. Other religious programs having extensive broadcast dissemination include Hour of St. Francis, Ave Maria Hour, Sacred Heart Hour, the Protestant Hour, Voice of Prophecy (Seventh Day Adventist), Lamp Unto My Feet (Ecumenical), Jewish Dimension, The Eternal Light, and Jewish Community Hour.

Virtually all religious program producers are supported by contributions from the public and by virtue of that are enabled to continue their ministry. Many religious broadcast stations are licensed to non-profit, tax-exempt organizations and are also supported, in whole or in part, by contributions from the public. The balance of the religiously oriented stations are supported through the sale of broadcast time to the program producers as a vehicle for their ministries. Some stations sell advertising as well, others do not.

CODE OF ETHICS OF NATIONAL RELIGIOUS BROADCASTERS, INC.

Organizations and individuals associated with radio and television broadcasting who desire to join NRB are required as such members to abide by a strict Code of

Ethics. Those seeking membership who do not meet its standards are rejected. Those meeting NRB ethical standards count for approximately 95 percent of all religious programming broadcast in America (excluding local church broadcasts). Attached as Exhibit No. 1 is NRB's Code of Ethics.¹ The Code includes standards of financial accountability. Those applying to program producers, which are the most important to consideration of the provisions of H.R. 41, are as follows:

"FINANCIAL ACCOUNTABILITY

"Appeals shall be of a bona fide character for legitimate religious purposes and shall be presented in a dignified Christian manner. All donors shall be properly furnished with receipts and an accounting thereof shall be furnished to the Board of Directors [of NRB] on request of the Board."

H.R. 41 is known in certain quarters of the religious community as the "Pallottine bill" because of the abuses of Christian generosity perpetrated by the Pallottine Fathers. That \$20,000,000.00 was collected in support of foreign missions of which only \$1,000,000.00 reached them with the balance going to such purposes as financing the divorce of a State Governor, a loan to an associate of a former Vice President of the United States, and to various real estate investments, is outrageous, to say the least. Unquestionably the solicitation of funds that was diverted to such uses constituted a fraud upon the American public. It is conduct clearly incompatible with NRB standards. The Pallottine Fathers are not now and never have been members of NRB.

NRB is well attuned to the practices that are prevalent throughout the religious community in the solicitation of funds. Abuses are rare, almost nonexistent. Unfortunately, if there is a problem H.R. 41 is unlikely to cure it and in the process of its operation will have a deleterious effect upon the success of religious fund raising. The problem is not so much with what H.R. 41 mandates be disclosed, but with the "prospectusizing" of God. One who is moved to support a cause or a ministry and who, without more, would dispatch a check in its support may very well have second thoughts when the subject of that cause or ministry is accompanied or immediately followed by an obviously governmentally compelled notice or announcement. In the mind of the public, there may be no difference between the H.R. 41 announcement and the required warning that the Surgeon General has determined that smoking is dangerous to one's health or an admonition to keep poison out of the reach of children. Certainly, announcements or notices of the type contemplated by H.R. 41 can have no positive effect on the success of religious fund raising. At the very best, the effect could be neutral. Thus, NRB opposes adoption of H.R. 41.

FIRST AMENDMENT INJUNCTIONS

H.R. 41 is inconsistent with the Free Exercise and Establishment clauses of the First amendment. The burdens and efforts that it will place on churches and religious organizations are intolerable. In the Report to accompany H.R. 10922 (a Bill similar to H.R. 41) in the last Congress, there was addressed the inclusion of religious organizations. The Report stated: "Religious organizations soliciting funds from the general public will be covered by this legislation, since the First Amendment is not designed to provide religious-affiliated groups constitutional freedom to defraud the public." That is simplistic. The constitutional freedoms we as Americans enjoy are not designed to permit anyone to commit any crime. If a religious organization is guilty of fraud, it should be criminally prosecuted, sued civilly, or both. By the same token, Members of Congress are not protected from prosecution by the Speech or Debate Clause of the Constitution if they take bribes. *United States v. Brewster*, 408 U.S. 501, 33 L. ed. 2d 507 (1972). No one would contend that the freedom of speech provision insulates from prosecution a conspiracy to violate the laws of the United States.

As written, H.R. 41 affects virtually every church in the United States in that it cannot go outside of its own membership, as for example with a building campaign, unless it is willing to disclose the information required by the bill and is willing to conform to accounting standards prescribed by the Post Office. The legislation would do precisely what one of this Nation's most respected "country lawyers" and learned constitutional scholars, Senator Sam Ervin, sought successfully to rectify with the Equal Employment Opportunity Act of 1972: "In other words, this Amendment is to take the political hands of Caesar off of the institutions of God, where they have no place to be."

¹ See p. 217.

At another point, Senator Ervin commented: "Our amendment would strike out the word 'religious' and remove religious institutions in all respects from the subjugation of the EEOC."

The idea of the subjugation of religious organizations of all types, including churches, to the Post Office is abhorrent.

H.R. 41 further fails survival of the Establishment Clause: "[T]o pass muster under the Establishment Clause the law in question, first must reflect a clearly secular legislative purpose . . . second, must have a primary effect that neither advances nor inhibits religion . . . and third, must avoid excessive government entanglement with religion . . . *Committee for Public Education v. Nyquist*, 413 U.S. 756, 773, 37 L.ed. 2d 948, 963 (1973). (Citations omitted)."

The most obvious conflict with the First Amendment is the extraordinary entanglement that would be occasioned by H.R. 41. Religious organizations are not lightly going to surrender "such audit reports, accounts or other information as the Postal Service may require . . ." or change their accounting methods and procedures to what "the Postal Service shall adopt." Further, insofar as H.R. 41 may impact financially upon religious programs to the point where they cannot continue, H.R. 41 impermissibly impacts upon the Free Exercise Clause.

INCONSISTENCY WITH COMMUNICATIONS ACT

H.R. 41 is inconsistent with the purposes of the Communications Act of 1934, as amended. 47 U.S.C. § 151 provides:

"For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, a rapid, efficient, Nationwide, and world-wide wire and communications service with adequate facilities at reasonable charges . . . and for the purpose of securing a more effective execution of this policy by a centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communications, there is created a commission to be known as the 'Federal Communications Commission', which shall be constituted as herein after provided, and which shall execute and enforce the provisions of this chapter."

Notwithstanding the purpose of centralizing all regulation of interstate and foreign commerce in communication in the Federal Communications Commission, H.R. 41 vests in the Postal Service jurisdiction over broadcasts by charitable organizations containing solicitations of funds over 60 seconds.

Moreover, H.R. 41 is unclear as to what constitutes the 60-second exemption for solicitations made through the use of radio and television. Under the present regulatory system, the Federal Communications Commission, not the Postal Service, would interpret through the issuance of regulations what constitute a 60-second or less solicitation. Similarly, under the present regulatory system broadcast licensees are responsible to the Federal Communications Commission to insure that false and deceptive program content (with the exception of political announcements) is not broadcast over their facilities.

Violations of this structure have led to losses of license. *Cosmopolitan Broadcasting Corp.*, 59 FCC 2d 558 (1976); *United Television Co., Inc.*, 55 FCC 2d 416 (1975); *Friendly Broadcasting Co.*, Docket No. 19412, FCC 77D-7 (Initial Decision, released February 25, 1977). No reason is apparent why the provisions of the Communications Act, the false representatives provisions of the Postal Reorganization Act, 39 U.S.C. § 305 (1970) and the Federal Trade Commission Act are not adequate to prevent any imaginable kind of abuse.

To eliminate the inconsistency with the purposes of the Communications Act there is required the deletion of the proposed subsection (b) (3) of H.R. 41 or its modification to read substantially as follows:

"(3) Any solicitation which is made through the use of radio or television communications shall not be subject to the provisions of subsection (a) of this section."

Such change of course, only expels the objectionable broadcast communications aspects. There remain the fundamental problems.

CONCLUSION

Because H.R. 41 is unconstitutional, unnecessary and unwise, National Religious Broadcasters, Inc. urges it not be passed.

STATEMENT OF GEORGE E. REED, GENERAL COUNSEL, UNITED STATES CATHOLIC
CONFERENCE

The United States Catholic Conference is the national level agency of the Catholic bishops of the United States. It conducts programs in such fields as education, social justice and communications. In addition, it seeks to coordinate and assist counterpart activities in the dioceses of the country.

H.R. 41, the subject of this statement, proposes to amend Title 39, United States Code (The Postal False Representations Statute and to add a new section imposing certain requirements on "Any charitable organization which solicits, in any manner or through any means, the remittance of a contribution by mail . . ." (Proposed Section 3013(a)).

Analysis of H.R. 41 discloses constitutional deficiencies of significant import in the areas of freedom of speech and religion, and equal protection of the laws.

In addition, the application of the provisions of H.R. 41 would impose unwarranted burdens on charitable organizations and entail such impractical requirements as to render the bill deserving of opposition.

It is our conclusion, therefore, that H.R. 41 should be rejected by the Subcommittee and we urge the members to vote against its adoption.

INTRODUCTION

All disclosure statutes are violative of first amendment free speech rights and can only be justified by compelling State interest

Consideration of the constitutional implications of H.R. 41 must begin with the understanding that under the United States Constitution, government has no apparent legislative authority to fashion disclosure laws. The Supreme Court has dealt with such laws on several occasions in the past and indeed has recently reaffirmed its position that extraordinary justification is needed to sustain such laws. In a Per Curiam decision in *Buckley v. Valeo*, 96 S. Ct. 612 (1976), the court stated that:

"We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *Alabama (Alabama v. NAACP)* we have required that the subordinating interests of the State must survive exacting scrutiny. We also have insisted that there be a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed. See *Pollard v. Roberts*, 283 F. Supp. 248, 257 (E.D. Ark.) (three-judge court) aff'd, 393 U.S. 14, 89 S. Ct. 47, 21 L. Ed. 2d 14 (1968). This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosures. *NAACP v. Alabama*, supra, 357 U.S., at 461, 78 S. Ct., at 1171. Cf. *Kusper v. Pontikes*, 414 U.S. 51, 57-58, 94 S. Ct. 303, 307-308, 38 L. Ed. 2d 260 (1973)."

Congress, then, is under an affirmative duty to demonstrate that H.R. 41 is required to meet some compelling and immediate danger to the state. The proponents of this legislation must identify and demonstrate the existence of a clear and immediate danger to the state in order to meet constitutional standards.

H.R. 41 is violative of free exercise rights under the first amendment

It has long been established that the solicitation of funds by churches and religious organizations is an activity protected under the Free Exercise clause of the First Amendment. In *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the Supreme Court recognized that solicitations by religious organizations seeking support for their activities were an integral part of the activity protected by the Free Exercise clause. See also *Murdock v. Pennsylvania*, 319 U.S. 105 (1943).

Free Exercise rights under the First Amendment are among those fundamental rights which have long been deemed to be preferred. *Ballard v. U.S.*, 329 U.S. 187 (1946). The Supreme Court has repeatedly held that limitation upon Free Exercise rights can only be justified when government action meets an exacting standard. This standard includes, inter alia, the requirement that the limitation must be designed to meet some state interest so important as to compel action; further, that such limitation be narrowly drafted so as to limit only those kinds of conduct which present immediate threat or danger to the state. *Shapiro v. Thomp-*

son, 394 U.S. 618 (1968); *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974).

H.R. 41 proposes a prior restraint upon solicitation by religious groups which would have not only a chilling effect upon the exercise of those rights but certainly limit the exercise in many cases.

The statute proposed is essentially a gloss upon antifraud statutes existing presently in the postal code. There has been no testimony that the absence of this gloss would present a serious threat to the wellbeing of the state. The substantial burden upon First Amendment Free Exercise rights occasioned by the government's compulsion upon religious organizations to maintain certain financial records and disclose these to the general public has not been justified by any demonstration of a compelling state interest.

Even when a state interest could be shown to be so compelling as to justify the kind of abridgment of Free Exercise rights that are patent in H.R. 41, there still remains the requirement that such a statute be drafted narrowly to avoid limitations upon protected as well as unprotected activity. *Cantwell, supra*; *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Shapiro v. Thompson, supra*. The legislative purpose announced with respect to H.R. 41 is the protection of the public against fraud. The statutory effect of the bill, however, reaches all charitable solicitors regardless of whether or not there is any probable cause to suspect that they are engaged in any fraudulent activity. Clearly the rights of many innocent solicitors will be impaired.

Furthermore, it should be noted that the statutorily imposed administrative costs are, in effect, monetary considerations for the right to engage in constitutionally protected activity. The operation of H.R. 41 is similar to the situation which obtained in *Boddie v. Connecticut*, 401 U.S. 371 (1971) where the government imposed a filing fee on individuals seeking a divorce. The court reasoned that since the need of the parties to deal with the government was existent because of the government monopoly on the civil dissolution of marriages that the filing fee was unconstitutional. In H.R. 41 solicitors must deal with the government because the government monopolizes the mail and the government is using its position as the controlling agency in the distribution of the mail to impose certain financial obligations upon the charitable solicitors.

The constitutional implications of this type of imposition were examined in *Speiser v. Randall*, 357 U.S. 513 (1958) and *Sherbert v. Verner*, 374 U.S. 398 (1963). In *Speiser*, Justice Brennan noted that governmental imposition of a financial burden on the exercise of a protected activity, whether free speech protection under *Speiser v. Randall*, or the right of free exercise of religion protected under *Sherbert v. Verner* were violated by such imposition.

H.R. 41 also impinges upon Free Exercise rights when it requires the Postal Service to identify who are members of what religion. Subsection 39 U.S.C. 3012 (g) provides that the Postal Service exempt those solicitations which are made exclusively to members of a bona fide membership organization. This section would require that postal authorities determine who are members of a particular organization. Governmental adjudication of membership of the church is certainly at odds with the necessity for neutrality recently reaffirmed by the court in *Serbian Orthodox v. Milivojevic et al.*, — U.S. —, 96 S. Ct. 372.

We have not attempted to exhaust all of the Free Exercise implications of H.R. 41. The foregoing should be sufficient to identify the fact that H.R. 41 violates Free Exercise rights because it is a limitation on the solicitation of funds by religious organizations. Further, we have noted that since Free Exercise rights are highly privileged government may only infringe them when there is some immediate threat to the state which compels the state to take action. There has been no showing that there is such grave threat to the state as would justify limitations upon the Free Exercise rights of religious institutions which solicit funds from the general public.

Government has an affirmative duty to justify the infringement of these important First Amendment rights. In the instant case the government has not even attempted to identify the interest which compels it to act. Ironically, the government agency which is to be charged with enforcing the bill has testified that there may be less of a need to protect the public from charitable solicitations than from commercial users. The burden placed upon the government by the exacting standards required to permit violation of Free Exercise rights has not been met here and in fact we have serious doubt that it could ever be met since the state already has machinery in existing antifraud laws to protect it from any grave danger as a result of fraudulent solicitation.

First amendment free speech rights as affected by H.R. 41

Mail solicitation is protected by the Constitution under the Free Speech provisions of the First Amendment for two separate and distinct reasons. First, it is protected because it is advertising which is a communication from one person to another. Secondly, it is protected as the use of the mails because all users of the mails are protected.

