

# Responsive Philanthropy

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Photo by Tim Boyle, Getty Images



## Wal-Mart Philanthropy

### Do their Dollars Really Make a Difference?

*Local grantmaking buoys Wal-Mart's reputation  
even as its deplorable corporate practices gain wider circulation*

By Betty Feng

Corporate philanthropy is rarely just an expression of a company's altruistic desire to contribute to public welfare—it has become an integral part of a corporation's business plan. Companies not only receive tax breaks from grantmaking, they can also generate publicity and change public perception of company policies and actions. The 2004 Cone Corporate Citizenship Study shows that 80 percent of Americans care whether or not companies are good corporate citizens. The most common response by participants (12 percent) of a strong example of a good corporate citizen was Wal-Mart. Wal-Mart's public persona has changed

"Wal-Mart Philanthropy" continued on page 16.

## The Accountability Toolbox

*Sector must nix the either-or mentality towards government regulation and self-regulation*

By Rick Cohen

Apocalyptic fears of governmental oversight drive many in the nonprofit sector to envision a nirvana of self-regulation.

A foundation executive described the either-or scenario for self-regulation as a matter of choice or will: "Sooner or later, foundations are going to have tougher oversight. The question is whether we will take the initiative ourselves or wait to have something foisted upon us by a knee-jerk response to public outrage over some real or perceived case of excess or abuse."<sup>1</sup>

This is a sort of rugged individualist interpretation of nonprofit and philanthropic accountability: Either take responsibility or succumb to mindless ("knee-jerk"), irrational ("public outrage") governmental oversight.

The nonprofit self-regulation story involves dispelling myths and examining real experience of self-regulation in the United States and elsewhere.

**Self-regulation exists:** The U.S. nonprofit sector is basically self-regulated, and institutional philanthropy is nearly untouched. Witnesses in last year's Senate Finance Committee hearings and subsequent roundtables on nonprofit accountability unanimously observed the scant governmental oversight of the sector from the Internal Revenue Service (IRS) and state charity offices. The tax-exempt division of the IRS is seriously underfunded, barely capable of reading the mammoth 990-PFs big foundations submit and much less competent at investigating the information they contain. The 145 audits and reviews of foundations<sup>2</sup> and 3,396 reviews of tax-exempt organizations filing 990s and 990-PFs conducted by the IRS<sup>3</sup> in 2003 demonstrate that few nonprofits may actually be investigated for their financial probity.<sup>4</sup>

The capabilities of state attorney-general offices do not compensate for federal limitations. For the most part, state governments focus rather narrowly on charitable solicitations. At best, only a dozen or so states possess active charity offices, only a few have more than a handful of staff,<sup>5</sup> and most are incapable of going after the bigger miscreants. Indeed, the lack of oversight and enforcement



Rick Cohen

resources at the state level is such that only occasionally do attorneys general Eliot Spitzer of New York, Lisa Madigan of Illinois, and Bill Lockyer of California get involved in philanthropic cases.

The absence of government oversight does not mean that the nonprofit sector is

eagerly filling the gap on its own. It is difficult to think of any examples of nonprofit malefactors being drummed out of the membership rolls of national infrastructure organizations. As the brouhaha at Independent Sector (IS) around a proposed article for an online IS "Memo to Members" by the Minneapolis Foundation's Emmett Carson demonstrated, the mere mention of certain IS members in the article (the Irvine Foundation, Red Cross, Nature Conservancy, and United Way) ran afoul of a kind of nonprofit *omerta*. Rejected by Independent Sector, Carson's article was eventually published without censorship in *The Chronicle of Philanthropy*.

For the most part, with minimal government oversight and limited sector willingness to boot out bad guys, nonprofit self-regulation largely falls to nonprofit board members. Self-regulation, such as it is, is also occasionally abetted by members of the donating public, provided they are knowledgeable enough to use the information provided by rating organizations such as the BBB Wise Giving Alliance, Charity Navigator, and American Institute of Philanthropy.

**Not either-or:** Nonprofit accountability is not a choice between the mutually exclusive options of government regulation and self-regulation. Somewhat less hysterical about oversight, the Canadian nonprofit sector offers this useful interpretation:

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"Accountability should be thought of as a toolbox, rather than as a single approach for the exercise of responsibility. In this light, we have interpreted accountability broadly to include mechanisms of stewardship by boards of directors, self-accreditation by organizations, self-regulation by the sector, and external regulation."<sup>6</sup>

There are some aspects of nonprofit governance that can only be addressed by nonprofit organizations themselves. There are other dimensions that require the government's involvement, and there are some functions that are legitimately shared between the sector and government. While right wingers bemoan the Senate Finance Committee's attention to nonprofit accountability, the sector will have to draw on self-regulation as one of its accountability tools, no matter what Congress, the IRS, or state governments do.

As for the self-regulatory elements, the challenge will be how much teeth to give them.

**Dimensions of accountability:** The challenge of nonprofit accountability is that nonprofits share so little beyond their shared 501(c)(3) legal status. There are distinctions between grantmakers and grant recipients, distinctions between large nonprofit behemoths and small local service providers, and differences among nonprofits by topical focus: community development, health provision, environmental conservation. In other words, what works for land trusts on some issues might not work nearly as well for hospitals and universities and vice versa.

Equally important, different kinds of regulatory schemes fit parts of nonprofit functions better than others. Government seems to have little or no role in the accountability of a nonprofit that is drifting away from its mission, but the board of directors certainly does. And if the board doesn't act, the stakeholders themselves—the nonprofit's consumers and partners—may have to take matters in their own hands.

Within the nonprofit sector, observers estimate that only 20 percent of nonprofits belong to professional or trade "umbrella" organizations. Alternatively, some nonprofits are members of more than one umbrella organization, thus raising the question of whose standards a nonprofit should follow.

**Mechanisms of self-regulation:** Self-regulation is not purely an alternative to government oversight, but rather should be viewed as different mechanisms, such as these:

> Accreditation and licensing: For the public, accreditation of nonprofits (and some for-profits) is well-known in higher education. Indeed, colleges and universities, and their programs, may be accredited by one or more of 60 regional or national accrediting organizations.<sup>7</sup> The Council for Higher Education Accreditation (CHEA) actually coordinates the array of voluntary accreditation programs aimed at distinguishing legitimate schools from diploma mills. Well-known accrediting organizations include the American Bar Association (ABA) for law schools and the Association of American Medical Colleges. For the purpose of this article, these are classified as accreditation and licensing entities in that they review not only the financial and management practices of organizations, but also the content of programs and in some cases curricula. More than a seal, the accreditation is a sort of license to practice or operate.

> Codes of practice: Among generic nonprofits, the Maryland Association of Nonprofit Organizations (MANO) is the most recent to promulgate a code of practice to evaluate Maryland nonprofits. One of the nation's most impressive is the Seven Standards of Responsible Stewardship of the Evangelical Council for Financial Accountability (ECFA).<sup>8</sup> ECFA describes itself as an accreditation agency in that its nearly 1,200 nonprofit Christian ministry members have to comply with the ECFA standards to maintain membership status. ECFA also enforces standards annually by requiring submissions of audits and other information, conducting field reviews of 10 percent of its membership, and investigating reported complaints about non-compliance. Other trade associations such as the Council on Foundations (COF) promote codes of behavior like ECFA's, but rely on their members' self-reporting.

> Education (for consumers as well as producers): Some organizations believe and advocate that education for nonprofits, particularly for nonprofit board members, is the best and most cost-effective mechanism for nonprofit accountability. In that sense, recent shifts in the public focus of the New York Attorney General's office—away from legislative initiatives and toward public education—have garnered support and sighs of relief from anti-regulation nonprofit leaders. On nonprofit accountability issues, educated boards of directors are in all probability the

**The absence of government oversight does not mean that the nonprofit sector is eagerly filling the gap on its own. It is difficult to think of any examples of nonprofit malefactors being drummed out of the membership rolls of national infrastructure organizations.**

strongest operational mechanisms of self-regulation in the sector.

- > Ratings and evaluations: BBB Wise Giving Alliance, Charity Navigator, and the American Institute of Philanthropy are well-known generic nonprofit ratings organizations. Each relies more or less on 990s—and, in some instances, excerpts from organizational audits plus supplemental information submitted by nonprofits—to rate nonprofit accountability. This information usually emphasizes fundraising costs, administrative costs, and structural aspects of nonprofit governance.
- > Co-regulation: There are more and more examples of co-regulation occurring in the for-profit sector, where government essentially shares with the sector the task of developing and enforcing standards. Unlike self-regulation, the government imprimatur provides some legal protection against stakeholder litigation for organizations complying with co-regulation standards. With co-regulation, nonprofits would have more input into the interpretation of the rules than they would with government regulations.