The Supreme Court has recognized a constitutionally protected First Amendment rights to use the mails. *Lamont v. Postmaster General*, 381 U.S. 301 (1965). The rationale behind these decisions is that free speech guarantees cannot be protected unless government authority over the mails is limited to permit the free flow of communication.

Historically, there was a question as to whether or not commercial use of the mails was protected under free speech guarantees. In *a. State Board of Pharmacies v. Va. Citizens Consumer Council*, 96 S. Ct. 1817 (1976), Justice Blackmun writing for the court found that commercial speech, like other speech, is to be protected by First Amendment guarantees.

In dealing with fundamental rights such as free speech government is limited in its ability to legislate. There is a long list of cases, including, inter alia, *Speiser v. Randall*, supra, *Shapiro v. Thompson*, supra, and *Memorial Hospital v. Maricopa County*, supra, which stand for the proposition that it is constitutionally impermissible for government to burden a fundamental constitutional right in the absence of a compelling state interest.

The activity of soliciting funds for a charity is protected by Free Speech and is therefore a preferred constitutional right. The conditioning of the exercise of the freedom to use the mails or the freedom to advertise by statutorily imposed obligations to disclose financial data is without question a burden upon the exercise of those fundamental rights.

"It has been said that Congress may not by withdrawal of mailing privileges place limitations upon the freedom of speech which if directly attempted would be unconstitutional. See *Hannegan v. Esquire, Inc.*, 327 U.S. 145, 156, 66 S. Ct. 546, 461, 90 L. Ed. 586; cf. *United States ex rel. Milwaukee Social Democratic Publishing Co. v. Burleson*, 255 U.S. 407, 430-431, 41 S. Ct. 352-360-361, 65 L. Ed. 704 (Brandeis, J., dissenting)." *Speiser v. Randall*, supra, 518.

The standard of review to which such limitations are subject is far greater than the rational relationship test. We submit that such statutory limitations on the exercise of free speech rights could not even withstand review under the lesser standard commonly referred to as the reasonable relationship text. The Post Office testimony dealing with H.R. 41 indicates on page 4 thereof that the statistics dealing with fraud investigations "may perhaps also suggest that most charitable solicitations by mail are honest." The basic framework of First Amendment guarantees recognizes that there are dangers inherent in Free Speech guarantees. The cases dealing with materials alleged to be obscene are replete with discussion by the court of the need for government to temper its concern for the moral climate with the realization that the deterrents of obscenity must also not chill legitimate expression. *Ginzburg vs. U.S.*, 383 U.S. 463 (1966).

The basic concept underlying the Bill of Rights is a recognition that certain activities are so socially important and so significant to the organic structure of the country that the state lacks pertinent authority to regulate them. These activities are removed, as it were, from the mainstream of life. *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943). The court has recognized that the right to use the mails and the right to propose transactions are such protected activities.

H.R. 41 operates in precisely the manner in which *Speiser v. Randall*, supra, and *Shapiro v. Thompson*, supra, have held to be constitutionally impermissible. H.R. 41 penalizes all persons engaged in the charitable solicitations for the exercise of their First Amendment rights. The onerous mechanics of complying with the bill really have far more than a mere "chilling effect" and the exercise of these First Amendment rights.

In point of fact, many charities whose operations could not withstand the administrative cost of complying with the law may be forced, as a practical matter, to abandon any charitable solicitations.

H.R. 41 is impermissibly overboard

The proposed bill is constitutionally deficient in that its application affects legitimate exercise of protected free speech, as well as speech that is unpro-

tected. It is well established that statutes affecting free speech rights must be narrowly drawn to avoid impermissible interference with the legitimate exercise of such rights. *Thomas v. Collins*, 323 U.S. 516 (1945). H.R. 41 imposes restrictions on First Amendment rights on all those engaged in charitable solicitation and its does so indiscriminately and regardless of whether or not the solicitor is engaged in fraudulent practices.

It is well established that the government's zeal in protecting the public must be channeled to avoid undue interference to legitimate First Amendment rights. See *NAACP v. Button*, 371 U.S. 415 (1963). The tension between enforcement of the law and the necessity to maintain respect for these preferred rights has been referred to on many occasions. *West Virginia State Bd. of Ed. v. Barnette*, supra. It should be clear that the restrictions placed upon mail use by H.R. 41 is a classic example of the shotgun approach to government regulation which has been held impermissible on many occasions by the Supreme Court. *Talley v. California*, 362 U.S. 60 (1960); *Hynes v. Mayor of Oradell*, U.S. , 96 S. Ct. 1755 (1976).

H.R. 41 is violative of the equal protection clause

H.R. 41 seriously compromises the equal protection guarantees contained in the Fifth Amendment of the United States Constitution. The proposed bill carves out a class of mail users and conditions the use of the mail by this class upon the performance of certain statutorily imposed obligations. As we have noted above, the limitation of fundamental constitutional rights such as those found here can only take place where there is a compelling state interest in the limitation of those rights. Where the state can demonstrate an interest sufficient to warrant the infringement of the preferred right, it must nevertheless legislate with narrow specificity. *Hannegan v. Esquire*, 327 U.S. 146 (1946). Congress seeks to place a separate burden on charitable solicitors more than it does on any other mail user. No compelling state interest is evidenced for such a drastic measure. In point of fact, there cannot even be a rational basis for such a classification since it is obvious that charitable solicitors are not the only mail users who might be engaged in fraud.

The classification seems irrational in the face of the testimony of the postal officials on March 29, 1977, which indicated that charitable solicitors had a far better record than strictly commercial users of the mails. It is, to say the least, unclear as to why charitable solicitors would be singled out to bear the onerous task of complying with these administrative requirements when their record seems to be better than those users not subject to the conditions.

In addition to constitutional consideration the requirements of H.R. 41 have serious practical limitations. The bill (1) would increase the cost of soliciting contributions; (2) is unsupported by any public demand for the requirements it proposes; (3) provides for an 'up-front' disclosure requirement which is impractical; and (4) proposes to subject charitable organizations to accounting methods and procedures that have not yet been adopted, and which would be established by an agency lacking competence.

H.R. 41 would increase the cost of soliciting contributions

It is difficult to avoid the conclusion that H.R. 41, if enacted, would increase the cost of soliciting, and thereby divert the charity dollar. Modification of accounting and administrative procedures would, as some witnesses have testified, increase costs. It is impossible to predict the extent of the increased costs a charity may incur. Theoretically, these costs and administrative burdens could be prohibitive, especially for smaller charities. Proposed Section 3012(d) states: "Any charitable organization which makes a solicitation which requests the mailing of contributions . . . shall, no later than 30 days after the receipt of a request from any person receiving such solicitation, furnish to such person a pertinent financial statement prepared in accordance with generally accepted accounting principles, for the most recent complete fiscal year of the organization . . ." This subsection must be read in connection with Sec. 3012(a) which states, in part, "Any charitable organization which solicits, in any manner or through any means, the receipt of a contribution by mail . . ." and in light of the Committee's explanation of that language in its report on H.R. 10922: "If a solicitation asks for contribution (sic) and includes an address, it is seeking remittance by mail and would be covered by the legislation." Therefore, a charitable organization utilizing such media as newspapers, magazines, television, radio, and public transportation advertising displays, would be compelled by

law to send a financial statement to as many persons as might request one (even though none may be a donor). The increased cost which would result from this requirement is obvious, to say nothing of the potential for harassment of unpopular causes.

There has been no demonstration of a public demand for this type of legislation

Although it has been asserted that there is a need for the type of Federal legislation proposed in H.R. 41. The assertion, no matter how often repeated, does not prove the need. Actually, a contrary conclusion could be reached on the basis of the testimony presented to the Subcommittee.

Rather than referring to public demand for national legislation, a number of witnesses have suggested relief from state and local regulatory requirements by means of federal preemptive legislation. We refer to their testimony, not to recommend preemption, but to observe that public demand certainly does not seem to be a factor. The most effective testimony is that of the giving public. If, in fact, the public were demanding what H.R. 41 seeks to provide, charities would respond, simply as a matter of survival.

The up-front percentage disclosure requirement is impractical

A number of witnesses have expressed criticism of proposed Section 3012(a) (4). This would require that the solicitation include, *inter alia*, "The percentage of all contributions for the charitable purpose of the organization which remained for direct application to such charitable purpose after deducting all fundraising and management and general costs during the most recent complete fiscal year of the organization. . ."

This requirement is not at all practical: it does not take into account differing methods of raising funds; it says nothing about the value of the charity; it does not recognize variations in the constituencies solicited; it will result in distorted reporting by its failure to provide for "averaging"; it penalizes new organizations and those which solicit contributions for unpopular or specialized causes; it will not eliminate "devious operators", "charity ripoffs", or "fraudulent schemes."

1. The percentage disclosure requirement does not take into account differing methods of raising funds. By providing only one "up-front" criterion, all charities are lumped together. Differing solicitation methods incur differing costs. Methods that are not comparable as to costs, e.g. direct mail vs. newspaper advertisements, television spots vs. volunteers utilizing telephones, etc., cannot reasonably be the basis for informing donors—the methods and the costs are simply not comparable.

2. The requirement says nothing about the value of the charity. The percentage disclosure does not, per se, tell the donor anything about the *accomplishments* of the charity, which is the primary criterion. Some charities with high costs of raising funds might be particularly efficient, productive, and of significant value to society. Section 3012(a) (4) would require publication of partial, and therefore, misleading information.

3. The requirement does not recognize variations in the constituencies solicited. Fund raising costs can vary with the nature of the constituency. A charity located in and serving an inner city constituency will obviously incur higher costs than one in a more affluent area. The disclosure requirement, not recognizing this difference, would place the higher-cost charity in an unfavorable light.

4. Distorted reporting will result from a failure to provide for "averaging." By providing for single fiscal year reporting, H.R. 41 fails to take cognizance of certain types of fund raising that do not lend themselves to a meaningful disclosure of a percentage figure for this period. Bequests, for example, may be realized only after a long period of cultivation. Long range capital campaigns may yield a relatively small amount in the initial period. The percentage disclosure, as required by H.R. 41, would present an inaccurate and meaningless picture to the donor; costs that appear to be high, would discourage donors.

5. New organizations and those which solicit for unpopular or specialized causes would be penalized by H.R. 41's disclosure requirement. The bill makes no provision for new charities or for those existing ones which initially undertake fundraising efforts. The start-up costs may be relatively high and do not lend themselves to equitable or meaningful reporting in the manner suggested by H.R. 41. Likewise, some charities do not enjoy the widespread support enjoyed by some of our large, well-known charities. The causes they support may be unpopular or so specialized as to demand extraordinary efforts—and relatively

high costs—to gain support. Yet they would be rated by the same criterion as the larger, more popular charity.

6. Unscrupulous operators will not be eliminated by the disclosure requirements of H.R. 41. The Committee report on H.R. 10922 states that “without the kind of disclosure provided by H.R. 10922 . . . devious operators have found considerable profit to be had in the philanthropic market.” It added that the bill would “protect the public from fraudulent schemes.” It should be noted that the Postal Service already has authority to issue a mail stop order against any person who “is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations.” In addition, the Postal Service investigates and the Department of Justice prosecutes violators of the mail fraud statute, which involves the use of the mails “in any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent promises.”

In addition to the fact that the Postal Service already has authority to investigate false representations and mail frauds, it should be observed that H.R. 41 would be ineffective as to those who, in the words of the Postal Service “are adept at resuming their schemes under new names and addresses.” Such operators do not normally have a previous fiscal year history to report to potential donors.

Accounting methods and procedures to which organizations would be subjected under H.R. 41, have not yet been adopted, and moreover, would be established by an agency lacking competence.

Proposed Section 3012(e) states: “The Postal Service shall adopt rules and regulations which establish the accounting methods and procedures to be used by charitable organizations to assure compliance with the provisions of this Section. Such accounting methods and procedures shall conform to any generally accepted accounting principles applicable to the field of operation of the charitable organizations involved.”

With respect to the latter part of proposed Section 3012(e), it is our understanding that the subcommittee staff intends a reference (and this is generally so understood) to the Accounting Principles and Reporting Practices for Non-profit Organizations promulgated by the American Institute of Certified Public Accountants (AICPA). This is a tentative set of principles published on February 1, 1977 by the AICPA's Accounting Standards Subcommittee on Nonprofit Organizations, for public comment. Final, official promulgation of the document by the AICPA or the Financial Accounting Standards Board (FASB) will take place some time in 1978, according to present estimates. The point here is that we are being asked, in effect, to agree to be subjected to accounting methods (apparently) incorporated in H.R. 41 by reference, when such methods have just been promulgated for comment; moreover, The Postal Service is given authority, by H.R. 41, to adopt rules and regulations to conform to the above principles. We are therefore faced with the possibility of being subject to regulations based on a tentative set of standards. Neither have we had an opportunity for sufficient study of the AICPA document, nor do we necessarily concede its applicability to churches and religious organizations.

In addition, we question, as have other witnesses, the ability of the Postal Service to discharge the task proposed for it in Section 3012(e). It would seem to us that the statement of the Postal Service substantiates our reservations: “. . . the provision casts the Postal Service in a role in which it has, at present, no particular expertise and is ill-equipped to assume . . .”

It is our conclusion, therefore, that H.R. 41 is subject to serious constitutional and practical objections, and we urge its defeat.

STATEMENT OF ALAN B. MORRISON, DIRECTOR OF LITIGATION AND COUNSEL TO
PUBLIC CITIZEN

During the course of the hearings on H.R. 41, in March 1977, Chairman Wilson stated on a number of occasions that H.R. 41 is intended to be a “consumer” protection bill for donors. Public Citizen, which was founded by Ralph Nader in June 1971, is a non-profit public interest organization with special expertise in the area of consumer protection. Public Citizen obtains virtually all of the approximately \$1.1 million that it has raised annually for the past five years

from direct mail solicitations, with the average gift in the amount of \$15.00. Public Citizen supports the premises underlying H.R. 41. However, after careful consideration and analysis of the submitted statements and public testimony, we have reached the conclusion that the means employed by H.R. 41 are ineffective and that the disclosure of the percentages in subsection 3012(a) (4) may indeed be counterproductive.

The heart of H.R. 41 is the provision requiring the disclosure of fundraising and administrative costs. This provision is based on the assumption that such information will be useful to individuals in choosing which charities to support.

The testimony before this Committee indicated that the bill would apply to vastly different types of organizations, some of which are fully operating, some of which are primarily grant-making, some of which are central bodies for the distribution of funding, and others are schools, hospitals, and churches. These very different kinds of organizations have very different ways of satisfying their funding needs. For example, while organizations such as Public Citizen depend almost entirely on direct mail solicitations, hospitals and universities derive the greater part of their revenues from patients and students, respectively. Similarly, the United Way, which because of its access through the employment situation has exceedingly low fundraising costs, is in an entirely different position than are many other organizations covered by this bill. It is also common knowledge that established charities have lower fundraising costs in general than do newly created ones, since it is particularly expensive to enlist new contributors and less expensive to rely on renewals. Thus, it is apparent that H.R. 41 covers a wide range of very different kinds of organizations with very different fundraising problems and costs.

Equally important to note is that H.R. 41 applies to organizations having very different methods of accounting, even within the categories of organizations described above. For example, all organizations which send out newsletters or reports to their members do not treat the expenses associated with those reports in the same manner, and yet such differences can drastically affect the percentage figures which H.R. 41 would require. Similarly, all hospitals and universities would have to classify the time spent by various officials in "administration" on the same basis, even though that may be very difficult to do because of major differences in their operations. Moreover, testimony before this Committee also established that many organizations would want to include detailed explanations of why their costs appeared to be high, at least for the prior year. The result of all of these explanations, we believe, will be more confusion.

Once it is recognized that there are these very significant differences among organizations, it is necessary that all reporting be on a comparable basis in order to insure fairness, and that consumers have the best information available in making their selections of charities.

But once it is recognized that uniformity is the key to fair disclosure, it must also be recognized that uniformity is a very costly and time-consuming process which would require the creation of a large federal bureaucracy to issue detailed rules and regulations to insure comparability. And because of the need for uniformity and the penalties for false statements, the authority to set standards would have to be given to some governmental body. It is this fact, coupled with the doubtful utility of the percentage figures required by H.R. 41, which should lead this Committee to reject the disclosure of costs by percentages. Without such detailed scrutiny of each organization's accounting practices, fairness cannot be insured; but with it, the burden is simply too crushing.

Also to be included are the costs of policing these requirements. Since there are at least 700,000 tax exempt organizations in this country, and since there is no "systematic" way to perform routine checks of solicitations, it would be impossible for the Postal Service to do more than a random check to insure even facial compliance. Anything else would require trained accountants, familiar with complex rules for charitable organizations, and the Postal Service does not have this capability nor does it want the responsibility. But if the Act is to be more than a request, the government must be prepared to spend the money to see that the standards are being followed and that the honest charities are not unfairly disadvantaged by the unscrupulous. On the other side of the policing question is the plain fact that most inquiries will be made because of a complaint, often from a rival charity claiming improper reporting that is cutting into its share of the market. The potential for mischief leading to a full

audit of a competitor is obvious, yet unavoidable, given the theory behind the bill and the need for some kind of enforcement.

Even the burden of detailed regulation might be justifiable if the information provided were truly useful. We doubt, however, that most citizens make their charitable determinations in the same way that they decide which stereo to buy or which stock to purchase. Because a gift is different from a purchase, many other factors beside a group's fundraising "efficiency" influence an individual's choice of charities, and therefore the fundraising costs incurred by the charity are rarely, if ever, determinative in making that choice.

We also note that the bill would, in effect, provide a full year and a half grace period before any organization would have to make any disclosures. This results from the fact that the reporting requirements are for the previous fiscal year and a new organization would have no prior year to report. In addition, the bill also, necessarily we believe, allows six months after the conclusion of the fiscal year to compile the percentage figures and include them in whatever printed material needs to be sent out. The result is that a potentially dishonest charity could operate within the law for a year and a half and utilize all proceeds for non-charitable purposes, and no would-be donor would be aware of that fact. Similarly, an established charity with low fundraising and administrative costs could change its pattern drastically for a year and a half without the public ever being aware of the changes through updated reports. In short, the practical necessities of reporting percentage figures are such that anyone who truly sought to funnel off money for non-program purposes could do so without having to report them for considerable periods of time and without violating any provision of H.R. 41.

It is our position that insofar as the basic problem is that tax-exempt organizations are obtaining money and not fulfilling their charitable purposes, the Internal Revenue Service should proceed directly against those organizations and divest them of their favored tax status. To the extent that the problem revolves around organizations which do not have a tax-exempt status, disclosure of that fact alone may well prevent the most serious of abuses by making it much harder for such groups to raise money. It is for these reasons that we propose that the disclosure provided in H.R. 41, in addition to the purposes of the organization and of the solicitation, be limited to a disclosure of the tax exempt status, if any, of the organization, plus a statement that a copy of the financial report is available from the organization upon request. Any organization which did not have a tax-exemption pursuant to section 501 of the Internal Revenue Code would be required to so state on its solicitation, and any organization which had applied for one but had not yet received it, could also state that fact.

Such disclosure would be burdensome to no one and would give the single most important fact about an organization. It could readily be included and would serve the fundamental purposes of H.R. 41 with far less burden to all concerned. In connection with the requirement that a financial statement be sent to any person that requested it, we believe that it would be appropriate to permit the organization, at its option, to charge up to \$1.00 for such a request from any non-contributor in order to prevent other persons from imposing large costs upon an organization which they oppose by sending in numerous requests for financial reports.

Public Citizen also believes that the coverage of H.R. 41 should be limited to written solicitations sent through the mail. We have no evidence that door-to-door campaigns or telephone solicitations ought to be of concern to the federal government. As for fundraising through such events such as the telethons of Billy Graham and Jerry Lewis, problems of disclosure are extremely complex and have not been adequately addressed by the testimony before this Committee. Thus, for example, how often would any message have to be included, what would it have to say, could it be printed on the screen or would it have to be given orally? These and many other problems suggest that the problems presented by disclosures in non-written solicitations are sufficiently different so that this Committee ought to study them separately, and, if necessary, include them in future legislation.

We also believe that there should be an exemption for small solicitations such as those involving less than 5,000 requests annually. Experience has shown that a rate of return of between 1 and 2% is quite good, so that no more than 50 to 100 people could be expected to respond to a solicitation of 5,000 individuals. If the average donation were \$20, the amount raised is unlikely to exceed

\$20,000 which is hardly the kind of problem that the federal government wants to be involved with. It is also our view that the limitation on coverage to written communications, the exclusion for small solicitations, and the minimal disclosure required would obviate the need for the exemptions sought by churches, small schools, or hospitals.

The testimony of many witnesses before this Committee indicated the very great need for preemption. It has long been recognized that the United States mails are the province of the United States Government and that no state, locality or private party can interfere with them. H.R. 41 recognizes that it is also the policy of the federal government to encourage responsible charitable giving. That principle has long been recognized in the Internal Revenue Code and in the special exemptions given to charitable organizations in the bulk and third class mailing area. This recognition of a special status is properly tempered, we believe, by the requirement in H.R. 41 that there be concomitant disclosure of relevant information to the public. We believe that, with our proposed amendments, H.R. 41 would nicely balance the needs of the public and of charitable organizations, but that many state statutes and local regulations do not.

It is important to distinguish two aspects of preemption that have not been properly differentiated so far. To our knowledge no witness has suggested that the authority of any state or locality to investigate fraud ever be preempted by this legislation. These matters are of vital concern to the state and local governments, and Congress should, insofar as possible, leave those matters to other authorities. What is at issue in the preemption question is whether the states can interfere with the right of organizations to utilize the United States mails without interference. It is the attempt by the states to control what is sent through the mails that we believe should be preempted. In this regard, we note that the exclusion from H.R. 41 of all solicitations other than those sent through the mail would, of course, limit the preemption provisions accordingly, and thus, for example, door-to-door solicitations would remain subject to local regulation.

There are three kinds of state and local regulations which require preemption. The first and most obtrusive is the one which purports to prohibit solicitation if the organization spends more than a fixed percentage of its contributions on fundraising and administrative expenses. We believe that such purported limitations on the rights of charities to use the federal mails are unconstitutional on their face, but in order to avoid litigation on this question, Congress should specifically prohibit such restrictions on the use of the mails.

The second and only slightly less obtrusive interference is the type which requires disclosure in addition to that which will be required in H.R. 41. The disclosure problem is very serious one because each locality has its own set of requirements, and a national charity that sought to comply with each of them would either be in the position of making separate mailings for separate states and/or localities, or including multiple disclosures, often in different formats and based on different standards, in the mailing. Both of those choices are financially unacceptable and are positively wasteful of charitable contributions.

Third, there are often coupled with the disclosure requirements registration provisions that deny a charity the right to solicit unless it has filed various forms with the state or locality. They are also unnecessary and any legitimate interest that the states may have in obtaining such information can be satisfied by requesting the financial report from the charity itself as any other member of the public can do. In addition, the relevant tax returns are available from the Internal Revenue Service if those documents should be required by any non-federal jurisdiction.

In short, H.R. 41 should specifically preempt any state or local statute or regulation that purports to limit the right of a charity to utilize the United States mails to solicit based upon a disclosure, filing, or spending requirement. The states should be specifically permitted to continue to investigate and prosecute for fraud and other improper conduct, but the right to use the mails is an inviolate federal right on which no state or locality can tread. Moreover, should any state wish to regulate fundraising or administrative costs of organizations incorporated in that state as a condition of its charter, that would be a different matter for at least in that case there would be only a single state's regulation and the organization could seek its charter elsewhere.

Should the Committee nonetheless proceed to include a requirement of percentage disclosures, the exceptions for solicitations to members of a voluntary membership organization and to alumni, students, and faculty of educational institutions should be eliminated. Quite apart from the severe difficulty of de-

fining a voluntary membership organization so that it does not create an enormous loophole, we see no reason to deny either group of recipients information that Congress decides is relevant when others are solicited. The fact that such persons are able to obtain the information by asking proves too much since Congress could require that copies of financials be sent on request to any person who is solicited. More importantly, from the point of view of fairness to other groups who do have to make the disclosures at some expense, membership and educational organizations should not be given a cost advantage, nor should they be able to create the impression (directly or indirectly) that the absence of the percentage figures represents a judgment by Congress that "consumers" who are affiliated with those organizations don't need this protection because the organizations are such thrifty fundraisers and administrators. If anyone using the mails has to make these disclosures, everyone making comparable-sized solicitations should make them.

STATEMENT OF ROBERT W. BARKER, SPECIAL LEGAL COUNSEL, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

I make this statement on behalf of the almost four million members of the Church of Jesus Christ of Latter-day Saints, commonly called the Mormon Church. The Mormon Church is organized as one unified world-wide church, as distinguished from an affiliation of local independent congregations. This statement has been authorized by the First Presidency of the Church, its senior governing body.

We strongly oppose the enactment of H.R. 41 because of its Constitutional infirmities. It would transgress the separation of church and state mandated by the First Amendment to the United States Constitution. We believe that the Establishment and the Free Exercise Clauses prohibit any attempt by the government to regulate the charitable activities of churches and compel disclosure of church financial information. In addition to these basic constitutional objections, the Church sees significant interpretations and administrative problems in the bill as presently written.

Constitutional separation of church and state

There is no question that the First Amendment to the Constitution in the Establishment Clause and the Free Exercise Clause contemplates the separation of church and state and the avoidance of entanglement of the government in religion. This has not only been an historical pattern in the early development and history of the nation, but in the pronouncements of the Supreme Court of the United States. In *Waltz v. Tax Comm. of City of New York*, 397 U.S. 664 (1970), the Court stated: "We must . . . be sure that the end result—the effect—is not an excessive government entanglement of religion The questions are whether the involvement is excessive and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement. 397 U.S. at 674-75."

Likewise, in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the Court condemned that state statute which required "continuing state surveillance" which would "involve excessive and enduring entanglement between state and church." 403 U.S. at 619. See also *Tilton v. Richardson*, 403 U.S. 672 (1971) and *Hunt v. McNair*, 413 U.S. 734 (1973).

H.R. 41 would regulate in a detailed sense persons and associations organized for religious, as well as charitable medical and educational purposes. In addition, the definition of a contribution for purposes of the bill, the touchstone of jurisdiction to regulate, is the promise, grant, gift or pledge of money or property of any kind for any religious as well as charitable, humane, medical or other eleemosynary purpose. Therefore, churches based on the performance of their religious function would be subject to all the requirements of the Act, including disclosure of internal financial information, standardized accounting procedures, and potential audit by the Postal Service. It is clear that this kind of government regulation of religion would require the "continuing surveillance" and "excessive and enduring entanglement between state and church" which was prohibited by the cases cited above as a violation of the First Amendment.

Other federal statutes carefully avoid infringing on constitutionally protected freedom of religion by exempting churches from reporting requirements applicable to other organizations. For example, under § 6033 of the Internal Revenue

Code of 1954, churches and their integrated auxiliaries are granted a mandatory exemption from filing of internal revenue information returns. The purpose of this exemption is to prevent government entanglement in the affairs of churches which violates the principle of separation of church and state.

Thus, it is clear that the Constitution, as well as federal statutes in deference to the constitution, prevent the government from setting up regulators which would infringe on the freedom of religion intentionally granted to churches by the founders of this great country. This is true no matter how salutary the purpose behind the regulation is.

We recognize that there have been abuses of charitable solicitations by a few religious organizations in the past. We do not condone impropriety, nor do we oppose making fraudulent and deceptive acts a violation of law. However, the vast majority of religious organizations are not involved in schemes which defraud the public of their contributions, but rather use all solicited money for church-related charitable purposes. The important constitutional freedoms of free exercise of religion and non-establishment of religion should not be jeopardized by a sweeping regulation designed to prevent unsavory behavior by just a few. There are valid means to reach law violators without government intrusion into religion.

Exempting religious contributions from the bill

It may be suggested that the First Amendment problems discussed above could be solved by merely exempting from the bill solicitations by religious organizations when the contributions are to be used solely for religious purposes. We do not believe that this would solve the First Amendment problems and would not support such an amendment to the bill. The reason for this is that such an exemption would require the Postal Service to make a determination of whether a particular purpose was religious or merely charitable. If the Postal Service determined that the purpose could be characterized as charitable, the provisions of the bill would apply. It would be intolerable to all churches and violative of the First Amendment to have a government agency such as the Postal Service determine what activities of a church were a part of its religious functions and what activities were not.

The Courts have consistently deferred to the church authorities in making religious determinations. For example, in *The Presbyterian Church in the United States v. Mary Elizabeth Bluehall Memorial Presbyterian Church*, 393 U.S. 440, 441 (1969), the Supreme Court refused to allow the government to determine "interpretation of particular church doctrines and the importance of these doctrines to the religion."

We believe that it is not proper to restrict the concept of a church to so-called "sacerdotal" functions i.e., formal worship or ordinances in the Church building. To many churches this restricted concept is not consistent with their religious belief and functions. For example, in our own Church, based upon the "Old Testament" and the "New Testament," the "Book of Mormon" and other sacred scriptures, religious activities, concepts and duties of church members extend beyond mere formal worship service to include welfare functions to help the needy, compassionate services, genealogical research and other functions which are essentially religious in nature. Therefore, it can be seen that many activities which would be considered charitable if carried on by non-religious organizations are an inherent part of the religious beliefs, doctrine and activities of churches. Any attempt by a governmental agency, such as the Postal Service, to define what activities of churches would be religious for purposes of exemption from this bill would violate the constitutionally protected right of churches to determine for themselves what their religious beliefs and activities will be.