Co-regulation merits special attention for its shared responsibility for oversight and governance. There are several models:<sup>9</sup>

- > Government adopts and incorporates part of a trade association's standards of behavior in the government's legally enforceable regulations.
- > Government recognizes a sector's or an association's code of behavior and passes legislation adopting it as the public's enforceable standard.
- > Government mandates that a trade or professional association create a code for subsequent oversight and enforcement.
- > Government officially delegates its oversight and enforcement authority to a professional or trade association.

**Abuses of self-regulation:** Much of the nonprofit sector's advocacy for self-regulation is based on the charitable, or "do-gooder," intent of the players. But as scandals at the United Way of the National Capital Area, Pipevine, and other United Way affiliates demonstrate, the positive intent of most of the 1,400 members of the United Way (UW) did not mean that the system worked to clean up abuses. To the contrary, some would suggest that the United Way's first

line of response to the National Capital scandal and other instances where United Ways engaged in double counting and other irregularities was press-oriented damage control, before finally succumbing to the realization that the UW accountability system needed a drastic overhaul. Nonprofit history identifies many pitfalls of self-regulatory schemes:

- > Self-regulation requires resources for investigation and enforcement that would be no less than a governmental agency would provide. The mere promulgation of sectoral standards accomplishes little if the sector lacks the organizational and financial resources to investigate compliance and enforce the standards. Given 1.4 million nonprofits, just the annual cost of doing organizational analyses and creating ratings along the lines of the work of the BBB Wise Giving Alliance or the American Institute of Philanthropy is enormous. No one should presume that self-regulation is a no-cost alternative to the IRS and state attorneys general.
- > The history of self-regulation demonstrates that the more powerful actors in the market tend to be the most influential in structuring the rules, frequently for self-interest. In this nation's nonprofit infrastructure, which includes organizations such as the COF and IS, the larger foundations and larger nonprofits dominate and influence the substance and content of standards more than smaller organizations, not to mention those that are not members of the organizations. Similarly, if structured by the dominant players in the sector—that is, the near monopolistic large nonprofits—self-regulation standards can be used as barriers to entry against small organizations or new groups that may be considered prospective or actual competitors.
- > The voluntary nature of self-regulation is a central weakness. If it's voluntary, an organization can opt out or simply refuse to sign on, though opting out can have substantial consequences.
- > To be effective, self-regulation must be matched with publicity. Consumers—or in this case, the nonprofits and their stakeholders and communities—must have sufficient information about the self-regulatory standards and mechanisms and their primacy in the sector, or they become no more than a link on a Web page.

- > The public must be able to see the consequences of enforcement, that self-regulation has actual consequences. Because there is scant evidence of major trade associations—nonprofit or for-profit—ejecting their scandal-ridden members, the public has little confidence in the efficacy of self-regulation.
- > Self-regulation seems to have functioned best where the market has been a driver, where consumers can shift their patronage to organizations that meet promulgated standards. For example, home buyers want reputable real estate brokers and turn to the National Association of Realtors as a powerful arbiter. Such market pressure has made the association use high standards to shore up levels of trust. For nonprofits, the effect of market-driven standards is less clear, but for foundations, it is difficult to imagine philanthropic grantseekers, the consumers, not submitting proposals to foundations that don't rank as high as others.
- > Similarly, strong, credible professional organizations are needed that can withstand challenge and criticism. Few organizations possess the courage to make public allegations about malefactors. Partly, they fear retribution—threats from organizations and individuals or even litigation for libel or slander. Partly, they fear the effect on fundraising, the concern that bad press for the sector will hurt their own fundraising. As a result, although the press will name names, most of the nonprofit trade associations will only obliquely refer to unnamed “bad apples.”

Limited self-regulation works when consumers and the regulated organizations change their behavior based on the information generated by compliance or noncompliance. An example is the behavior of donors, who can direct their charitable giving to nonprofits that garner good ratings from BBB Wise Giving or Charity Navigator, and away from the organizations falling short. Organizations that want to maintain their reputations for reliability and performance would in theory alter their policies and practices to correct areas where they fall short. Unfortunately, as some have noted, information on nonprofit effectiveness and efficiency has, to date, had little demonstrable effect on the giving decisions of individual or institutional donors.<sup>10</sup>

**Constructing effective self-regulation:** If the sector can overcome its fear of government, it

has the chance of devising complementary mechanisms of self-governance that strengthen oversight and enforcement. Make no mistake: Self-regulation is only one leg of the stool. Effective nonprofit accountability requires strengthened federal and state laws, regulations, and enforcement; the third leg is an infusion of resources to make self-regulation and government regulation work. Unlike the portrait of Dorian Gray, the nonprofit sector won't crumble and die if it takes a hard look in the mirror, joined by government regulators, to clean up and clean out the problem areas. To make self-regulation functional, the following lessons are worth learning:

- > Tools in the toolbox: Think of self-regulation as one of the tools in the accountability toolbox. Some aspects of self-regulation work well; others don't. The challenge is figuring out which pieces of self-regulation fit the task at hand. The regulatory tools, whether self-regulatory schemes or government oversight, have to be targeted to the elements of nonprofit behavior that they fit, and they have to be proportional to the scope of the problems addressed.
- > Small isn't necessarily beautiful: No one should fall prey to the “small is beautiful” argument that small nonprofits should be exempted from oversight and regulation. Further, the sector should neither permit the large nonprofits to set the rules for their own benefit nor hide behind the skirts of smaller nonprofits decrying the burdens of excessive regulation. Although the nonprofit sector's leadership seems to prefer blue-ribbon efforts that are dominated by “distinguished CEOs” of mega-nonprofits, a process for generating standards of accountability that is more democratic and transparent might be a way of ensuring that the sector's oligopolies don't end up writing the rules.
- > Noncompliance measures: Proponents of self-regulation intimate that self-regulation is a matter of self-actualizing willpower, internalized by probity-focused individuals within nonprofit organizations. Rarely do any of the proponents of self-regulatory schemes spell out how they will convincingly address noncompliance. Punishing the accountability scofflaws and making the noncompliance regimes public are crucial components of self-regulatory success. For the most part, the nonprofit sector is polite and collegial, searching

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for consensus. Effective regulation, however, requires the less-than-polite behavior of pointing a finger at miscreants and saying "you've crossed the line" or even "get out."

- > Widespread support: If "voluntary" self-regulation functions with limited support throughout the sector, with players able to opt in and out with little consequence, the public will find little confidence in self-regulation.
- > Credibility of the self-regulators: The sources at the beginning of this paper contrasted the sector's intellectual capabilities with the lack of knowledge and experience of the government regulators they opposed and feared. If the nonprofit sector claims that the IRS, for example, lacks a track record that inspires trust and credibility, the same goes for the self-regulatory bodies within the nonprofit sector itself. Notwithstanding the many good people in the membership of the COF, many nonprofits might view COF's oversight of foundation accountability as the foxes in charge of security at the henhouse. The ancient Romans had a phrase for it, "*Quis custodiet ipsos custodies?*" or "Who guards the guardians?" Show us the foundations whose membership dues have been spurned, or better, refunded by the council because of failure to live up to foundation accountability principles, and that will be a step toward self-regulatory credibility.

A *Wall Street Journal* editorial not long ago weighed in against government regulation of nonprofits.<sup>11</sup> Timed with the concerted corporate accountability reflex against Sarbanes-Oxley, the *Journal* shuddered at the thought of the three dozen recommendations on nonprofit oversight in the Senate Finance Committee's white paper and proffered the alternative of self-regulation modeled on ECFA's Christian nonprofit standards and the Maryland Association of Nonprofit Organizations' (MANO) "seal of excellence." The *Journal* concluded its self-regulatory plea with a holiday season wish: "In the spirit of the season, we urge Mr. Grassley to give our armies of compassion a chance to prove themselves anew."

When it comes to effective self-regulation and oversight in the era that started roughly a decade ago with the disgraces of the United Way's William Aramony, the sector has to do more than the ECFA and MANO approaches. In the wake of Enron and Tyco, critical observers of corporate behavior realize that self-regulation and more punitive government regulation

are complementary, not alternatives. The great case in point is the not-for-profit New York Stock Exchange (NYSE), a self-described instrument of self-regulation whose compliance with even minimal procedural requirements was undermined when it came to former Chief Executive Officer Richard Grasso's salary and by the NYSE Foundation's increasing grantmaking generosity to charities associated with the NYSE board members charged with reviewing Grasso's \$140 million compensation.<sup>12</sup> It took New York Attorney General Spitzer's intervention to slap some sense into the out-of-control self-regulating NYSE.