The membership organization exemption

The bill exempts a solicitation among any bona fide membership organization with respect to any solicitation for contributions by mail made by such organization exclusively to its members. The Committee Report accompanying H.R. 10922 in the last Congress suggested that this exemption, in the religious context, might be limited to parishioners of a local church. We believe that such a narrowing interpretation of this exemption does not conform to the realities of membership in many churches. Although there are some national religious organizations which are a loose-knit association or federation of the essentially independent smaller and local church groups or congregations, there are also many churches organized as a single church on a national or international level. For example, our own Church has a unitary organization which makes Mormons throughout the

world members of one Church body. Each congregation is a sub-unit of the Church itself, rather than an independent Church with an affiliation to a greater organization. As members move their residence from place to place they still belong to the same Church, the Church merely sending their membership records to the local ward or Church unit in which they reside. This does not constitute joining a new or different church.

Specifically, the Church is organized as follows: The Church is presided over by the President and Prophet, who is assisted by two counselors, who collectively make up the First Presidency of the Church, the presiding authority over all Church members throughout the world. The First Presidency is assisted by the Council of the Twelve Apostles who also have authority world-wide over all church members. These two councils of church governmental authority are in turn assisted by other General Authorities having general supervisory authority recognized Church-wide, as well as regional and local authorities who act under direction of the General Authorities.

For purposes of meeting together and carrying out church activities on a local level, the Church is subdivided into stakes and wards. A stake is similar to a diocese and frequently consists of six or more wards. Each ward is a local congregation of approximately 500 members. Members are expected to attend Church and participate in the ward in which they reside. They do not elect to join a particular congregation by their choice. The unitary nature of the Church as a whole is indicated by the fact that each church member has a membership record which, when the member moves to a new location, is automatically transferred through the church headquarters to the ward in the new location. In addition, each member of the church pays regular tithing contributions which are accounted for and controlled by the central church headquarters and not the local church. The general church participates on a regular and continuing basis both financially and theologically in the activities of the local stakes and wards. It surely could not be the intent of the bill to require the burdens of disclosure by the Church of all its financial information and expenses because these freely given contributions are sent beyond the local level to the Church headquarters to be used for Church religious needs, purposes and functions. For example, in the recent Teton Dam disaster in Idaho, as a principle of religious function, the Church sent thousands of dollars worth of products and money to assist the needy in the devastated area in Idaho. We submit that the gathering of welfare funds of the Church and their application to help the unfortunate is religious in action, as enjoined by the Holy Scriptures, and that such religious functions cannot constitutionally be subjected to regulation and reporting. Nor do we think that the authors of the bill so intended.

Even on the level of a local congregation, the membership exemption provisions of the bill are inadequate and unfair. Many churches have friends in their communities who are not members of the Church but freely contribute to the worthwhile purposes of the Church when asked. Often these friends are husbands or wives of members of the Church, or others without religious affiliation who see the merit of the activities carried on by the Church. Requiring the burdensome reporting and disclosure requirements of the bill to apply to local congregations in this kind of situation, would not be advisable or necessary.

The Church is not advocating that broadening or amendment of the membership exemption is the proper solution to the problems. The First Amendment issues discussed above would remain despite any attempt to improve the membership exemption. Our comments on this exemption as presently written are offered merely to illustrate the far-reaching impact of the proposed legislation and its practical as well as Constitutional infirmities.

School, college, and university exemption

Due to its ownership of several colleges and universities, the Church is also concerned about the impact of H.R. 41 on the fund-raising activities of these schools as institutions apart from the Church. Although the bill includes an exemption for solicitations made to groups closely associated with the school, there are important, and often solicited, sources of funds for educational institutions outside these groups. Many of these groups are long-time benefactors of the educational institution and are in no need of protection from unscrupulous requests for contributions. The Church believes that schools, colleges and universities are rarely, if ever, the source of the fraudulent solicitation schemes which the drafters of the bill seek to reach.

In addition, the administrative cost to a school of complying with the disclosure and auditing requirements of H.R. 41 would seriously decrease the amount of

money available for direct educational benefits. Forcing schools to divert resources to fund regulatory compliance mechanism at a time when colleges and universities generally are in severe financial difficulties is surely not a worthy goal for Congress to pursue.

The financial, as well as educational activities, of schools, colleges and universities is carefully monitored by many diverse interests, such as trustees, alumni, faculty, etc. These groups insure that the maximum funds are spent for educational purposes. There is no need for more burdensome and costly federal regulation in this area. In addition, existing law imposes certain informational reporting to the Internal Revenue Service. A new agency should not be involved. Therefore, the Church also opposes these aspects of H.R. 41 which would provide for federal regulation of the solicitation of contributions by schools, colleges and universities. The hardships and expenses which would be created would counter balance any possible public benefit.

Accounting standards and church financial organization

The bill provides that the Postal Service will develop accounting standards to be made applicable to all charitable organizations for purposes of enforcing the provisions of this bill. Through using these accounting standards, the Postal Service could meaningfully audit the activities of charitable organizations. Our experience has indicated that the accounting procedures used in churches are extremely varied and not comparable to normal accounting procedures used in business. This is simply because the Church sets up its financial affairs for the purpose of carrying out its religious activities. It does not organize itself like a business and it does not organize itself like most charities.

Churches are geared to operate as religious organizations. They should have the right to be primarily religious organizations and not commercial businesses. It is our sincere belief that any attempt to impose externally prepared accounting standards on the churches would seriously inhibit the exercise of their religious purposes and would therefore violate the free exercise of religion clause of the First Amendment. Not only would churches be unable to conform their internal financial affairs to uniform accounting standards, but also as discussed in the First Amendment Section above, attempts by the Postal Service to audit church financial affairs would result in excessive entanglement which is prohibited by the Constitution.

The bill would defeat its own purpose by adding to administrative costs

Even were this bill valid, we question whether it would accomplish its purpose of insuring that the maximum application of solicited funds is made for charitable purposes. All worthy charities try to reduce administration costs to permit donated funds, which as a Church we consider sacred funds, to be applied to their intended purposes. For this reason we make every effort to use volunteer and uncompensated services where possible. Nevertheless, it is a fact of life that one of the greatest costs experienced today in society is complying with ever expanding regulatory requirements and reports. This bill would only require more diversion of funds from their intended purpose to comply with another body of regulations, reports and accountings which will in no way help the Church better serve its members or the public. It would require us to divest funds for an unnecessary and non-religious and non-church function. If this bill were enacted what would the next regulatory requirement and financial burden be? Congress should stop right here and reject this bill.

Conclusion

The Church of Jesus Christ of Latter-day Saints strongly opposes H.R. 41. While the purpose of preventing fraud in charitable solicitations is a worthy one, the burdens which the bill imposes on churches are violative of cherished constitutionally protected First Amendment freedoms. The bill's efforts to regulate the charitable-religious activities of churches are in our sincere judgment clearly unconstitutional. In addition, as stated, the Church believes that the extra cost which this bill would impose upon a charitable organization would be counter-productive of the bill's purpose to encourage reduction of administrative costs and encourage more use of the contribution dollar for the charitable purpose.

Charitable giving in the United States has had a long and meritorious history. We believe that the vast majority of religious and charitable organizations sincerely attempt to fulfill real charitable purposes with a minimum of administrative costs. These organizations could not be prejudiced by the activities of a few

fraudulent solicitors which could be regulated by either enforcing existing criminal laws or imposing additional sanctions for fraudulent conduct.

Churches have traditionally been among the foremost charitable organizations contributing to the general welfare of the country. However, it must be recognized that churches are more than charitable organizations. They are organized for purposes of religious worship and activity, and these religious purposes are carefully protected by the Constitution in order to insure freedom of religion and separation of Church and State. It is the aspects of H.R. 41 which impinge upon these sacred freedoms which most concern the Church of Jesus Christ of Latter-day Saints.

STATEMENT OF GARY L. BAUER, MANAGER, GOVERNMENT RELATIONS, DIRECT MAIL/
MARKETING ASSOCIATION, INC.

The following statement represents the views of the Direct Mail/Marketing Association on H.R. 41. DMMA is the largest (1700 firms) and oldest (60 years) trade association representing firms which use a variety of media to sell all types of goods and services. We welcome this opportunity to submit a written statement for the record on the charitable solicitation bill which Congressman Charles Wilson introduced this year.

As the Committee knows we have an ongoing interest in this area. A portion of DMMA's membership consists of organizations that raise funds through direct mail and they are organized into a separate sub group called the DMMA Fund Raising Council. We have been in the forefront of promoting ethical standards that will strengthen the trust and confidence that millions of Americans place in the many charitable organizations to which they contribute their hard earned dollars. Over 14 years ago DMMA developed Guidelines for Ethical Business Practice as well as Supplemental Guidelines for Fund Raisers which covers the whole gamut of direct mail fund raising practices. A copy of those guidelines is attached to this statement.

We would like to begin by commending Congressman Wilson and his staff for their concern and work in the fund raising area. We know that this Committee agrees with us when we say that the overwhelming majority of charities in America are honest in their activities and perform a vital public service by directing resources to tremendously important problems. The contribution made by American charitable organizations is well documented in the Committee's records. We sincerely feel and think you agree that 99.9% of all charitable organizations are run by honorable and dedicated people who are careful spenders of charitable dollars. We recognize, however, that in fund raising, just as in any other area of human endeavor there are those who are less than honest. It is frustrating to know that the actions of a few individuals or organizations can lead to legislative regulation placing reporting requirements on all charities, requirements we fear may be misunderstood by the average contributor.

H.R. 41 is clearly a good faith effort to address this problem of abuse by a few without causing legitimate fund raising groups undue hardship while at the same time making it easier for the contributor to know where his charitable dollar is going. While we support such efforts we fear several problems are present in the legislation and we would like to comment on those in the hope that the legislation could be amended to take them into consideration.

First, we are deeply concerned with the effect of requiring a figure which discloses what percentage of contributions for the charitable purpose was applied to that purpose after other costs. This would necessarily discriminate against new charitable groups which by their nature devote larger percentages of funds to creating lists of future donors. Likewise, smaller charities in general will no doubt compare unfavorably with larger groups enjoying "economies of scale." A charitable group espousing a cause not well known in the public mind may well disclose high overhead figures that would tend to make the average contributor feel his money was being wasted, since such a charity would enjoy less response.

Charitable fund raising costs, like the costs of mail order business firms, are a mixture of the high costs of acquiring a new donor and the low cost of renewing him. It would be possible for a charity operating under the percentage requirements in your legislation to keep the "percentage" that is going to the charity relatively high. It could reduce the "mix" of its mailings and concentrate on renewing old donors. The fund raising costs will be low, but eventually the

charity will face a declining spiral of income as the old donors die, move away or just lose interest.

Any new charity will have a very high fund raising cost because all of its initial expenditures will be to find donors and there will be no low cost renewal income to help balance off the high cost of getting into business.

It may very well be that the percentage figure required in the bill, when seen by the public will result in the death of new, perfectly legitimate charities, that would have otherwise prospered and served a needed function.

We do not intend to belabor the point. All organizations have different fund raising costs which have no bearing on efficient management or purity of purpose. No fund raising is free, even though some mistakenly perceive it to be. As yet the American public has not been fully educated to understand the fund raising process or the reasonable costs associated with different charitable solicitations.

Second, it could be questioned whether the Postal Service is the appropriate body to establish rules and regulations on the accounting methods and procedures to be used by charitable organizations. As you know most charities except for the smallest and religious ones are now required to file financial reports with the Internal Revenue Service. We hope that the effect of this legislation will not be to require yet another form to be filled out to yet another government entity. If this function is to be left with USPS we would assume some sort of Congressional review would be possible to insure reasonable implementation of the bill.

Our third concern is perhaps the one of greatest importance. Charitable groups around the country are finding themselves faced with myriad state regulations governing their fund raising activities. The very number and variety of requirements is becoming an increasing large factor in the overhead costs of many charitable organizations. As these regulations proliferate they necessarily draw money and energy away from the charitable cause for which funds are being raised and in the final analysis will contribute to charities reporting higher percentages for overhead costs. Given the well established American penchant for each state to chart its own course, we fear the trend will continue to accelerate providing more and more jobs for lawyers and accountants and less and less funds for those in need. We would urge you to do everything in your power to encourage states to adopt the Federal standard and would hope that the legislative record surrounding the passage of this bill will clearly show that was the intent of the United States Congress and you as its chief sponsor and author.

In closing we would like to commend you and your staff for continuing your policy of seeking the input of all concerned individuals and organizations in your efforts to draft legislation in this area as well as the many postal problems you have addressed while a member of the United States Congress. We are looking forward to continuing to work with you on this issue and others in the years ahead.



Manual File: #9102
Subject: Ethical Practices
Revised: July 1976

Guidelines for Ethical Business Practice of the Direct Mail/Marketing Association, Inc.

We hold that a responsibility of the DMMA to its members and to all individuals and firms who use, create, produce or supply material and lists for direct mail/marketing advertising is to be a constructive and useful force in business and the economy in general.

We further hold that, to discharge this responsibility, they should recognize their obligation to the public, the medium they represent, and to each other.

Finally, we believe this responsibility will best be discharged if all such individuals and firms can refer to a recognized set of guidelines.

To this end, the DMMA recommends the following Guidelines for Ethical Business Practice as being in the best interests of the public, all advertising and of direct mail/marketing advertising users, creators, producers and suppliers in particular.

These guidelines are intended to serve as benchmarks for the kind of business conduct which experience has shown to be wise, foresighted, and constructive.

Because we believe dishonest, misleading, immoral, salacious or offensive communications make enemies for all advertising/marketing as well as direct mail, we recommend observance of these guidelines and standards by all concerned.

Operating Guidelines for Ethical Business Practice

1. Advertisers/marketers, whether selling products or services or raising funds for non-profit organizations, should make their offers clear and honest. They should not misrepresent a product, service, publication or program and should not use misleading, partially true or exaggerated statements. All descriptions and promises should be in accordance with actual conditions, situations and circumstances existing at the time a mailing is made. Advertisers/marketers, whether selling products or services or raising funds for nonprofit organizations, should operate in accordance with the Better Business Bureau's Basic Principles Contained in the BBB Code of Advertising and be cognizant of and adhere to the Postal Laws and Regulations, and all other laws governing advertising and transaction of business by mail.
2. Advertisers/marketers should not make offers which purport to require a person to return a notice that he does not wish to receive further merchandise in order to avoid liability for the purchase price, unless all the conditions are first made clear in an initial offer that is accepted by the purchaser by means of a bona fide written order. Attention is suggested to more detailed specifications regarding negative option plans which have been formulated by the Federal Trade Commission.
3. Mailings should not contain vulgar, immoral, profane or offensive matter nor should advertisers/marketers use the mails to promote the sale of pornographic material or other matter not acceptable for mailing on moral grounds. Advertisers/marketers, whether selling products or services or raising funds for nonprofit organizations, should not use the mails to promote the sale of products or services by means of a lottery.
4. Advertisers/marketers, whether selling products or services or raising funds for non-profit organizations, should not disparage any person or group on grounds of sex, race, color, creed, age or nationality.
5. The terms and conditions of guarantee should be clearly and specifically set forth in immediate conjunction with the guarantee offer. Guarantees should be limited to the reasonable performance capabilities and qualities of the product or service advertised.
6. Advertisers/marketers should not make exaggerated price comparisons, claims on discounts or savings; nor employ fictitious prices.
7. A product or service which is offered without cost or obligation to the recipient may be unqualifiedly described as "free". "Free" may also be used conditionally where the offer requires the recipient to purchase some other product or service, provided all terms and conditions are accurately and conspicuously disclosed in immediate conjunction with the use of the term "free" and the product or service required to be purchased is not increased in price or decreased in quality or quantity.
8. Photographs and art work representing or implying representation of a product or service or fund raising program for nonprofit organizations should be faithful reproductions of the product, service or aid offered by the fund raising program. All should be current and truly representative. All descriptions and promises should be in accordance with actual conditions, situations and circumstances existing at the time of the promotion. Photographs and art work representing or implying situations related to a product, service or program should be in accord with the facts. If models are used, clear disclosure of that fact should be made in immediate conjunction with the portrayal.

9. If laboratory test data are used in advertising, they should be competent as to source and methodology. Advertisers/marketers should not use excerpts of laboratory test material in support of claims which distort or fail to disclose the true test results.
10. Advertisers/marketers, whether selling products or services or raising funds for non-profit organizations, should not use unsupported or inaccurate statistical data or testimonials; or testimonials originally given for products or services other than those offered by such advertisers/marketers; or testimonials making statements or conclusions known to be incorrect. If testimonials are used, they should contain no misstatement of facts or misleading implications and should reflect the current opinion of the author.
11. Advertisers/marketers who sell instruction, catalogs, or merchandise-for-resale or sell or rent mailing lists should not use misleading or deceptive statements with respect to the earning possibilities, lack of risk, or ease of operation.
12. Advertisers/marketers, whether selling products or services or raising funds for non-profit organizations, should not use promotional solicitations in the form of bills or invoices (pro forma invoices) deceptively.
13. Advertisers/marketers, whether selling products or services or raising funds for non-profit organizations, should not mail unordered merchandise for which payment is demanded.
14. Advertisers/marketers, whether selling products or services or raising funds for non-profit organizations, should not use any list in violation of the lawful rights of the list owner; and should promptly bring to the attention of the lawful owner of any list any information they may have regarding any possible violation of his proprietary rights therein.
15. Advertisers/marketers, whether selling products or services or raising funds for non-profit organizations, who permit the outside use of their mailing lists should at all times be aware it is not in the best interests of the public or of themselves to allow their lists to be used by organizations that do not observe the DMMA Guidelines for Ethical Business Practice.
16. Advertisers/marketers, whether selling products or services or raising funds for non-profit organizations, who rent, exchange or purchase mailing lists should make every effort to ascertain the origin, current ownership and market profile of such mailing lists in the interests of directing their promotions only to those segments of the public most likely to be interested in their causes or to have a use for their products or services.
17. When products or services are offered on a satisfaction guaranteed or money back basis, any refunds requested should be made promptly. In an unqualified offer of refund or replacement, the customer's preference shall prevail.
18. Advertisers/marketers should be prepared to make prompt delivery of orders solicited in their copy. Unforeseen contingencies should be reported to the customer promptly when delivery is unavoidably delayed. A reply device should be included, enabling the customer, if he wishes, to cancel the order and obtain a refund of any purchase price already paid.

(continued on next page)

19. Advertisers/marketers, whether selling products or services or raising funds for non-profit organizations, should not use misleading or deceptive methods for collecting money owed by delinquent accounts.
20. Advertisers/marketers should distribute products only in a manner that will provide reasonable safeguards against possibilities of injury to children and/or adults.
21. Advertisers/marketers who are raising funds for nonprofit organizations should make no percentage or commission arrangements whereby any person or firm assisting or participating in a fund raising activity is paid a fee proportionate to the funds raised, nor should they solicit for non-existent or non-functioning organizations.
22. All advertisers/marketers including those firms who use, create, produce or supply materials and/or lists for direct mail advertising should make conscientious efforts to remove names from their mailing lists when so requested either directly or in accordance with the DMMA Mail Preference Service.

Basic Principles Contained in the Better Business Bureau Code of Advertising

1. The primary responsibility for truthful and non-deceptive advertising rests with the advertiser. Advertisers must be prepared to substantiate any claims or offers made **before** publication and, upon request, present substantiation promptly to the advertising medium or the Better Business Bureau.
 2. Advertisements which are untrue, misleading, deceptive, fraudulent, untruthfully disparaging of competitors, or insincere offers to sell, shall not be used.
 3. Advertisements should advise consumers of facts and qualities of a product that will allow a more intelligent choice.
 4. An advertisement as a whole may be misleading although every sentence separately considered is literally true. Misrepresentation may result not only from direct statements but by omitting or obscuring a material fact.
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Procedures in Implementation of Ethical Guidelines

DMMA will seek to achieve observance of the Guidelines by an informal exchange of views between DMMA and advertisers/marketers whose practices appear not to be in accordance with the Guidelines.

If the question involved cannot be adjusted by the DMMA executive staff, the matter will be referred to the Ethics Committee for its consideration, investigation, determination and, if the facts warrant, referral of the complaint along with the DMMA Ethics Committee's investigation records, analysis and summary to the appropriate government or regulatory agency.

In addition to the above, those cases involving a DMMA member which cannot be adjusted by the Ethics Committee will be recommended to the DMMA Board of Directors for its consideration and appropriate action.

United Way
of America

March 29, 1977

801 North Fairfax Street
Alexandria, Virginia 22314
Phone: 703-836-7100
TWX: 710-832-0617
UWA ALEX

Mr. Charles H. Wilson
Chairman, Postal Personnel and
Modernization Subcommittee
Post Office and Civil Service Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

United Way of America, the national association of local United Way fund-raising and planning organizations (United Ways, United Funds, Community Chests, Community Health and Welfare Councils, etc.) is pleased to submit comments and suggestions on H.R. 41, a bill to amend Title 39, United States Code, to require the furnishing of certain information in connection with the solicitation of charitable contributions by mail, and for other purposes.

In 1976, some 2,350 local United Way fund raising organizations in the United States and Canada raised one billion, one hundred million dollars from more than 37 million contributors for the support of 37,000 local, state and national health, welfare and recreation services which serve almost 35 million families annually. As the largest annual fund raising effort on earth, the United Way has a deep interest in the objectives of H.R. 41 as well as in the means proposed for achieving those objectives.

It is important to understand that each local United Way is a completely autonomous, locally controlled enterprise. They range in size from one raising as little as \$2,000 and serving 1,500 people to one raising over \$39 million and serving a metropolitan area of six million people. Well over 1,000 are completely volunteer-operated, being too small to employ even one staff person. Many of the latter do not belong to United Way of America and are, consequently, out of communication with each other or the national association for all practical purposes.

United Way of America and its members have always been committed to the principle of full disclosure to contributors and the general public. Consequently they are as one in applauding the objectives of H.R. 41.

Not only do United Ways issue annual reports on their own operations and finances and encourage the organizations they support to do the same, but they also operate intensive allocations programs under which volunteer representatives of contributors make intensive, annual evaluations of every aspect of every organization to which they supply financial support. Thus, the organizations supported by United Ways practice public disclosure and accountability to a far higher degree than any organization is required to do under existing Federal, state and local law.

Maximum utilization of the contributed dollar for charitable purposes is a hallmark of the United Way system. United Way fund raising is probably the least expensive method of securing charitable contributions.

All United Ways and all the organizations they support which have annual income of \$5,000 or more are now required to file annual returns with the Internal Revenue Service on Form 990. In about two dozen states these same

organizations are required to register with and file annual returns with the attorney general or some other state official charged with supervising charitable organizations. Under the terms of many local ordinances, these organizations are also required to submit information about fund raising and other activities to city and county governments. Multiple reporting of different information in varying forms to a multiplicity of different units of government necessarily operates to divert funds to overhead expense that would otherwise be spent for charitable purposes. As more and more units of government develop or expand their supervisory activity, this problem is exacerbated.

Against the foregoing background, United Way of America offers the following comments and suggestions regarding H.R. 41:

The exclusions from coverage (Section 1(g) and (h) should be broadened to include:

- a) Organizations which raise less than \$25,000 annually and which do not employ fund raisers or fund raising counsel.
- b) Organizations registered with and reporting to any state agency charged by law with supervising charitable organizations and trusts.

More than any other charitable entity including private schools and colleges, United Ways and other local community federated fund-raising organizations operate in a goldfish bowl of public scrutiny. They function under the direct and continuing supervision of representative boards of local citizens. In no sense are they a source of the problem at which H.R. 41 is aimed. Yet, their inclusion will subject them to additional expense. In this connection, it needs to be recognized that, whether or not an organization is required to display the information specified by Subsection (4), responding to requests for the information could become expensive and burdensome particularly for small organizations. It is one thing for unstaffed organizations raising less than \$25,000 to prepare the information and to produce 25 or 50 copies in order to handle possible requests, it is another if they were forced to respond to 500 or 1,000 requests for the information. Most of them would be incapable of handling such a problem.

State laws regulating charitable organizations and solicitation have the same basic objective as H.R. 41. Generally, the information filed with the state agencies by the charities is available to the public and is the same information specified in Section 1(4). Furthermore, it is evaluated by state government officials on behalf of the contributing public. The effect of our suggested amendment would be to relieve charities in such states from the burden and expense of complying with H.R. 41 by recognizing that their compliance with state law is the equivalent of compliance with Federal law. Consequently H.R. 41 would bring under Federal supervision those organizations which are not supervised at the state level. This in turn would eliminate duplicate supervision for organizations under state supervision.

A further, major concern with H.R. 41 is that, although not intended, perhaps, Section 1(5) would place an unnecessary, costly and inequitable burden on local United Way organizations in that it would require local United Ways to reflect deductions under Subsection (4) by all charitable organizations to which they make distributions.

In this connection it is essential to note that a local United Way organization might, depending on community size and number of volunteer agencies seeking United Way support, distribute funds to as many as 300 or 400 agencies e.g., New York or Chicago. United Way support to a particular agency as a percentage of the recipient's total budget might range from one percent or less to 100 percent.

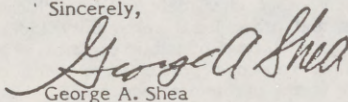
For clarity and to distinguish appropriately between activities of the federated fund raising organizations and those of recipient charitable agencies we recommend that Section 1(5) be amended to read:

"(5) in the case of a federated fund-raising organization, the percentage of all contributions distributed or allocated by such organization to its participating voluntary agencies, during the most recent complete fiscal year of the organization; except that if the solicitation involved is made during the 6 month period immediately following the close of such fiscal year, information relating to such percentage of contributions may be based upon the fiscal year preceding such fiscal year."

It is suggested that the objectives of H.R. 41 would be fully met in that the effect of other provisions of Section 1 is to require each charitable organization covered by the bill (which includes individual, participating United Way agencies) to provide, upon written request to such agency, the information specified in Section 1.

We appreciate this opportunity to comment on H.R. 41 and stand ready to assist the Subcommittee and its staff in any way possible.

Sincerely,



George A. Shea
Executive Vice President

National Newspaper Association

SERVING 7000 PUBLISHERS AND EDITORS IN 50 STATES

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April 7, 1977

The Honorable Charles H. Wilson
Chairman
Subcommittee on Postal Personnel
and Modernization
122 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The National Newspaper Association respectfully requests that this letter be placed in the record of the Subcommittee's hearings on H.R. 41, a bill to require the disclosure of certain information by charitable organizations.

The National Newspaper Association (NNA) is a national trade association which represents the interests of more than 7,000 community newspapers in the United States, the District of Columbia, Guam and the Virgin Islands.

Our members, working as they do at the "grassroots" level of journalism, are vitally interested in the concept of openness and accountability. Consequently, one of the mandates accorded NNA by its members is to encourage public disclosure requirements in appropriate federal and state legislation.

We commend your efforts, reflected in H.R. 41, to require accountability by charitable organizations. Your work takes the first forthright approach to this subject and puts it in the most workable and effective form -- federal legislation.

We find it especially admirable because it does not harm bona fide charitable organizations, but does subject to closer public scrutiny those groups with dubious claim to the name "charitable." Further, it properly leaves the ultimate decision whether to contribute in the hands of individuals. It simply requires charitable organizations to present potential contributors with enough facts to keep them from being the victims of an uninformed decision.

We do wish to offer two basic amendments which we feel would clarify H.R. 41 and help it obtain its worthy objective.

I. Section 3012(a)(1)-(5) requires the disclosure of the charitable organization's legal name and principal business address, purpose and intended use of solicited funds, availability of financial information and percentage of funds actually applied to the charitable purpose. Subject to extremely narrow exceptions, this information is to appear in all print and electronic solicitations for contributions.

We urge you to adopt a provision which also requires a charitable organization to publish once annually, in at least one newspaper of general circulation in each geographic area in which it made solicitations during its preceding fiscal year, the information called for in Section 3012 (a)(1)-(5), a financial statement for the preceding fiscal year. This notice would have to be published within 30 days of the close of the charitable organization's fiscal year.

We think this requirement would give concrete form to the bill's concept of public disclosure. Newspaper notice to the community at large where the charity seeks the citizens' financial support seems only logical and fair.

Knowledge that it has to make a yearly public financial accounting would also operate as a beneficial check on charitable organizations' day-to-day operations. In turn, this would increase public confidence in bona fide charitable organizations and the effectiveness of the charitable dollar. Greater public confidence would likely lead to greater public contributions to legitimate organizations.

On the other hand, public scrutiny of a published financial statement would expose shady operations which reflect adversely on all charitable organizations and solicitations. Once brought to light, these disreputable groups would no longer fill their coffers at the expense of generous Americans and legitimate charities.

Annual newspaper notice not only maximizes the bill's disclosure requirements and minimizes abuse, but closely ties in with other sections of the bill which already require compliance with annual reporting. [See Sections 3012(a)(5);(d);(c)] It is also the optimum method of conveying this information in the clear and concise format outlined in Section 3012(b)(1) and (2). Consequently, the preparation and publication of an annual newspaper notice involves little extra time, effort, or expense, but has great benefits.

Consequently, we recommend adding to Section 3012 a new subsection (e) which represents this final stage of disclosure. The suggested language is:

"(e) Any charitable organization subject to the provisions of this section shall cause to be published, at least once annually in a newspaper of general circulation in each geographic area in which it has solicited contributions during the preceding 12 months, a notice containing the information required in subsection (a) (1)-(5) of this section, and a financial statement prepared in accordance with requirements promulgated by the United States Postal Service under subsection (f) of this section. Such notice shall appear within 30 days of the close of the charitable organization's fiscal year."

[Note: The above reference to subsection (f) reflects the renumbering which would be necessary if the proposed subsection (e) is adopted. The text of subsection (f) now appears as subsection (e),]

II. Section 3012(b)(3) grants an exception to the bill's general disclosure rule. It reads: "Any solicitation which is made through the use of radio or television communications and which does not exceed 60 seconds in duration shall not be subject to the provisions of subsection (a) of this section."