The NYSE's self-regulation, like the pre-Enron self-regulation among accounting firms, is really interest promotion masquerading as self-regulation. Like the historically delusional who cite the pre-Enron accounting industry as a success story in self-regulation, observers who encourage nonprofits toward self-regulation with the adage "physician, heal thyself"<sup>13</sup> obviously fail to see the irony in citing the notoriously regulation-defensive medical industry. Wrapping themselves in the angel wings of accountability through self-regulation, the nonprofit sector's leadership organizations will do little to advance accountability until they put teeth to their own self-regulatory efforts and get over their fear of complementary government oversight and enforcement. ☺

#### Notes

1. Les Silverman, "Building Better Foundations," in *The McKinsey Quarterly* (2004: Number 1, [http://www.mckinseyquarterly.com/article\\_page.aspx?ar=1382&L2=33&L3=95](http://www.mckinseyquarterly.com/article_page.aspx?ar=1382&L2=33&L3=95)).
2. The 145 reviews include not only private foundations (filing 990-PFs) but also split-interest charitable trusts (form 5227), other charitable trust accumulations (form 1041A), and the returns of revoked private foundations (form 1120).
3. In comparison, in 1997, when there were significantly fewer private foundations and other nonprofits, the IRS reviewed or audited 503 tax exempt filing 990-PFs and other charitable trusts plus 4,168 tax-exempt organizations filing 990s and 990EZs.
4. The recently announced IRS reviews of the NAACP and 59 other nonprofits for their political speech constitute a politicized and potentially dangerous use of the IRS that extends far beyond the accountability issues being debated in the sector.
5. Representing the National Association of State Charity Officials, Mark Pacella testified on June 22, 2004, to the Senate Finance Committee that less than half of the states are regular participants in NASCO and most states "do not have personnel dedicated to the exclusive regulation of charities."

*Continued on p. 19*

## The Triumph of the Beast Starvers?

By Jared Bernstein  
Economic Policy Institute

Last month, the Bush administration released its budget for fiscal year 2006 (which goes from October of this year to September 2007). While presidents' budgets aren't always big news, this one is particularly important for at least two reasons. First, the Bush administration serves up some big unprecedented spending cuts, and it's worth checking out for whom the ax falls. Second, more so than in any previous Bush budget, the longer-term priorities of the administration and its backers are apparent just under the budget's surface.

So steel your nerves, and read on. What follows is not for the faint of heart, and has consequences for the charitable sector.

### Take Me to Your Budget

Imagine you land on a distant planet. Aliens greet you and take you to their leader, who greets you warmly and asks, "What can we do to make you more comfortable?" Your goal is to learn about this alien population: Are the people warmongering or peaceful? What are their values, their preferences?

To the aliens' surprise, you ask if you might peruse their budget.

OK, I admit this is an economist's fantasy, but there's something to it. Our national budget may appear at first blush to be a mind-numbing balance sheet. But our budgets are actually powerful statements about what matters to us as a nation.

To note that we ignore them at our peril is an understatement, because their impact can reverberate for generations. We ignore them at the peril of our progeny.

This is particularly the case with the recent budget from the Bush administration. This document reveals a set of priorities that has profound short- and long-run implications. The short-run impacts, primarily spending cuts to human services programs, have gotten the most attention, and such attention is well-deserved. The long-run implications are just as, if not more, worrisome. Lurking behind these reams of tables and numbers is a mission to significantly shrink government and its services. If this mission is successful, it will hobble not only our government's ability to perform its functions as we have come to know them, but also the ability of the nonprofit sector to complement these functions and services. Specifically, the sector would face both an increasing demand for services and budget slicing, as fewer government funds and grants are made available.

### The Long Run

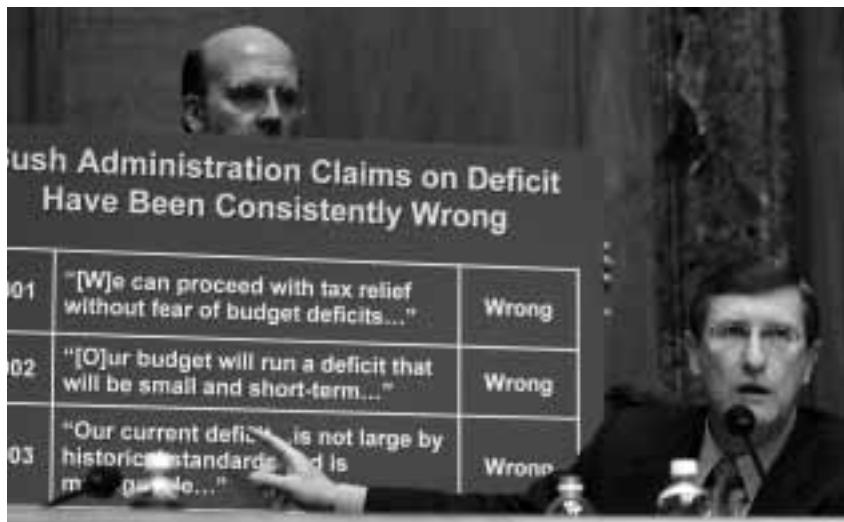
My Economic Policy Institute (EPI) colleague and longtime budget-parser, Max Sawicky, begins a forthcoming paper about the current budget with the following quote from the budget document itself:

These long-run budget projections show clearly that the budget is on an unsustainable path."

At its heart, the problem is this: The government is collecting too few revenues to meet our spending obligations. This explains current deficits, of course. But unless we make big changes, the magnitude of the imbalance between what government takes in and what it's slated to spend grows to unsustainable levels (for the record, this is much more a function of health care spending than Social Security). Eventually, we will either have to raise more revenue to meet our commitments or noticeably reduce those commitments. The cuts we're arguing about today will pale by comparison.

This revenue/spending point is critical, both for historical context and to fend off partisan arguments. Federal tax revenues as a share of

U.S. Sen. Kent Conrad (D-ND) questions Joshua Bolten, director of the Office of Management and Budget, as Bolten testified before the Senate Budget Committee on Capitol Hill February 9, 2005 in Washington, DC. Bolten testified before the committee on the Bush administration's 2006 federal budget. (Photo by Win McNamee/Getty Images)



**A few years ago, conservative activist Grover Norquist bragged that his agenda was to “starve the beast” of government spending, and the Bush administration’s tax cuts can certainly be viewed in that light. But the beast starvers did not count on the Bush administration to be both so open to new spending, and so unconcerned about deficits.**

gross domestic product (GDP) were 16 percent last year, their lowest level since 1959, while federal spending was not particularly high in historical terms. In fact, between 1975 and 2003, federal spending relative to GDP averaged 21 percent; last year, it was 20 percent.

A particularly misleading variant of the argument is that we’re overspending on domestic programs. The Center on Budget and Policy Priorities (CBPP, the best source for speaking truth to power on these issues; the group’s Web site is a treasure trove of information on the president’s budget), puts it this way: “Recent domestic spending increases come in a distant fourth as a cause of the current deficit, well behind tax cuts, spending increases for defense, homeland security, and operations in Iraq and Afghanistan, and the economic downturn.”

Thus, our current deficits are due in large part to the massive tax cuts enacted since 2001; we’ve choked off our revenue stream. Yet, we’re still devoting about the same share of our economy to federal spending. At least, that was the budget story of Bush’s first term.

Things are shaping up differently this time around. The administration claims to have gotten serious about deficit reduction (more on this later), and has constructed a budget that allegedly cuts the deficit, albeit temporarily. Predictably, they do so exclusively by cutting spending; in fact, the budget calls for further tax cuts amounting to \$1.4 trillion over the next 10 years (more than \$2 trillion if you include fixing the alternative minimum tax, a fix that is highly likely, since by 2010 the tax is expected to hit 33 million taxpayers, about a third of all returns, compared with less than 5 percent in recent years).

The thematic is not hard to spot. A few years ago, conservative activist Grover Norquist bragged that his agenda was to “starve the beast” of government spending, and the Bush administration’s tax cuts can certainly be viewed in that light. But the beast starvers did not count on the Bush administration to be both so open to new

spending, and so unconcerned about deficits.

It has thus taken a little longer for the starving to commence. The federal government is still spending about the same share of the economy as ever, but, as the above quote from the budget suggests, the administration knows that will have to change. As economists love to point out, “Unsustainable trends can’t be sustained.” The question is how will they be reversed.

### **What’s Being Cut?**

According to analysis by CBPP, the president’s budget proposes a 16 percent—\$214 billion—cut in domestic discretionary spending between 2006 and 2010, not including homeland security. Estimated cuts in mandatory low-income programs make up about \$30 billion, and include cuts to the following programs: Earned Income Tax Credit (EITC), Supplementary Security Income (SSI), Temporary Assistance to Needy families (TANF) and child care, foster care and adoption assistance, and the Social Services Block Grant. According to the Coalition on Human Needs (CHN), in 2010, “The funds lost to states would be enough to provide health coverage to 1.8 million children.”

Turning to entitlements, the president’s budget cuts Medicaid by \$45 billion over 10 years (the budget proposed \$60 billion in cuts and \$15 billion in increased spending), in part by enforcing stricter rules on how states finance their share of the program. Medicaid, along with these low-income programs, is a federal state match—if the feds give less, the states either have to pony up more or cut services. In the case of other low-income programs that states have to match, potential cuts cost the states millions of dollars for each program. For example, estimated state cuts of the EITC from 2006 to 2010 range from \$5.9 million in Wyoming to \$462 million in Texas.

As a result, it is estimated that as many as 300,000 working poor could lose food stamps as a result of the proposed cuts; the same number of children are projected to lose child care subsidies. Cuts in education services to adults are estimated to reduce such services to 470,000 persons. As many as 671,000 could fall off the roles of Women, Infants, and Children, a nutrition and health program; 370,000 fewer households could get Section 8 housing vouchers; and 360,000 could lose low-income home energy assistance. There could be 90,000 fewer Head Start slots by 2009.

Given the long-term fiscal constraints noted above, these cuts could be only the beginning. For the Norquists of the world, they cause the beast to miss a meal or two—they don’t starve it. So a few other ideas are being floated that constitute much more lasting attacks on federal spend-

### **Possible Cuts in Selected Low-Income Programs Under the Jurisdiction of the Ways and Means Committee (2006 – 2010)**

Supplemental Security Income	\$4.8 billion
Earned Income Tax Credit (refundable portion)	\$4.2 billion
TANF and Child Care Block Grant (combined)	\$2.4 billion
Child Tax Credit (refundable portion)	\$1.6 billion
Foster Care and Adoption Assistance	\$900 million
Child Support Enforcement	\$600 million
Social Services Block Grant	\$208 million

Source: Center for Budget and Policy Priorities (CBPP)

ing. Here are three techniques for putting the starve function on autopilot.

**Budget Reconciliation:** As CBPP analyst Sharon Parrot notes, this is a process in which Congress sets a multiyear deficit target and moves legislation on a fast track to make cuts in entitlement programs to meet the target. In practice, the various committees that determine spending levels are instructed to cut a set amount from the programs over which they have jurisdiction. The larger the reduction targets, the bigger the program cuts. Parrot warns that "the House has been trying to use this fast-track budget-cutting process for several years, and so far the Senate has stopped them. But ...with the elections safely behind congressional leaders, this is more likely to happen."

**Entitlement Caps:** Think of these as a backup in case lawmakers don't slash sufficiently in the reconciliation process. If entitlement costs (excluding Social Security) are projected to exceed the cap, Congress must pass legislation to stay under the cap or across-the-board cuts are made automatically.

**Block Grants:** Most of us have come to know this approach through welfare reform, which became a block grant in 1996. Entitlements, such as food stamps and Medicaid, do not undergo annual appropriations because by law, they have to expand or contract to meet the needs of those who qualify for the program. Block grants, on the other hand, are chunks of money that undergo annual appropriations and are sent to the states to cover specific program functions. They give states more flexibility, but from a budgetary perspective, especially in the current environment, think of them as a way to revoke a program's entitlement status, setting up a chopping block that did not previously exist.

### Conclusion

The embodiment of "chutzpah" is traditionally that of the child who, having disposed of his parents, throws himself on the mercy of the court as an orphan. In that spirit, this is a budget with major chutzpah. After initiating massive, regressive cuts in taxes, the two most important messages in the current budget are:

- 1) Sorry, folks. We really think stuff like education, job training, food stamps, and child care are important. We just don't have, or refuse to make available, the resources to help.
- 2) Watch out ahead! This budget path we're on is unsustainable.

We're not supposed to notice that the administration itself, with Congress's approval, is responsible for these problems. And we're supposed to be resigned to the idea that our dimin-

ished revenue outlook means belt tightening. Forget national priorities like health care, education, and housing—can't afford 'em anymore.

The current operative agenda has two components: Put the budget on an unsustainable path and take tax increases off the table. Lawmakers then throw up their hands in despair, claiming they have no choice but to slash and burn.

But the president's budget goes way beyond this: It calls for billions more in tax cuts. And not included in the budget are the costs of the ongoing wars, fixing the alternative minimum tax and, biggest of all, more than \$750 billion of borrowing that would be necessary to partially privatize Social Security. Even ignoring these, the Congressional Budget Office finds that the president's budget would add \$1.6 trillion to the national debt, of which \$1.4 trillion would come from making the Bush tax cuts permanent.

Well, I suggest we not go so gently into that good night. There needs to be a "plan B," and it needs to include tax increases. According to CBPP, we could get much of the way to 75-year solvency in Social Security simply by reversing the tax cuts that go to the top 1 percent income earners (75-year financing shortfall: \$3.7 billion; 75-year cost of permanent tax cuts to top 1 percent: \$2.9 billion). The cost of these high-end tax cuts is about what the feds spend on education, and a lot more than we spend on housing and urban development. According to the Coalition on Human Needs, undoing the repeal of the estate tax would hit a few multimillionaires, but it would return the resources needed to pay the full costs of the No Child Left Behind program and the Individuals with Disabilities Education Act for 10 years.

The point is that once we contemplate going back to historical levels of revenue collection (remember the factoid above: This value is at its lowest level since 1959), the chains that bind us fall away and the possibility of using government to meet a different set of priorities re-emerges.

The larger point is the one made by the economist space traveler: Budgets represent what we as a nation care most about. They are national statements about the depth of our connection to each other, or lack thereof. Conservative policymakers, with their focus on individualism and privatization, have been successful in breaking these connections, and this latest budget is a case in point. ☺

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**The administration claims to have gotten serious about deficit reduction, and has constructed a budget that allegedly cuts the deficit, albeit temporarily. Predictably, they do so exclusively by cutting spending; in fact, the budget calls for further tax cuts amounting to \$1.4 trillion over the next 10 years.**

# Wasting Resources and Risking Lives

*Philanthropy, Bush and Abstinence-Only Programs*

By Jeff Krehely

**What value does society—including taxpayers, the government, and (especially) the country's most disadvantaged citizens—get in return for the huge amounts of public money given directly and indirectly to nonprofits and foundations?**

A recent report from Texas A&M University confirmed—yet again—that abstinence-only sex education programs do not necessarily deter teenagers from having sex. This study found that 23 percent of ninth-grade girls and 24 percent of 10th-grade boys had sex before participating in abstinence-only education programs. After the programs, 29 percent of the girls and 39 percent of the boys in the same groups reported having sex.

Findings from other reports, including one published in the American Journal of Sociology, suggest that abstinence-only programs are not only ineffective, but that they also increase the likelihood that a teen will have unprotected sex once they become sexually active. Abstinence-only education programs do not provide any information on using condoms or other safe-sex practices—in fact, to qualify for federal grants to run such programs, organizations are barred from preaching anything besides abstinence as a way to prevent sexually transmitted diseases or pregnancies. Thus, teens participating in such programs will be less likely to know about safe-sex options, compared with teens participating in programs that weren't forbidden from using the word "condom."

Texas A&M's Scott and White Memorial Hospital received nearly \$800,000 in 2004 from the Bush administration to run an abstinence-only program called Worth the Wait. This money was only a fraction of the \$31 million that the U.S. Department of Health and Human Services' Health Resources and Services Administration gave to 50 nonprofit organizations in 2004 for these programs.

On its Web site, Worth the Wait lists "101 Fun Things to Do (Besides Having Sex)," including making a scrapbook, bowling, and starting a band. It also calls drugs, sex, tobacco, violence, and alcohol five "risky behaviors," and claims that "indulging in one risky behavior leads to another and another. Before you know it you are stuck in the web with a cigarette in one hand, a beer in the other, the smell of weed in the background, a girl from your math class is in the back room having sex, and two drunk guys are about to fight over some girl!"

It's not clear in which peer-reviewed journal this theory was explained, tested, and verified, but it's a safe bet that it wasn't the American Journal of Sociology.

Another big winner in the government's no-safe-sex campaign is the Washington, D.C.-based Best Friends Foundation (BFF), which received a \$755,000 grant for its abstinence-only work. According to its Web site, BFF "promotes self-respect through the practice of self-control and provides participants the skills, guidance and support to choose abstinence from sex until marriage and reject illegal drug and alcohol use." BFF was established in 1987 by Elayne Bennett, who is married to William J. Bennett—a fellow at the hyperconservative Heritage Foundation and Claremont Institute, the former education secretary under Ronald Reagan, a lay preacher of all things virtuous, and a gambler who reportedly lost \$8 million on his gambling "habit" (he and his wife stressed that it wasn't an addiction and didn't conflict with his self-righteous moralizing).