We think this exception is valid, but should be extended to reflect a similar exception for newspapers. In particular, our concern is with small noncommercial "public service" ads newspapers run as good will gestures or fillers without cost to the charitable organization. We think these small (often a column inch) ads saying, for example, "GIVE THE UNITED WAY," "SUPPORT THE AMERICAN CANCER SOCIETY" or "BUY EASTER SEALS" are the equivalent of brief radio or television solicitations. (See attachment)

Consequently, we urge you to include this exception after Section 3012 (b)(1) which deals with written solicitations. We suggest this language:

"Noncommercial newspaper advertisements which are not larger than two column inches and which are published as a public service for charitable organizations are not subject to the disclosure and accounting provisions of this section."

The exception for sixty-second radio or television messages could remain in the sections dealing with electronic communications, or one new section could be drafted to except both these items.

We ask you to clarify the language so as to exclude the brief public service advertisements appearing in newspapers and heard on radio and television.

We respectfully urge you to adopt our proposed amendments and press forward toward enactment of this important and long-overdue legislation. We strongly believe these changes would strengthen H.R. 41 and ensure achievement of its worthy objectives.

If we may be of assistance in this matter to you or your staff, do not hesitate to call upon us.

Respectfully submitted,

James Cregan
James Cregan
General Counsel

Patricia Gallagher
Patricia Gallagher
Staff Attorney



COUNCIL OF BETTER BUSINESS BUREAUS, INC.
THE INTERNATIONAL ASSEMBLY OF BETTER BUSINESS BUREAUS

April 20, 1977

The Honorable Charles H. Wilson
31st District - California
2335 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Wilson:

Better Business Bureaus began serving the public and business more than 60 years ago. Over the years, BBB reporting on soliciting organizations has become a tradition. In many communities the Bureau is the principal monitoring body, and in some cases it serves as the official registering agency for charitable organizations. Before commenting on HR 41, we would like to provide you with some background information so you can understand our perspective.

Today, the Council of Better Business Bureaus monitors, evaluates, and reports on charitable organizations that solicit nationally and internationally. This responsibility is the function of the Philanthropic Advisory Service (PAS), a division of CBBB. The Council is a nonprofit organization supported by annual dues from its members, consisting of approximately 600 national corporations and 143 Better Business Bureaus in all major metropolitan areas.

PAS was established to provide donors, both individual and institutional, with basic information about a solicitation before they decide whether to contribute. It issues reports on soliciting organizations that include facts about their structure, management, activities, fund raising, finances, and tax status. The reports are available to any inquirer. At present, PAS maintains files on approximately 8,000 national organizations.

Acting as a third party--neither donor nor recipient--PAS holds an objective position to examine the needs of philanthropy. During 1976, we received over 100,000 inquiries from the general public, corporations, foundations, government, media and soliciting organizations. Potential donors usually want to know if an organization is "worthy." Soliciting groups often seek counseling and advice on fund raising ethics and accepted nonprofit procedures, as well as guidance on how to meet the BBB STANDARDS FOR CHARITABLE SOLICITATIONS.

The BBB STANDARDS were issued in 1974 following extensive consultation with fund raisers, direct mail experts, tax attorneys, accountants, media representatives, corporations, foundations and donors. They are based on the principle of complete and accurate disclosure by all soliciting organizations. The STANDARDS are the basis of all PAS evaluations of charitable, soliciting organizations, and more than 75,000 copies have been distributed to date.

The purpose of PAS is twofold: it educates and advises donors about soliciting organizations and it promotes public confidence in philanthropy. These aims are best accomplished, we believe, by encouraging complete disclosure of all information a potential donor may wish to consider.

As a leading proponent of financial disclosure by charitable organizations, we have reviewed carefully the provisions of HR 41, and we have the following observations:

Contrary to previous proposals, HR 41 recognizes the principle of full disclosure by all charitable organizations. By including religious organizations in its requirements, the bill would help assure total accountability of public contributions. This is consistent with our policy of reporting on religious organizations that go beyond their own membership to solicit the general public for support.

While we applaud these efforts which support disclosure and accountability, HR 41, as written, contains two problem areas you may wish to consider. The first concerns the language of the bill. The requirement for disclosing the percentage of funds spent calls for reporting income that "remained" for programs, and not income that was actually spent on programs. Obviously, there is a difference. Although intended for programs, remaining income may in fact be invested and added to the organization's fund balance, spent on fund raising or administration, or used as intended, for the programs. To correct this, the bill should require organizations to report income actually spent for program services instead of reporting remaining income which they intend to spend on programs.

The second problem area is more complicated. HR 41 now requires soliciting organizations to disclose figures for three kinds of expenses: program, management and fund raising. However, it has been our experience that most donors are unaware of variable costs in raising money and place undue importance on fund raising percentages. Instead of evaluating and weighing the three different expense figures, donors will base their decisions to give or not only on a group's fund raising percentage.

PAS and others have spent a great deal of effort trying to educate donors about fund raising costs which we believe are not always the best yardstick for evaluating an organization. It does not always hold true that groups with low fund raising costs are efficient and "good" and that organizations with high fund raising costs are wasteful and "unworthy."

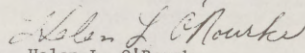
For example, newly-formed organizations that have not established a base of support must solicit a wide group of people to locate donors. If they use direct mail, the cost of these initial mailings will usually equal the amount received in contributions. Thus, even highly competent but new organizations that have not yet identified their donors and do not yet have tested mailing lists will incur higher fund raising costs than established organizations.

Similarly, organizations working for unknown or unpopular causes must expend greater fund raising efforts that will inevitably result in higher fund raising costs. Clearly, an appeal for a rare disease will not elicit as great a response from the public as an appeal for cancer. Moreover, such organizations attract fewer volunteer whose efforts can help reduce fund raising percentages.

Nevertheless, donors unfamiliar with fund raising will use the percentage as the basis of their evaluations. This judgment will benefit the larger, well-known organizations that report low fund raising costs because of income from government grants, volunteer help in their fund raising campaigns, and long-standing reputations that ensure credibility and fund raising success. At the same time, however, the newer organizations may suffer from the requirements of HR 41 because they will usually report higher fund raising percentages since they do not have the advantages of immediately identifiable donors, volunteer help or established reputations.

We hope you will consider these points. The first problem regarding the language of the bill is relatively easy to correct so that the intent of HR 41 will be completely clear. The second area of consideration, donors using only fund raising percentages on which to base their decision, is more difficult to amend. In the long run, it is a matter of public education and toward this end PAS last year devoted five issues of its newsletter, "In-Sight," to fund raising problems. These are enclosed for your information. We hope that in your review of HR 41 you will consider the possible impact it may have on all soliciting organizations, large and small.

Sincerely yours,


Helen L. O'Rourke
Vice President, CBBB

UNITED CEREBRAL PALSY ASSOCIATIONS, INC.
 The Chester Arthur Building
 425 "Eye" Street, N.W., Suite 141
 Washington, D. C. 20001

United Cerebral Palsy Associations, Inc., is a nationwide federated network of 270 state and local voluntary agencies (UCPA affiliates) which develop and carry out client services, public and professional education, and support research primarily concerned with cerebral palsy. The national organization, headquartered in New York City, was founded in 1949 to coordinate and assist affiliates. Six years later, the UCPA Research and Educational Foundation, Inc. was established to stimulate and fund research and training of personnel.

UCPA is committed to full public disclosure of its fund raising costs as well as to full public accounting for the way it spends money in its national and community service programs for the disabled and their families, its public and professional educational activities, and management and general purposes. In fact, we already disclose our fund raising and management and general costs in our annual report, form 990 filed with the Internal Revenue Service and forms filed with the New York State Social Welfare Board, and in reports to the National Health Council, the Combined Federal Services Fund Campaign for National Health Agencies and the Better Business Bureau.

UCPA will adhere to provisions of H.R. 41 if enacted and will publicly state fund raising and management and general costs in all required information and fund raising materials. UCPA welcomes the opportunity to account to the public as prescribed by H.R. 41. We believe that doing so will heighten the public confidence in our organization and services which UCPA has always enjoyed. So long as the bill applies equally to all recipients of public charity, we feel sure that the value-conscious citizen will be pleased with the benefits purchased by the dollar he contributes to credible voluntary agencies. However, if the committee exempts any class of organization from comparable disclosure of fund raising and management and general costs, we fear this will confer on that class an unfair competitive advantage over other recipients of public charity since the public will be reminded of the existence of costs in one case but not in the other.

In the same way, H.R. 41 should be realistically enforceable against all recipients of public charity. Careful consideration should be given to the merits of placing H.R. 41's enforcement authority with the Postal Service, the Internal Revenue Service, and other federal agencies. This is a big job. In New York State for example there are 75,000 charities which are subject to the reporting requirements of the Social Services Law. Only 2500 of these charities file the required reports, and enforcement is entrusted to a professional staff of four people. Given these conditions, adequate enforcement is impossible. The responsible organizations comply with the law and the irresponsible ones do not. But the purpose of the law was to require reporting and disclosure of all, particularly of those who get away with failure to comply.

One technical concern we have with H.R. 41 relates to proposed section 3012(f). In addition to contributions our national organization and many of our affiliates receive from the public financial support from United Way and from numerous governmental agencies which is also accessed. We find the language of the proposed subsection (f) adequate but we do feel that the legislative history of the bill, which would

be relied on by the Postal Service in drafting regulations, should make it clear that the apportionment of management and general costs between programs funded by receipts from direct contributions and programs funded by receipts from other sources should not be arrived at by mechanical formula; instead such apportionment should realistically reflect the actual management and general costs associated with the various programs, in keeping with the generally acceptable accounting principals referred to in subsection (e).

UCPA supports H.R. 41 and its intent of full public disclosure related to fund raising efforts. The Congress should also consider the fact that H.R. 41 may raise administrative costs of charitable organizations.

THE UNITED PRESBYTERIAN CHURCH

IN THE UNITED STATES OF AMERICA
1201 INTERCHURCH CENTER, 475 RIVERSIDE DRIVE, NEW YORK, N.Y. 10027
Telephone 212-870-2005



William P. Thompson, Stated Clerk
Otto K. Finkbeiner, Associate Stated Clerk and Treasurer
Rev. Robert F. Stevenson, Associate Stated Clerk
Rev. Robert T. Newbold, Jr., Associate Stated Clerk

April 12, 1977

The Honorable Charles H. Wilson,
Chairman, Subcommittee on Postal Facilities,
Mail and Labor Management
House Committee on Post Office and Civil Service
House of Representatives
Washington, D.C. 20224

Dear Congressman Wilson:

I regret that my schedule prevented me from appearing before the Committee on Post Office and Civil Service during the hearings on H.R. 41. I very much appreciate the opportunity which you have afforded me to enter this written statement into the record of hearings on the legislative proposal pertaining to the regulation of charitable solicitations.

My name is William P. Thompson. I am Stated Clerk of the General Assembly of the United Presbyterian Church in the U.S.A., which is the highest governing body of this denomination of 2.75 million members. I am also President of the National Council of the Churches of Christ in the U.S.A., a cooperative agency of thirty national religious bodies, Protestant and Eastern Orthodox, with aggregate membership of over 40 million. In this statement, however, I am not purporting to speak for either of these national bodies or for their members, since they do not have formulated policy on the precise issue covered by this proposed legislation. I mention them only for purposes of identification.

As a practicing attorney for more than 20 years and as a church officer, I have a deep personal interest and concern in the subject-matter of H.R. 41. I offer this personal statement in an effort to lend whatever insight my experience in the Church has afforded me to the Committee as it explores the difficult and complex question of regulating charitable solicitations.

In my view, charitable giving is one of the great strengths of American society, since by means of voluntary contributions the citizenry can channel their support to the causes and concerns that interest them with a minimum of governmental intervention. By this system of private philanthropy a vast network of eleemosynary institutions has grown up which greatly enriches the fabric of our democratic society. Rather than discouraging the flow of charitable contributions by overregulating them, government should seek to encourage them.

Whether H.R. 41 or similar proposals, if enacted into law, would unduly hinder the flow of charitable contributions to eleemosynary institutions in general, I am not prepared to say. Colleges, hospitals, secular voluntary associations, museums, symphony orchestras, and other worthy causes can very well speak for themselves on this subject, and I understand many have done so in your hearings.

I would like to confine my comments primarily to the concerns of churches, which in many ways are different from, or at least distinguishable from, those of other organizations, not least by reason of their status under the Constitution. While churches as such are not mentioned in the First Amendment, they are the clearest organizational embodiment of "religion," which is treated uniquely among all the important rights and liberties safeguarded by the Bill of Rights, which provides that Congress is forbidden to legislate "respecting an establishment of religion" and is also forbidden to interfere with the "free exercise thereof."

While the import and implications of these dual commands have been argued extensively over the years, one way in which Congress has sought to honor them is by excluding, excepting or exempting churches from various systems of governmental regulation, as has been done, for instance, in the Internal Revenue Code, where "churches, conventions or associations of churches" are:

- (1) given mandatory exception from the presumption of being a private foundation (Section 508(c)(1)(A));
- (2) given mandatory exception from the requirements of filing annual informational returns (Section 6033(a)(2)(A));
- (3) excluded from eligibility to elect to be covered by the new provision for limited lobbying by public charities (Section 501(h));
- (4) shielded from certain types of audit or examination by the Internal Revenue Service (Section 7605(c)).

It is this type of treatment which I suggest should be accorded churches in H.R. 41 or any similar legislation. They should simply be exempted from its requirements, as indeed was recommended by the distinguished "Filer Commission" on Private Philanthropy and Public Needs in its report, Giving in America: Toward a Stronger Voluntary Sector (1975):

"That all larger tax-exempt charitable organizations except churches and church affiliates be required to prepare and make readily available detailed annual reports on their finances, programs and priorities.... This requirement would not apply to religious organizations, although some Commission members feel that it should apply to nonsacramental activities of religious organizations such as hospitals and schools."
(p. 164, emphasis added.)

I would not necessarily differ with the proposal that "nonsacramental" or non-ecclesiastical activities or organizations not be covered by this exclusion, or indeed that churches which make massive direct-mail fund appeals to the general public through a commercial fundraiser might not be regulated in some way -- or at least the commercial fund-raiser might be regulated.

It is the formal policy of the two organizations I serve that churches should make voluntary disclosure of their finances, but that such disclosure should not be made mandatory by law, and with that view I heartily concur. The United Presbyterian Church in the U.S.A. and the National Council of Churches both publish annual audited financial reports that are available to anyone for the asking, but they would strenuously resist being required to do so by government. The churches are accountable to their members and contributors, not to the government, and those members and contributors do not require the government to protect them from their own freely-chosen faith-group.

Occasional "scandals" such as that arising in connection with the Pallottine Fathers in Maryland often stimulate impulses on the part of governmental agencies to impose powers to inspect, examine, certify and regulate such organizations "for the public good." But in the case of churches, I am convinced that the "cure" is worse than the complaint. Such "scandals," at least in the older and more stable churches, are few and far between, and are readily rectified by internal means -- as was the Pallottine situation -- when discovered (and it was discovered by enterprising journalists rather than by a mandatory disclosure requirement).