BFF is also a favorite of the foundation world. From 2001 to 2003, this group brought in \$2.3 million in foundation grants, with nearly half of that amount coming from the Washington, D.C.-based J. Willard and Alice S. Marriott Foundation. Another \$500,000 came from the Case Foundation, which is endowed by America Online founder Stephen Case and also based in Washington, D.C. The Case Foundation in the past has given grants to evangelical groups such as the McLean Bible Church in Virginia, which has a history of pointing out the many sins of the "homosexual lifestyle." Case and his wife have also given personal contributions to the Westminster Academy, which was established by the vehemently anti-gay Coral Ridge Ministries. The W.K. Kellogg Foundation provided another \$200,000 to BFF, while the remaining grant dollars were donated in smaller amounts from a range of foundations.

Apparently the Marriots, Cases, and other donors to BFF love the music of Bobby Vee, who had a No. 1 hit with "Take Good Care of My Baby" back in 1961. On the two most recent IRS

filings for the Best Friends Foundation, Vee is listed as one of the organization's five highest paid independent contractors for "donor dinner enter" [sic], earning nearly \$60,000 each year for his services. Given the Best Friends Foundation's mission, Vee probably didn't sing "One Last Kiss" or "Stranger in Your Arms," two of his other hits from the 1960s.

Of the 50 organizations that received abstinence-only grants from the Bush administration in 2004, 14—including BFF and the Scott and White Memorial Hospital—also received foundation grants from 2001 to 2003. About 75 different foundations gave out the grants, which totaled \$8.2 million during the period studied. More than \$7 million of this amount was given to organizations in New York state, Pennsylvania, Texas, and Washington, D.C.

With the Bush administration pledging to spend billions more dollars on its Faith-Based and Community Initiatives project in the coming years (which is the program that provides the support for the abstinence-only grants), foundations providing millions of dollars of support for the organizations that run these programs, and hundreds of nonprofits ready to lap up the public and private largesse, the nonprofit sector faces critical questions related to accountability. There is unbiased scientific evidence that abstinence-only programs (and others that are being funded through Bush's executive orders) do not work, and might actually hurt the recipients of these services.

The organizations that claim to lead the nonprofit and philanthropic sectors, such as Independent Sector and the Council on Foundations, should be outraged that taxpayers are footing the bill for these bogus programs (either directly, through government grants, or indirectly, through tax breaks that foundations and nonprofit organizations receive). But one of Independent Sector's biggest Senate allies, Rick Santorum, R-Penn., champions these kinds of programs, and recently introduced an omnibus bill that calls for billions of dollars in funding for them, through the Compassion Capital Fund.

This bill also would also attempt to reform welfare further and calls for government funding for a "healthy marriages" initiative (which is already being funded through an executive order from Bush, similar to how the abstinence-only programs are being funded). Because the bill also contains charitable-giving incentives that Independent Sector has been desperately trying to get passed into law, the chance of its leadership speaking out publicly and stridently on these very obvious and dire nonprofit accountability issues is unlikely.

The accountability issues raised here point to an even larger question that is plaguing the nonprofit and philanthropic sectors: What value does society—including taxpayers, the government, and (especially) the country's most disadvantaged citizens—get in return for the huge amounts of public money given directly and indirectly to nonprofits and foundations? Considering the current amount of media and government scrutiny of the sector in the wake of several years of high-profile scandals, Independent Sector, the Council on Foundations, and others should be doing everything they can to answer these questions. Instead, we have Independent Sector's Panel on the Nonprofit Sector spending millions of dollars on an accountability initiative that is led almost exclusively by large, wealthy, national organizations and foundations.

While the panel works from platitudes such as "A Vibrant Nonprofit Sector Is Essential for a Vital America," and obsesses over how many nonprofit executives must sign an organization's IRS Form 990, Bush and his allies in Congress are using the sector as a tool to please their conservative religious power bases. That Independent Sector and others willingly submit to such political manipulation is certainly disturbing. But what is most troubling is that their complicity could lead to hundreds of thousands of people being placed in harm's way, as well as the further tarnishing of the nonprofit and philanthropic sectors' reputations. ☺

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## Available Now

### Social Justice Philanthropy:

*The Latest Trend or a Lasting Lens for Grantmaking?*

We are proud to release *Social Justice Philanthropy: The Latest Trend or a Lasting Lens for Grantmaking?* The new report defines and discusses the concept of social justice philanthropy, provides an assessment of its future in philanthropy, and explores how grantmakers define and apply the concept of social justice to their work.

The report's findings indicate that social justice philanthropy is fraught with many definitional variations, as well as disagreements on how to apply social justice concepts to grantmaking. While many agree that social justice philanthropy is somehow concerned with a more equitable redistribution of economic, political, and social power, there is little consensus on what a more just society would look like, or if philanthropy is capable of fostering these changes.

**To obtain more information,** make a membership contribution, or order a PDF or printed copy using a credit card (Visa or Mastercard), please visit NCRP at [www.ncrp.org](http://www.ncrp.org) or call 202-387-9177. Social Justice Philanthropy costs \$20 per copy (\$10 for NCRP members).

# Disclosure for Charitable Solicitors

*The FTC and state attorneys general pursue fundraising miscreants, but the sector hasn't stepped up to the task of honesty and accountability*

By Naomi T. Tacuyan

If you found out that only \$15 out of the \$100 you donated to a charity would ultimately make it to the charity, would you still donate? More importantly, wouldn't you want to know before making the decision to donate? How do you really know if your donation is being used the way telemarketers said it would be used? Charitable telemarketing has been an issue over the past several years. Not only are these cases of charity-hired solicitors deliberately misleading donors, but the media and state governments have raised concerns about scandalously low return rates for the charities themselves. A case that exemplified many charitable soliciting scenarios and that is a benchmark for this debate is *Madigan v. Telemarketing Associates*.

## *Madigan v. Telemarketing Associates: Free Speech or Fraud?*

First Amendment rights versus fraud. That was the battle fought in the U.S. Supreme Court almost two years ago in the case *Madigan v. Telemarketing Associates*. The Illinois attorney general filed a case against a telemarketing company that would remove the company from the blanket of the First Amendment and make it liable for fraud, if it was found that the company deliberately misled or deceived donors. In

May 2003, the Supreme Court ruled in favor of the Illinois attorney general—that the First Amendment did not protect telemarketers or fundraisers from being pursued for potentially fraudulent activities.

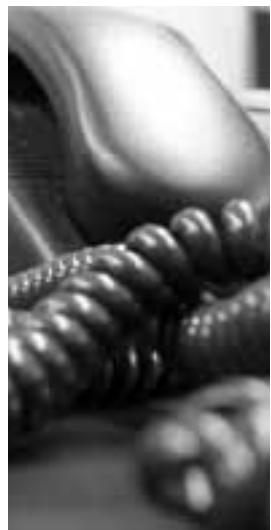
Telemarketing Associates in its fundraising for the nonprofit group VietNow, an organization servicing Vietnam veterans, had failed to tell telephone donors that more than 85 percent of their donations were pocketed by the telemarketers themselves.

The Supreme Court subsequently ruled that Telemarketing Associates deliberately deceived potential donors. According to the American Institute of Philanthropy (AIP), a nonprofit's fundraising expense should not exceed \$35 for every \$100 raised. AIP records indicate that VietNow spent \$91 to raise \$100.<sup>1</sup> Only 3 percent of the revenue that VietNow did keep was spent on the organization's program activities.<sup>2</sup> BBB Wise Giving Alliance's review of VietNow activities in 2000 revealed that only 2 percent of VietNow's income went to program services, the other 98 percent going to overhead and fundraising costs.<sup>3</sup>

The primary basis for the case wasn't necessarily the low return rates for the donor but rather, as described by the Supreme Court, "when nondisclosure is accompanied by intentionally misleading statements designed to deceive the listener." Nevertheless, the low return rates and the low percentage spent on actual programs—and the fact that they do not pass charity fundraising standards such as AIP's, BBB Wise Giving Alliance's, or Charity Navigator's—yield suspicion and the potential for charitable fraud, is a grave cause for transparency and accountability concerns.

## **Transparency and the Treasury**

But beyond the individual donor, there is also the larger issue of overinflated tax write-offs and its effect on the Treasury. If the donor writes a \$100 check, and deducts it from his taxes, and the charity only receives only \$15 with which to run their programs, there are millions of dollars deducted for charitable purposes that ultimately



aren't used for charity and that the Treasury never collects. These dollars, tax-exempt because of a donors' tax deductions, become revenue for for-profit organizations like telemarketers. In this case, charitable tax deductions, meant to funnel dollars to the charitable sector and its services, don't wind up in either the Treasury or with a charity. Telemarketers are the ones profiting from donor tax write-offs—under the guise of charity and philanthropy.

But beyond the individual donor, there is the macro issue of revenue loss from tax write-offs. The donor writes a \$100 check, and deducts it from his or her taxes. In the end, if the charity only receives \$9 of the \$100, considering the millions of dollars raised this way, there are millions of tax-exempt dollars from which telemarketers are profiting—a great loss for the Treasury's now-bleeding coffers—under the guise of charity and philanthropy.

It is vital that the nonprofit sector be honest with its donors. However, that has not always been the case for some nonprofits.

For national nonprofit organizations purportedly concerned about charity accountability and transparency, hiding behind the First Amendment in *Madigan* just sidestepped the larger issue of transparency and regulating fraud. However, nonprofits lined up behind Telemarketing Associates with the battle cry of protecting "charities' rights and responsibilities to educate the public on important issues." Attorneys for the Independent Sector (which took the lead), Public Citizen, Disabled American Veterans, Association of Fundraising Professionals, and others subsequently filed amici briefs in support of Telemarketing Associates. Their argument was that having to reveal cost and revenue proportions would be "forced speech" and "would be an obstacle to educating the public about nonprofit issues and causes." IS asserted that it was incorrect "to assume that there is a nexus between high solicitation costs and fraud."<sup>4</sup>

While IS did express concern about telemarketing fraud, these charities' support of Telemarketing Associates, aimed to shield telemarketing from oversight and review, defended inefficient telemarketing as just as good as the efficient and ethical telemarketing of others. To shield fundraising practices such as Telemarketing Associates' behind the First Amendment does nothing to uphold or strengthen the public's trust in charities. Sector leadership seemed more concerned with being able to fundraise and educate in any way possible, rather than being able to fundraise in an ethical,

transparent manner that would win and sustain the trust of individual donors.

### Charitable Solicitation as Telemarketing: The Federal Trade Commission

The Federal Trade Commission introduced a national "Do-Not-Call Registry" in 2003, intended to cut down on commercial telemarketing (under the rule, telemarketers are prohibited from calling registered numbers). The FTC amended the definition of telemarketing to include interstate calls that solicited charitable contributions. However, charitable telemarketers did not have to comply with the registry rule, though telemarketers have to comply if donors specifically ask the telemarketer not to call again.<sup>5</sup> Telemarketers soliciting charitable contributions must also state the name of the organization as well as the purpose of the call immediately, as required by the USA Patriot Act.

The same year, along with 38 states, the FTC, along with 34 state attorney general offices, launched "Operation Phoney Philanthropy," a law enforcement and education campaign designed to crack down on fraudulent charitable fundraising. The FTC pursued five national high-profile cases, while 34 states launched individual campaigns. Sixteen states announced they were pursuing legal action against charities and telemarketers, and two states announced new legislation.

### State Legislation & Enforcement

While nonprofits have been touting the free speech argument, state lawmakers and enforcers have been the vanguard for regulating actual charitable fraud. Forty-eight states<sup>6</sup> have rules that govern and regulate charitable solicitation. The laws vary slightly, but generally have the same premise. Charities are required to register with the state attorney general's office and report their finances and fundraising activities. Even before *Madigan* and "Operation Phoney Philanthropy," state attorneys general, backed by state legislation governing charitable organizations and solicitations, have been actively pursuing fundraising miscreants through public reporting and legal action.

New York Attorney General Eliot Spitzer has been issuing his "Pennies for Charity" report since he took office in 1999. The reports reveal that charities on average have received only 30 percent of revenues raised by telemarketing campaigns, and that only one-fourth of fundraising campaigns gave 50 percent or more of revenues to charity. With the first few "Pennies for Charity" reports came a four-part initiative:

**Not only are these cases of charity-hired solicitors deliberately misleading donors, but the media and state governments have raised concerns about scandalously low return rates for the charities themselves.**

- > the ability to issue subpoenas to nonprofits and commercial telemarketers, which could lead to legal action—including lawsuits for fraud;
- > preparing new regulations requiring charities to get majority-board approval before signing a telemarketing contract in which they will get only a small percentage of donations, and to do “comparison shopping” before agreeing to contracts;
- > proposing state legislation that requires telemarketers to disclose to donors the percentage of funds the nonprofit has received in previous telemarketing campaigns
- > proposing federal legislation that requires that if the charity receives less than half of fundraising dollars, only the remitted amount will be tax deductible.

Currently, Oregon profiles the 20 charities that receive the most inquiries and complaints, showing their financial statements and reporting on whether they meet BBB Wise Giving Alliance standards. In the 2003 Oregon report, only two out of 20 charities met these standards.<sup>7</sup>

The California attorney general issues a similar yearly report on charitable solicitation by commercial fundraisers, but specifically lists those charities, and their fundraisers, that make 15 percent or less in their campaigns, 15 percent being significantly below the \$35/\$100 AIP standard.

Connecticut's 2003 report revealed in-state campaigns having a 35.5 percent return for nonprofits, but multi-state campaigns show only a 9.5 percent return to the charities.<sup>8</sup>

Colorado's 2004 report fared better than others, showing that of the \$96 million Colorado charitable fundraising yielded, \$53 million or 55 percent was returned to the charities. Their 2003 report had yielded an even better return, at 41 percent.

#### **Noteworthy Telemarketer Miscreants**

Low returns are particularly common among veterans, police, and emergency personnel groups' fundraising. For example, two firefighters' organizations in Connecticut's 2003 report, the Association for Disabled Firefighters (ADF) and the Association for Firefighters and Paramedics, had 9.55 and 10 percent return rates, respectively. ADF, based in Santa Ana, CA, has been sued by three states so far, North Dakota in 2002, Oregon in 2003, and Ohio in 2004, for deliberately misleading donors as to the use of their donations.

#### **Massachusetts Police and Fire Groups and All Pro Telemarketing Associates**

According to a *Boston Globe* article, All Pro Telemarketing Associates of Fairfield, NJ, “reported raising a total of \$3.0 million last year from donors in Massachusetts and around the nation.” Only 14 percent went to its ten charities. The clients? Among them were Police Protective Fund of Austin, Texas, and the Firefighters Charitable Foundation of Westerly, R.I. According to Charity Navigator, the Police Protective Fund spent 90.3 percent of its income in fundraising, and only 7.4 percent on actual programs. The Firefighters Charitable Foundation of Westerly, R.I. spent 86.3 percent on fundraising, and twelve percent on programs. Charity Navigator gave both charities zero stars out of four for their (lack of) efficiency.

#### **The Cancer Fund of America and the Civic Development Group**

The Cancer Fund of America (CFA) would catch the eye of any casual observer in California's 2002 report on charitable solicitations by commercial fundraisers. CFA's mission is to provide support and services to cancer and hospice patients. They boast about their 26,000 sq. ft. storage space for products for distribution, but have no clear listing of how often, where, and to whom exactly these products are distributed.

Out of two telemarketing campaigns CFA ran, 90 percent of revenues went to its for-profit fundraiser, the Civic Development Group (CDG), with CFA pocketing only \$28,671 of \$262,642 that CDG raised. Furthermore, only \$4.5 million of CFA's \$19 million in expenses were spent on actual program services. New York's 2000 report shows CFA hired three different telemarketers that raised a total of \$3,806,761, of which the telemarketers received \$3,339,889 (88 percent) and CFA received just \$466,872 (the remaining 12 percent). The CFA shows up again in Connecticut's 2003 report—this time using a group called Barry E. Schmoyer and Associates. Their return rate with that particular fundraiser was 15 percent.

The Civic Development Group is even more suspect. A consumer-run Web site ([www.ripoffreport.com](http://www.ripoffreport.com)) blasts CDG for unethical telemarketing practices, such as impersonating firefighters and police officers. CDG will soon also be fundraising for the New York State Fraternal Order of Police, opening up a 200-person call center in New Jersey in April. According to Spitzer's 2004 report, CDG raised \$3.7 million

for the Order but gave only \$464,000 to the charity (12.5 percent). An article in the *Albany Times Union* further states that the highest percentage of funds that charities gained from seven CDG campaigns in 2002 was 17.9. CDG has been in hot water with the Federal Trade Commission for misrepresentation in 1998, and with the state of Vermont in 2001 for raising money purportedly for medical equipment for disabled children. Not surprisingly, no money went to any Vermont children. CDG will be opening call centers in states such as Kentucky, Illinois, and Virginia. Strangely, Charles Caputo, executive vice president of the Order says, "In New York, we had no problems with them."

Situations like these have provided the fodder for attorneys general in their capacity as regulators of charitable organizations. For example, the same month that the *Madigan* case was decided, Oregon Attorney General Hardy Myers filed a complaint against the Association of Disabled Firefighters as part of "Phoney Philanthropy." The basis of his complaint was that ADF deliberately concealed the fact that out of the \$4.4 million they had raised nationwide, less than 1 percent of funds was used to actually provide assistance to firefighters.