It is my view that governmental agencies tend to be oversolicitous in protecting consumers from fraud -- at least in the area of religion. As Mr. Justice Jackson observed in dissent in the case of U.S. v. Ballard (322 U.S. 78 (1944)):

"The collections aggregate a tempting total, but individual payments [contributions] are not ruinous. I doubt if the vigilance of the law is equal to making money stick by over-credulous people.... The wrong of these things, as I see it, is not in the money the victims part with half so much as in the mental and spiritual poison they get. But that is precisely the thing the Constitution put beyond the reach of the prosecutor, for the price of freedom of religion or of speech or of press is that we must put up with, and even pay for, a good deal of rubbish."

I realize that the present proposal is not one in which the government would exert control over the charitable organizations covered, or determine to what purposes their solicitations would be devoted; it merely requires disclosure of past financial history. But I would not wish to see even this degree of governmental supervision directed toward churches.

I would not want to see the U.S. Postal Service setting up the categories and standards by which churches report their finances.

In addition to the foregoing, I question the applicability to churches of certain terms in the legislation. The concept of "bona fide members" is too narrow in connection with appeals for funds by churches, which -- particularly on a national level -- have a broad penumbral array of constituents and occasional contributors and friends who may or may not be actual members, yet who know the church and its work fairly well and do not require the intervention of government to authenticate it.

Furthermore, in some churches fund appeals are launched by specialized agencies within the Church, such as the United Presbyterian Foundation or the United Methodist Board of Pensions or the American Board of Commissioners for Foreign Missions. Their appeals may go out to all the members of the denomination, but those recipients are not themselves "members" of the appealing agency.

I also question the pertinence of the information required to be supplied by the terms of the proposed legislation. My own denomination occasionally launches large special campaigns to raise funds for a particular project, program or purpose. For the purpose of assessing how those special funds will be used, of what conceivable help would it be to know how the funds of the entire United Presbyterian Church were expended during the preceding fiscal year? They come from many sources and are used for many purposes, few of which would be relevant to the special campaign for which the solicitation in question is being made.

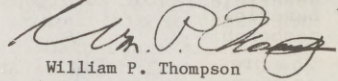
But the special campaign itself has no history of its own as yet to report to the prospective contributor. By the time it does have a history, it will be over. So what is the point of an elaborate system of accounting, notice and reportage that gives so little information relevant to the question presumably at issue: how the money to be contributed in the particular campaign will be used?

Churches do not as a rule use direct-mail solicitations of the general public to carry on their regular and continuing work -- the kind of operation that would be revealed by disclosure of the previous year's accounts. They usually resort to such solicitations for special causes and campaigns that are of relatively brief duration, and which are not therefore reflected in the regular financial reports of the Church as a whole in a previous fiscal year, although they will be in the year following.

In addition, churches often make use of such special solicitation campaigns not just to raise money but to lift up an important cause or goal, such as Disaster Relief, Remedying Hunger, Christian Higher Education or World Missions. It is in large part an exercise in education, involvement, exhortation, and is not necessarily limited to the Church's present membership, but is addressed to the whole world. It is part of the free exercise of religion to be able to preach one's message to any who will listen, and charitable solicitation of the general public in support of a particular cause is one important way of doing that. To burden that practice with governmentally-imposed regulations and requirements is to interfere with the free exercise of religion in ways which the Supreme Court struck down in a series of cases that includes Cantwell v. Connecticut (310 U.S. 296 (1940)), Murdock v. Pennsylvania (319 U.S. 105 (1943)), and others.

For the foregoing reasons, I seriously urge the Committee to exclude, exempt or except "churches, conventions or associations of churches" from any legislation which it may recommend on this subject.

Sincerely,


William P. Thompson

WPT:jhg



Council
of Jewish
Federations
and Welfare Funds, Inc.

575 Lexington Avenue, New York, N.Y. 10022 / 212 751-1311
Cable: Councilfed, New York

April 15, 1977

Hon. Charles H. Wilson
House of Representatives
Longworth House Office Building
Washington, D.C. 20515

Dear Rep. Wilson:

We would like to share some comments regarding HR41, dealing with revised disclosure legislation for charities.

It had been our understanding that a number of changes were to be made in the revised bill since its introduction last year. One of the changes we believed had been given consideration in order to make the bill more workable was the deletion of the original requirement for national agencies to include information regarding fund-raising and administrative costs of their local affiliates, and an analogous change to delete the requirement that federated fund-raising organizations report on such costs of organizations which receive allocations from Federations.

We find in reading Section 3012 of HR 41, particularly with regard to Sub-Sections A 4 and A 5, that while the deletion has taken place with regard to national organizations, the requirement in the original bill has been retained for federated fund-raising organizations. This retention is a matter of deep concern for us.

The major organizations which fall under the heading of federated fund-raising organizations are United Funds and Jewish Federations which have similar structures. Both of

these networks of organizations provide allocations for local agencies and for national agencies. Some local agencies receive grants from United Funds and/or from Jewish Federations. Some may have a membership or affiliation relationship to the grantor agencies and some may not. In the case of national beneficiaries of local United Funds and local Jewish Federations, membership or affiliation is infrequent.

The present language of the bill could be construed to require every national organization receiving a grant from a local United Way or a local Jewish Federation to provide these federated agencies with fund-raising and administrative data either in total or with regard to the specific allocation which it receives from each community.

This would be extremely unworkable. Indeed, the statement that "compliance will not burden legitimate charities" since "most reputable charities already break down costs in a manner required by this legislation" may apply to some of the elements in HR 41, but it is definitely not the case with regard to Section 3012 A5 and the reference it includes to the preceding paragraph 4.

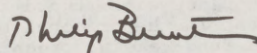
To retain this burdensome and unworkable provision can be counter-productive to the objectives of the legislation and certainly would impose an unreasonable and impractical burden on the agencies involved. It would require that many national organizations receiving funds from federated appeals develop detail involving a breakdown of their costs as they apply to hundreds of different communities. Even if it were possible to do so, it would involve substantial costs. Since the burden of providing the information would be placed on the United Funds and Jewish Federations, they might find themselves in a position where they could not distribute funds to worthy beneficiaries because the latter would be unable to provide the information required in the above Section at all or within the six-month period called for in the bill.

We believe that the Committee dealing with this matter should correct the draft by eliminating the phrase "and by its membership organizations" in Section 2012 A5.

We may wish to comment further with regard to other provisions of the bill, including appropriate jurisdiction, reasonableness of the six-month limitation for reporting (in the light of delays which sometimes occur in the work of auditors), and other problems which may be identified on the basis of additional study.

Thank you for your consideration of this matter.

Sincerely,



PHILIP BERNSTEIN
Executive Vice-President

95TH CONGRESS
1ST SESSION

H. R. 41

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1977

Mr. CHARLES H. WILSON of California introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 39, United States Code, to require the furnishing of certain information in connection with the solicitation of charitable contributions by mail, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) chapter 30 of title 39, United States Code, is
4 amended by adding at the end thereof the following new
5 section:

6 “§ 3012. Soliciting charitable contributions by mail

7 “(a) Any charitable organization which solicits, in any
8 manner or through any means, the remittance of a contribu-
9 tion by mail, shall include with such solicitation the following
10 information:

I

1 “(1) the legal name and the principal business
2 address of the charitable organization making the solie-
3 itation;

4 “(2) the purpose of the solicitation and the intended
5 use of the contribution solicited;

6 “(3) the obligation of the charitable organization to
7 furnish information in accordance with the provisions of
8 subsection (d) of this section;

9 “(4) the percentage of all contributions for the
10 charitable purpose of the organization which remained
11 for direct application to such charitable purpose after
12 deducting all fundraising and management and general
13 costs during the most recent complete fiscal year of the
14 organization, except that if the solicitation is made dur-
15 ing the 6-month period immediately following the close
16 of such fiscal year, such costs may be based upon the
17 fiscal year preceding such fiscal year; and

18 “(5) in the case of a federated fundraising orga-
19 nization, the portion of all contributions distributed or
20 allocated by such organization to its member organiza-
21 tions, during the most recent complete fiscal year of the
22 organization which remained for direct application by
23 such member organizations to the charitable purpose
24 involved, after deductions described in paragraph (4)
25 of this subsection are made by such federated fund-

1 raising organization and by its membership organizations,
2 except that if the solicitation involved is made during
3 the 6-month period immediately following the close of
4 such fiscal year, information relating to such portion of
5 contributions may be based upon the fiscal year preced-
6 ing such fiscal year.

7 “(b) (1) In the case of a written solicitation which
8 requests the mailing of contributions and which is subject
9 to the provisions of subsection (a) of this section, the infor-
10 mation required to be included with such solicitation by
11 subsection (a) of this section shall be presented in language
12 which is readily understandable by those persons to whom
13 the solicitation is directed, shall be located in a conspicuous
14 place on such solicitation, and shall appear in conspicuous
15 and legible type in contrast by typography, layout, or color
16 with other printed matter on such solicitation.

17 “(2) In the case of a solicitation which is subject to
18 the provisions of subsection (a) of this section and which
19 is made through the use of radio or television communica-
20 tions, the information required to be included with such
21 solicitation by subsection (a) of this section—

22 “(A) shall be presented in language which is
23 readily understandable by those persons to whom the
24 communication is directed;

1 “(B) in the case of a radio communication, shall
2 be clearly audible; and

3 “(C) in the case of a television communication, shall
4 (i) appear in lettering of sufficient size to be readily
5 legible to the viewer; (ii) be shown against a back-
6 ground which does not impair the legibility of such
7 communication; (iii) remain in view for a period suffi-
8 cient to enable the viewer to read such communication;
9 and (iv) if presented in audio form, be clearly audible.

10 “(3) Any solicitation which is made through the use of
11 radio or television communications and which does not
12 exceed 60 seconds in duration shall not be subject to the
13 provisions of subsection (a) of this section.

14 “(c) Any charitable organization which makes a solici-
15 tation which requests the mailing of contributions and which
16 is subject to the provisions of subsection (a) of this section,
17 or any charitable organization which receives any grant or
18 allocation from any federated fundraising organization which
19 requests the mailing of contributions and which is subject
20 to the provisions of subsection (a) of this section, shall, upon
21 request by the Postal Service, furnish to the Postal Service
22 such audit reports, accounts, or other information as the
23 Postal Service may require to establish or verify information
24 which such organization is required to include in solicitations
25 in accordance with subsection (a) of this section.

1 “(d) Any charitable organization which makes a solici-
2 tation which requests the mailing of contributions and which
3 is subject to the provisions of subsection (a) of this section
4 shall, no later than 30 days after the receipt of a request
5 from any person receiving such solicitation, furnish to such
6 person a pertinent financial statement prepared in accord-
7 ance with generally accepted accounting principles, for the
8 most recent complete fiscal year of the organization, which
9 is reasonably sufficient to verify any information included in
10 the solicitation involved in accordance with paragraphs (3),
11 (4), and (5) of subsection (a) of this section. If the solici-
12 tation involved is made during the 6-month period imme-
13 diately following the close of the most recent complete fiscal
14 year of the charitable organization, then the financial state-
15 ment required by the preceding sentence may be based upon
16 the fiscal year preceding such fiscal year.

17 “(e) The Postal Service shall adopt rules and regula-
18 tions which establish the accounting methods and procedures
19 to be used by charitable organizations to assure compliance
20 with the provisions of this section. Such accounting methods
21 and procedures shall conform to any generally accepted
22 accounting principles applicable to the field of operation of
23 the charitable organizations involved.

24 “(f) Any charitable organization which has revenues
25 from any source, in addition to receipts from contributions,

1 may, for purposes of complying with the provisions of para-
2 graph (4) of subsection (a) of this section, apportion man-
3 agement and general costs, other than fundraising costs,
4 between receipts from contributions and receipts from other
5 sources. Any such apportionment shall be made in the
6 manner specified by rules and regulations adopted by the
7 Postal Service.

8 “(g) The provisions of subsection (a) of this section
9 shall not apply to any bona fide membership organization
10 with respect to any solicitation for contributions by mail
11 made by such organization exclusively to the members of
12 such organization.

13 “(h) The provisions of subsection (a) of this section
14 shall not apply to any school, college, or university with
15 respect to any solicitation for contributions made by such
16 institution exclusively to its students, alumni, faculty, mem-
17 bers of governing boards and appointed committees, or a
18 member of the family of any such individuals, nor to any
19 charitable organization which is authorized by and exclu-
20 sively makes expenditures to or for the benefit of a school,
21 college, or university with respect to any solicitation for
22 contributions made by such organization exclusively to any
23 such individuals.

24 “(1) the term ‘charitable organization’ means any

1 person (including any individual, organization, partner-
2 ship, association, trust, society, foundation, group, cor-
3 poration, or any combination of them) which is
4 organized, or which claims to be organized, for any
5 charitable, benevolent, philanthropic, humane, patriotic,
6 scientific, literary, medical, religious, or educational pur-
7 pose, or for the prevention of cruelty to children or
8 animals, or for any other eleemosynary purpose;

9 “(2) the term ‘contribution’ means the promise,
10 grant, gift, or pledge of any money or property of any
11 kind for any charitable, benevolent, philanthropic, hu-
12 mane, patriotic, scientific, literary, medical, religious,
13 or educational purpose, or for the prevention of cruelty
14 to children or animals, or for any other eleemosynary
15 purpose;

16 “(3) the term ‘federated fundraising organization’
17 means a charitable organization established for the pur-
18 pose of raising and distributing money for and among
19 affiliated charitable organizations in any case in which
20 affiliation with, or membership, in such organization does
21 not confer operating authority and control by any indi-
22 vidual charitable organization upon any other individual
23 charitable organization;

24 “(4) the term ‘membership’ does not include any

1 case in which an organization confers a membership
2 upon any person solely as a consideration for making a
3 contribution; and

4 (5) the term "written solicitation" includes any
5 request for the remittance of a contribution which is
6 made through the use of any letter (other than a letter to
7 any individual with whom the individual transmitting
8 such letter is personally acquainted), circular, notice,
9 brochure, advertisement, or other written material which
10 is: (A) mailed or delivered by any means to the individ-
11 ual receiving the solicitation; or (B) displayed in any
12 newspaper, magazine, or other periodical or printed
13 matter, or which is displayed on any billboard, poster,
14 or other device for the display of written, printed, or
15 graphic matter."

16 (b) The table of sections for chapter 30 of title 39,
17 United States Code, is amended by adding at the end thereof
18 the following new item:

19 "3012. Soliciting charitable contributions by mail."

20 SEC. 2. Section 3005 (a) of title 39, United States Code,
21 is amended by inserting immediately after "means of false
22 representations," the following: "or for a charitable purpose
23 without complying with the provisions of section 3012 of this
24 title,".

1 SEC. 3. (a) Except as provided in subsection (b), this
 2 Act shall take effect 3 years after the date of the enactment
 3 of this Act.

4 (b) The authority of the United States Postal Service
 5 to adopt rules and regulations to carry out the provisions of
 6 section 3012 of title 39, United States Code, as added by sub-
 7 section (a) of the first section of this Act, shall take effect
 8 on the date of the enactment of this Act, except that such
 9 rules and regulations shall not take effect before the close of
 10 the period specified in subsection (a) of this section.