In January of this year, Massachusetts Attorney General Tom Reilly won \$75,000 from the Cancer Society of America,<sup>9</sup> which violated the state's charitable solicitation laws by misrepresenting their charitable activities.<sup>10</sup> The settlement requires the society to pay \$75,000 to the Cancer Center at the University of Massachusetts Memorial Center and Why Me Inc., nonprofits that provide cancer patients with financial assistance. Of the case, AG Reilly said, "Charities and their fundraisers have an obligation to be forthright to prospective donors about the mission of their organization."

In March of this year, New York Attorney General Eliot Spitzer went after the Saratoga County Deputy Sheriffs' Benevolent Association for misrepresentation.<sup>11</sup> The association purports to represent deputy sheriffs and solicits accordingly, when in fact it represents only support staff of sheriffs' offices. On top of that, the Attorney General's office has determined that only 10 percent of its revenues go to charitable purposes.

Not all states have been as active in pursuing charitable fraud as New York, Massachusetts, or Oregon has. It may be a question of funding, staffing, or legal priorities. Nonetheless, state attorneys general like Spitzer and Myers are developing a standard for effective, ethical, and legal state-level charitable fraud regulation,

which will need more funding and staffing if states are expected to continue uncovering fraudulent schemes.

### **Disclosure and Fraud Prevention: Whose Responsibility?**

The potential for fundraising fraud means more instability for an already shaky public trust of the charitable sector, and a significant loss in tax revenue for the government. It is obvious that attorneys general, even with their limited resources, are continuing to find cases of fundraising fraud. Government enforcement and education certainly does not exempt the non-profit sector from doing its part to curb misleading, fraudulent, or inefficient charitable fundraising practices. For the nonprofit sector and the people it represents and serves, the mentality of fundraising at any cost with hardly a concern concern for basic ethical behavior will do more harm than good if this type of behavior dissuades increasingly large numbers of donors from giving money to nonprofit organizations. If sector leaders are truly concerned about fraud, they need to step up and advocate for further regulation at the state and federal levels of charitable fundraising practices, including mandatory disclosure of the return rates to actual charities. They need to hold charities accountable for inefficient fundraising and high overhead costs. Perhaps then, charities and telemarketers to think twice when planning their fundraising-- or for charities specifically, when choosing a fundraising company. ◎

### **Notes**

1. "Telemarketers can be liable for fraud, high court rules," CNN, May 5, 2003.
2. *Chicago Tribune*, November 5, 2002.
3. Rick Cohen, "Fundraising or Fraud?," *Responsive Philanthropy* (Spring 2003).
4. <http://www.independentsector.org/programs/gr/ryan-faq.html>
5. <http://www.ftc.gov/opa/2002/12/donotcall.htm>
6. [www.nasconet.org/](http://www.nasconet.org/)
7. <http://www.doj.state.or.us/ChariGroup/CAS06158.pdf>
8. <http://www.ctgov/dcp/cwp/view.asp?a=1629&Q=285442&PM=1>
9. Despite the striking similarity in names, this organization is not the same as the Cancer Fund of America discussed earlier in the article. There was no website on this organization, and there have been accusations that this organization used to its advantage the fact that its name is similar to the American Cancer Society ([www.cancer.org](http://www.cancer.org)).
10. <http://www.ago.state.ma.us/sp.cfm?pageid=986&id=1365>
11. [http://www.oag.state.ny.us/press/2005/mar/mar22a\\_05.html](http://www.oag.state.ny.us/press/2005/mar/mar22a_05.html)

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## Do Wal-Mart Dollars Make a Difference in Local Communities?

"Wal-Mart Philanthropy" continued from page 1

over recent years and according to Cone, "We believe that the response to our question shows that Wal-Mart's promotion of their community philanthropy is breaking through to some as corporate citizenship."<sup>1</sup>

According to *Giving USA 2004*, in 2003 corporations and their foundations contributed \$13.5 billion in cash and in-kind donations to charities, a 4.2 percent increase from 2002. The Foundation Center reports that in 2003 the Wal-Mart Foundation was the 51st largest corporate foundation based on assets and the second largest based on total giving. However, because corporations also make donations independent of their foundations, it is difficult to calculate and rank corporate givers. While the Foundation Center ranked the Wal-Mart Foundation as the second largest corporate giver of 2003, based on the foundation's IRS 990-PF filings, *Business Week* ranked Wal-Mart as the overall largest corporate giver, using a combination of direct corporate gifts and corporate foundation donations. According to Wal-Mart, the Wal-Mart Foundation is now the largest corporate foundation by total giving, having reportedly donated more than \$170 million in 2004, up from \$101 million in 2002. Does this nearly 70 percent increase in its cash donations reflect the increasing generosity or responsible corporate citizenship of Wal-Mart? Or does it instead reflect an attempt by the world's largest retailer to deflect the increasingly harsh criticism that it now faces?

With more than 4,800 stores and revenue exceeding \$288 billion each year, Wal-Mart is now the world's largest private employer with 1.4 million employees worldwide. As Wal-Mart has grown to dominate the retail market, it has come under harsh criticism for being bad for labor, the environment, the economy, businesses, communities, women, and more. According to *USA Today*, Wal-Mart was sued 4,851 times in 2000 and had 9,400 open cases.<sup>2</sup> Over 100 unfair labor practice charges have been filed against Wal-Mart throughout the country in the last few years, with 43 charges filed in 2002 alone. Since 1995, the U.S. government has been forced to issue at least 60 complaints against Wal-Mart through the National Labor Relations Board. Most recently, in March 2005, Wal-Mart agreed to pay \$11 million to settle

federal allegations it used illegal immigrants to clean its stores. In addition, Wal-Mart is now the defendant in the largest sex-discrimination class-action lawsuit ever, estimated to represent over more than 1.5 million women that have been employed by Wal-Mart since 1988.

As negative press has increased regarding its labor policies and its deleterious impact on local communities, its ambitious expansion plans have been met with roadblocks. While the Cone Research Study shows that Wal-Mart has been successful in portraying itself as a good corporate citizen, it acknowledges that consumers are receiving and giving mixed messages about Wal-Mart. While their study shows a growing number of positive perceptions of Wal-Mart, other studies show the opposite. "For example, recent research noted that Wal-Mart fell five spots to 28th in ranking by the Reputation Institute, and it was among the five companies receiving the most negative ratings for rewarding employees fairly" In response to the increasing amounts of criticism, in late 2004 Wal-Mart launched an unprecedented multi-million-dollar ad campaign, defending its labor policies and extolling its positive impacts on communities, including the work of the Wal-Mart Foundation.

The Wal-Mart style of philanthropy emphasizes its claims of being a supporter of families and part of the community. Rather than focusing on nationwide philanthropic campaigns from its headquarters in Arkansas, the Wal-Mart Foundation distributes the vast majority, over 90 percent according to its own figures, of its funds through its local stores. Rather than large multi-million dollar contributions, the Wal-Mart Foundation makes over 100,000 separate contributions every year, ranging from \$100 to \$5,000,000, averaging about \$1,000 each grant. By giving directly to local communities, Wal-Mart creates the perception that it is part of the community, rather than a large, impersonal corporation that could be doing more harm than good.

The way the Wal-Mart Foundation functions is distinctive in the world of corporate philanthropy. Wal-Mart contributes a lump sum of over \$100 million to its foundation each year, the majority of which is distributed to each Wal-Mart store and distribution plant, where grant

decisions are made by the store or plant manager. According to the Wal-Mart Foundation website, the philosophy behind this decentralized philanthropic method is that "In our experience, we can make the greatest impact on communities by supporting issues and causes that are important to our customers and associates in their own neighborhoods. We rely on our associates to know which organizations are the most important to their hometowns, and we empower them to determine how Wal-Mart Foundation dollars will be spent."

Grants made by managers must meet the general guidelines set up by the Foundation, which leaves store and distribution plant managers with a great deal of autonomy and little oversight in their grantmaking. One of the few guidelines in place is the prohibition of funding any organization or project that benefit people outside Wal-Mart communities. This restriction limits the recipients of Wal-Mart's philanthropic efforts to only those who are or may be Wal-Mart customers or supporters. Wal-Mart also prohibits store managers from funding organizations outside the United States, ignoring the communities that produce the majority of its products while concentrating on those communities that purchase them.

While Wal-Mart claims over 90 percent of its grants are made directly through individual stores—and despite the relative autonomy Wal-Mart managers have in the grant making process—Wal-Mart at the corporate and foundation level still has the ability to influence where individual store contributions go. When Wal-Mart makes corporate commitments to charities such as the United Way or the Salvation Army, some of the funding is given directly from the foundation at the corporate level, while other amounts come from individual stores and go to their local branch of the charity. While these grants are partly made by individual stores, there is still corporate guidance in the decision-making process.