EXECUTIVE OFFICE OF THE PRESIDENT
 OFFICE OF MANAGEMENT AND BUDGET

Honorable Robert N. C. Nix
 Chairman, Committee on Post Office
 and Civil Service
 House of Representatives
 Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your request for the views of the Office of Management and Budget on H.R. 41, a bill "To amend title 39, United States Code, to require the furnishing of certain information in connection with the solicitation of charitable contributions by mail, and for other purposes."

With the amendments suggested by the United States Postal Service, the Office of Management and Budget would have no objection to the enactment of H.R. 41.

Sincerely,

(Signed) James M. Frey

James M. Frey
 Assistant Director for
 Legislative Reference



LAW DEPARTMENT

Washington, DC 20260

March 28, 1977

Dear Mr. Chairman:

This responds to your request for the views of the Postal Service on H.R. 41, a bill "To amend title 39, United States Code, to require the furnishing of certain information in connection with the solicitation of charitable contributions by mail, and for other purposes." This bill is quite similar to legislation reported favorably by the Committee and supported by the Postal Service in the last Congress. H.R. 10922; H.R. Rep. No. 94-1135, 94th Cong., 2d Sess. (1976). The goal of this legislation is a more informed public. It requires of charitable organizations seeking to obtain contributions by mail reasonable disclosure of their fiscal operations without direct regulatory intervention of the Government.

Although we suggest several minor modifications in the present bill, we continue to support this legislation and believe our comments fall logically into four divisions: Disclosure Requirements, Types of Solicitations, Organizations Covered, and Administration.

Disclosure Requirements

The bill would enact a new 39 U.S.C. §3012, Subsection (a) of which would require "any charitable organization which solicits, in any manner or through any means, the remittance of a contribution by mail" to include with the solicitation:

- (1) the legal name and the principal business address of the charitable organization making the solicitation;
- (2) the purpose of the solicitation and the intended use of the contribution solicited;
- (3) the obligation of the charitable organization to furnish further financial information at the request of a recipient of the solicitation;
- (4) the percentage of all contributions for the charitable purpose of the organization which remained for direct application to that purpose after deducting

all fundraising, management, and general costs during the most recent fiscal year of the organization; and

(5) in the case of a federated fundraising organization, the portion of all contributions distributed or allocated by that organization to its member organizations, during the most recent fiscal year of the organization, which remained for direct application to charitable purposes by the member organizations after deducting all fundraising, management, and general costs of both the federated and member organizations.

If the solicitation was made during the 6 months immediately following the end of the organization's fiscal year, the information in (4) and (5) would be based upon the preceding complete fiscal year.

We believe the proposed disclosure requirements of new §3012(a) would afford potential donors a reasonable opportunity to compare the actual operations of a charity with its promises and the proposed disclosure requirements reflected by §3012(a)(1) and (2) are, we should expect, already customarily satisfied by any legitimate solicitation.

Disclosure requirement (3), together with proposed 39 U.S.C. §3012(d), seeks to promote public awareness of charitable financing and to alleviate the enforcement burden placed on the Postal Service by the legislation. Under these provisions, a charitable organization would be required to furnish certain financial information to the recipient of a solicitation for contributions. Within 30 days of the receipt of a request, the organization would be required to furnish "a pertinent financial statement prepared in accordance with generally accepted accounting principles. . .which is reasonably sufficient to verify. . ." information included in the solicitation in accordance with new 39 U.S.C. §3012(a)(3), (4), and (5). We believe subsection (d) appropriately meets the reasonable needs of the public for financial data concerning a particular solicitation while permitting the organization to deny unreasonable requests for unnecessarily detailed or irrelevant information, repeated requests from the same individual, or other requests apparently motivated by a desire to harass the organization.

Proposed §3012(a)(4) appears intended to prevent the inclusion of solicitation costs and other administrative expenses in the amounts an organization reports as being devoted to a charitable purpose. As this provision allows the organization to present data from its own fiscal year, it should not impose burdensome accounting duties on any charitable organization.

Finally, disclosure requirement (5) appears to deal realistically with the special problems of "federated fundraising organizations", as defined in proposed 39 U.S.C. §3012(i)(3).^{1/} Proposed §3012(a)(5) would require disclosure of the portion of contributions distributed to the member organizations by the federated organization which remained for charitable purposes after deducting the fundraising costs and other expenses of both the federated organization and its members. This would give the prospective donor a reliable picture of the overall effectiveness of the federated organization, but does not clearly provide for the donor who desires additional information concerning the operations of specific member organizations. Disclosure requirement (3) may require additional consideration in this regard. Accordingly, we believe the proposed section meets the interests of prospective donors in obtaining sufficient information to make an intelligent decision, while recognizing the problems confronting a federated organization faced with the task of providing comprehensive information regarding the various activities of the members of the federation.

The proposed legislation also addresses the disclosure problems of charitable organizations which have revenue from sources other than contributions. Proposed §3012(f) seeks to prevent an organization with revenue from sources other than contributions from presenting an unbalanced view of the effectiveness of its solicitation efforts. In determining the portion of contributions remaining for application to a charitable purpose under §3012(a)(4), the organization might, in a manner to be specified by the Postal Service, apportion management and general costs, other than fundraising costs~~2/~~, between receipts from other sources. If this provision is enacted in its present form, the Postal Service would require by regulation that any organization with "outside income" reduce the amount of contributions received by an amount which bears the same ratio to the total management

^{1/} We note that the heading for subsection (i) appears to have been omitted from page 6 of the bill. We suggest that the words, "(i) For purposes of this subsection-", should be inserted immediately after line 23 on page 6 to remedy this apparent oversight.

^{2/} Fundraising costs would be apportioned to, and deducted from, receipts from contributions in supplying information required under §3012(a)(4).

and general costs of the organization (other than fundraising costs) as the contributions received bear to the total revenues of the organization.^{3/} However, the Postal Service has no desire to intrude unnecessarily into the management policies and internal affairs of charitable organizations. Accordingly, we suggest it would be desirable to revise proposed §3012(f) to track the corresponding provision in the bill reported by the committee in the last Congress.

Types of Solicitations

Proposed new §3012, like the present false representations statute, 39 U.S.C. §3005, would cover radio and television advertisements, as well as direct mail solicitations, which request that contributions be remitted by mail. Radio and television solicitations would be required to present the required information in language which is "readily understandable by those persons to whom the communication is directed", clearly audible to the listener, and clearly legible to the viewer. However, to avoid burdensome or impractical constraints upon radio and television solicitations §3012(b)(3) requires the information described in §3012(a) only in radio and television solicitations exceeding 60 seconds.

The legislation would cover a broad range of written solicitations, as well, under the definition in proposed §3012(i)(5). Like the present false representations statute, the proposed legislation would cover solicitations in letters, circulars, notices, brochures, newspapers, magazines, and periodicals, whether or not mailed, and even billboard advertisements, so long as they invited the remittance of contributions by mail. However, the definition of "written solicitation" would not apply to a letter to any individual with whom the individual sender is personally acquainted. We believe that this exception, narrowly applicable to letters transmitted by individuals to their personal acquaintances, would minimize the impact of this bill on local fundraising efforts.

Organizations Covered

Under the definition in proposed §3012(i)(1), the legislation would apply to:

any person (including any individual, organization, partnership, association, trust, society, foundation, group, corporation, or any combination of them)

^{3/} As reported by the Committee on Post Office and Civil Service in the 94th Congress, H.R. 10922 specified a formula of this type for use by organizations in providing the information required under proposed §3012(a).

which is organized, or which claims to be organized, for any charitable, benevolent, philanthropic, humane, patriotic, scientific, literary, medical, religious, or educational purpose, or for the prevention of cruelty to children or animals, or for any other eleemosynary purpose.

The Postal Service believes that since the purpose of this legislation is to require that organizations soliciting funds by mail provide sufficient information for informed giving, the focal concern of the bill is the solicitation of contributions to be remitted by mail, and the particular type of charity (e.g., religious, educational, or medical organization) is not relevant. Accordingly, we see no justification for the exclusion of any particular class of charities.

However, the legislation reasonably exempts "local" fund-raising appeals which are designed to reach only individuals who are in a position to be otherwise well informed about the affairs of the organization. Proposed §3012(g) would exempt "any bona fide membership organization with respect to any solicitation for contributions by mail made by such organization." This provision appears sufficient to insulate from the requirements of new §3012(a) the activities of local churches, lodges, or other groups the members of which may be assumed already to have adequate knowledge of the group's finances. We note that the term "membership", as defined in proposed §3012(i)(4), excludes such subterfuge as conferring membership solely in return for a contribution. We believe that this qualifying language will prevent the membership exception from being easily exploited by organizations which are not eager to make the disclosures required under §3012(a).

Similarly, proposed §3012(h) would exempt a school, college, or university, or a charitable organization organized exclusively for the benefit of such institutions, with respect to appeals to the school's "students, alumni, faculty, members of governing boards and appointed committees, or a member of the family of any such individuals." This provision would apparently exempt from §3012(a) the various building, athletic, and scholarship fund appeals regularly received by the graduates of certain educational institutions. We believe this exemption is reasonable, because the alumni of an educational institution appear to be in a position to acquire information about that institution adequate for purposes of evaluating its fund appeals.

Administration

We believe it important to stress that the proposed legislation would not assign to the Postal Service any responsibility

to approve or to supervise charitable appeals. The manpower requirements of any such obligation would exceed our resources. Rather, it would amend 39 U.S.C. §3005(a) to authorize the Postal Service to bring administrative proceedings under §3005 against any organization which fails to comply with the provisions of the new statute. To facilitate these enforcement efforts, proposed §3012(c) would require any organization making a solicitation which is subject to the legislation to "...furnish to the Postal Service, such audit reports, accounts, or other information as the Postal Service may require to establish or verify information. . . ." the organization is required to include in its solicitations. To preclude possible construction of this provision as not authorizing on-site examination of books and records, we suggest the phrase "furnish to the Postal Service" be replaced by the following: "make available to the Postal Service in accordance with its request,"

In addition, proposed §3012(e) would direct the Postal Service to prescribe by regulation the accounting methods and procedures to be used by charitable organizations to assure compliance with new §3012. We believe that this provision is unnecessary because the Postal Service, under 39 U.S.C. §401(2), already has the general power "to adopt, amend, and repeal such rules and regulations as it deems necessary to accomplish the objectives of this title."

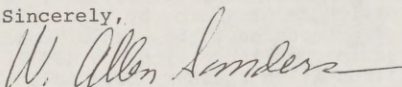
Further, because of its mandatory terms, proposed §3012(e) appears to cast the Postal Service in a regulatory role which it is ill-equipped to assume. It is important to recognize that the Postal Service is not a regulatory agency and that it is not equipped with the staff or expertise to oversee the daily activities of organizations subject to this legislation. Sharing the sponsor's view that undue Government regulation of charities is not desirable, we believe that charitable organizations should be free to adopt a system of accounting which fits individual institutional needs, provided that system does not frustrate the purpose of this legislation through accounting practices designed to distort the financial affairs of the organization. We believe that absent compelling reason to involve the Postal Service immediately in the prescription of accounting methods and procedures, the Congress should adopt a generalized standard to govern the accounting practices of organizations subject to this bill, while recognizing the existing authority of the Postal Service to adopt substantive regulations particularizing accounting standards should such action become necessary at some future date.

Accordingly, we recommend that proposed §3012(e) be amended to read as follows:

(e) Any charitable organization which makes a solicitation which requests the mailing of contributions and which is subject to the provisions of subsection (a) of this section shall, in preparing the information required to be included with such solicitation by subsection (a), use accounting methods and procedures which conform to the generally accepted accounting principles applicable to the field of operation of that charitable organization.

With the changes we have suggested in proposed 39 U.S.C. §3012(e) and (f), we believe that this legislation would not impose substantial administrative or cost burdens on the Postal Service, but would enable the public to make more informed judgments on legitimate charitable solicitations, while giving law enforcement personnel access to data useful in combating illicit fund appeals. Accordingly, the Postal Service favors the enactment of this legislation.

Sincerely,



W. Allen Sanders
Assistant General Counsel
Legislative Division

Honorable Robert N.C. Nix
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Washington, D.C. 20515

* CODE OF ETHICS OF THE
NATIONAL RELIGIOUS BROADCASTERS
PROGRAM PRODUCTION

Purpose

Recognizing the vital and increasingly important role played by radio and television broadcasting as an agency of mass communication, vastly extending the potential audiences of the church and the classroom, the National Religious Broadcasters believe that the propagation of the Gospel by radio and television is essential to the religious inspiration, guidance, and education of the public, to the enrichment of the national life, and to the full use of this blessing of modern civilization in the public interest. In furtherance of this belief and of its purpose to foster and encourage the broadcasting of religious programs, and "to establish and maintain high standards with respect to content, method of presentation, speakers' qualifications, and ethical practices to the end that such programs may be constantly developed and improved and that their public interest and usefulness may be enhanced," the Association has adopted, and each of its members has subscribed to, the following Code of Ethics:

Sponsorship

1. Sponsorship of all programs broadcast by or in the name of the Association or any of its members shall be solely by a nonprofit organization whose aim and purpose is the propagation of the Gospel.

Character

2. The message disseminated in such programs shall be positive, concise, and constructive.

Production

3. The content, production, and presentation of such programs, including both music and continuity, shall be consistent with the program standards of the station or network over which they are broadcast and with the requirements of all Federal and State laws and of all regulations of the Federal Communications Commission.

Cooperation

4. Persons engaging in the broadcasting of such programs shall, by prompt appearance, scrupulous conformity with the limitations imposed by physical, technical, and economic characteristics of radio, Christian courtesy, and otherwise, cooperate with the station or network management.

Financial Accountability

5. Appeals shall be of a bona fide character for legitimate religious purposes and shall be presented in a dignified Christian manner. All donors shall be promptly furnished with receipts and an accounting thereof shall be furnished to the Board of Directors on request of the Board.

STATION OWNERSHIP AND OPERATION

In furtherance of its purpose to operate radio and television stations with the highest degree of quality, integrity, and Christian ethics, the Radio and Television Stations have adopted, and each of its members has subscribed to, the following Code of Ethics:

Obligation

The license granted by the FCC to operate a station is a privilege, not a right. Thus it is the obligation of each station to serve its listening constituency with programs that will instruct, uplift, and enhance their understanding of Christian principles and patriotic endeavor. We believe this is best accomplished by airing only programming which—

1. enriches the lives of the listeners in areas of education, culture, entertainment, information, and news;
2. contributes to the sanctity and upbuilding of the home;
3. respects the rights of all people;
4. protects and upholds the integrity of the United States of America; or
5. presents the Gospel message in clarity and simplicity.

It is also the obligation of each station to operate with the highest degree of quality by—

1. constant and thorough maintenance of equipment;
2. careful logging and operational procedures; and
3. employment of only competent and experienced personnel in both the programming and engineering sections.

Finance

All matters of finance, appeals for funds, and negotiations with advertisers shall be conducted with Christian dignity and integrity. All donors shall be promptly furnished with receipts.

Advertising

Each station operating on a commercial basis will maintain high standards in the selection and presentation of advertising.

Cooperation

Each station will cooperate in every way possible with broadcasters and producers of Gospel-centered programs.