Funding of religious institutions also differentiates the Wal-Mart Foundation from other large corporate foundations such as the Ford Motor Company Fund and the AT&T Foundation. Ford's policy explicitly bans the funding of "religious or sectarian programs for religious purposes." AT&T will only fund "nonsectarian and non-denominational" causes. Wal-Mart only prohibits the funding of "faith-based organizations whose projects benefit primarily or wholly their members or adherents." Wal-Mart Foundation President Betsy Reithmeyer states that, "We try to serve community needs. Oftentimes it has

been the faith-based organizations that have stepped up to meet that need."<sup>3</sup> Churches and other houses of worship receive a large percentage of the Wal-Mart Foundation grants. Some of this funding is directed toward education in the form of scholarships to private religious schools. Walton family members, including the widow and children of Wal-Mart founder Sam Walton, are some of the largest financial backers of school voucher initiatives around the country.

The sheer size of the Wal-Mart Foundation makes it incredibly difficult to track where Wal-Mart Foundation grants go, for what purpose they are intended, and how the money is actually used. As result of the fact that the Foundation makes well over 100,000 grants each year, the IRS 990 filings by the Wal-Mart Foundation for the tax year ending January 2003 was 2,145 pages long. The immense size of these documents alone makes oversight of its action difficult, but exacerbating the situation is the fact that the Foundation fails to meet IRS disclosure regulations and only lists the grant recipient name and the grant amount. It fails to provide information such as the address of the grant recipient and the purpose of the grant, which are required by current federal laws and regulations. This lack of transparency into where the Foundation funds are going makes the possibility of oversight and accountability—either for a member of the general public or a government official—minimal.

It is important to note that while Wal-Mart does disclose, although incompletely, cash donations made by the Foundation, it is not required to disclose other donations made by the corporation itself or "in-kind" donations of products or services. NCRP has long advocated for greater transparency and government oversight in the area of corporate philanthropy, while illustrating the ways in which corporate philanthropy has been misused and mishandled. The research NCRP has been able to accumulate on the philanthropic actions of Wal-Mart reaffirms earlier conclusions, including the assertion that "corporate philanthropy can be viewed as government-subsidized advertising for for-profit corporations"<sup>4</sup> and that the Securities and Exchange Commission (SEC) needs to adopt disclosure requirements for all corporate philanthropic donations.

While Wal-Mart continues to proclaim itself a strong corporate citizen that works to meet community needs, it has continuously ignored and circumvented the demands of communities around the country. From California to New York, communities worried about the possible

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negative effects of a new Wal-Mart in their town have been working to prevent Wal-Mart developments. Wal-Mart has continuously marginalized the concerns raised by these community groups, claiming that the voices working to prevent the Wal-Mart development do not represent the community, but are rather the work of national labor interests.

When city and county officials have stood in the way of a new Wal-Mart development, Wal-Mart has attempted to circumvent the power of these community leaders; the best example of which occurred in Inglewood, California, in 2004. When the Inglewood City Council blocked Wal-Mart's plan to build a store "the size of 17 football fields," Wal-Mart responded by funding and running a ballot initiative that would have "bypassed the government and allowed the construction without the traffic reviews, environmental studies or public hearings required of other developments."<sup>5</sup> In the end, the Wal-Mart backed initiative failed with only 39 percent of the votes supporting Wal-Mart, despite a campaign that included employees from Wal-Mart stores in neighboring communities handing out free meals to residents of Inglewood.

More recently, Wal-Mart announced that it will be building two separate stores in Dunkirk, Maryland to circumvent a local county regulation that limits single stores to a maximum of 75,000 square feet. Ordinances limiting the size of single stores, usually referred to as 'Big Box Ordinances,' have been one of the most common and successful ways local communities have prevented the expansion of Wal-Mart into their communities. Although these ordinances apply to all large retailers, such as Target and Home Depot, they are often specifically targeted at Wal-Mart which has in the past refused to build stores smaller than 100,000 square feet and whose Supercenters can be larger than 200,000 square feet.

When Dunkirk community members learned of Wal-Mart's intent to build a new store in their community, they lobbied their local government and last summer the county passed its own 'Big Box Ordinance.' However the release of Wal-Mart's new plans for their Dunkirk location marks a change in Wal-Mart's strategy and philosophy. Despite the increased costs of building and running two separate stores, Wal-Mart will build one 74,998 square foot store (just 2 sq. ft. shy of the county limit) and a 22,689 square foot garden center next to it.<sup>6</sup> Because each will have its own utilities, entrance, and cash registers, it will count as two separate stores, thereby cir-

cumventing both the county regulations and the desires of community members.

Aside from its disregard for community interests, needs, and wants; is Wal-Mart's philanthropic style good for nonprofit organizations? Its focus on small donations directly to community programs is certainly unusual; but is it the best way to maximize the effectiveness of the vast amount of money the Wal-Mart Foundation controls? Are small grants to hundreds of different organizations the best way to benefit a community, or would larger grants to a select number of organizations effect more change? For example, in 2002 the Wal-Mart Foundation, through its program 'Volunteerism Always Pays' made over 33,000 individual grants of \$100 a piece. How much does a grant of \$100 really impact an organization, and more importantly, how much does it actually affect a community compared to the possibilities of larger grants?

Although Wal-Mart's desire to fund a large variety of community programs is in and of itself not a bad idea, given the amount of money that the Wal-Mart Foundation controls, the potential exists to effect much more change than it currently does.

While the effectiveness of the Wal-Mart Foundation funds may be questionable, the benefits to Wal-Mart, the corporation, is much more concrete. While making small grants to a large number of charities may not maximize the effectiveness of its funds for charities themselves, it does maximize the benefit for its own corporate image. By contributing to a variety of local charities, Wal-Mart is able to present itself as an omnipresent community supporter and a good corporate citizen. As the Cone research survey shows, Wal-Mart has been able to maintain a reputation as a good corporate citizen, even as negative information about its corporate practices gain wider circulation. The work of the Wal-Mart Foundation has been integral in maintaining a positive image of the corporation. The question then is, does the desire of Wal-Mart to portray itself as a community member and to play down the increasingly harsh criticisms of its corporate practices prevent the Foundation from being as effective and influential a member of the philanthropic community as it could be?

Wal-Mart—like all corporations—receives tax-breaks for its contributions to its foundation, as well as its other corporate philanthropy, which raises the question of why isn't there more transparency and government oversight of corporate philanthropy? In the case of Wal-Mart, the facts that its Political Action Committee is the largest corporate contributor to the

Republican party and that the Walton family contributes mainly to conservative causes and politicians, raises concerns as to what else the corporation may be funding independent of its foundation.

Although charitable donations made by corporate foundations are disclosed to the public, contributions made directly by the corporation do not have to be reported, making it difficult to track the true amount and impact of corporate philanthropy. NCRP continues to recommend that the SEC adopt disclosure requirements for all corporate philanthropy donations, in-kind or cash, through a foundation or directly from the corporation. Such a policy would help restore confidence in corporate America, allow researchers to better understand a significant piece of U.S. private giving, and empower advocates to work to make corporate philanthropy more fair and responsive to the country's neediest and most disadvantaged citizens. ☺

#### Notes

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6. *Washington Post*, March 7, 2005.

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## Self-Regulation

*Continued from p. 6*

6. Building on Strength: Improving Governance and Accountability in Canada's Voluntary Sector (Panel on Accountability and Governance in the Nonprofit Sector, February 1999), <http://www.sr-tysb.net/pagvs/Book.pdf>.
7. Council for Higher Education Accreditation ([http://www.chea.org/public\\_info/index.asp](http://www.chea.org/public_info/index.asp)).
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*Rick Cohen is executive director of the National Committee for Responsive Philanthropy (NCRP). Since 1976, NCRP has advocated for the philanthropic community to provide non-profit organizations with essential resources and opportunities to work toward social and economic justice for disadvantaged and disenfranchised populations and communities.*



## Available Now

### Funding The Culture Wars: Philanthropy, Church and State

NCRP has issued a new report on the connections between conservative foundation grantmaking and the politically influential evangelical movement. *Funding the Culture Wars: Philanthropy, Church and State* clearly shows how strategic grantmaking is being used to promote "traditional family values" and stances on issues such as abortion, same-sex marriage, stem cell research, school prayer, and public displays of the Ten Commandments.

*Funding the Culture Wars* analyzes nearly 3,200 grants valued at \$168 million that 37 foundations made to 700 evangelical grantees from 1999 to 2002. Its findings raise important questions related to the public accountability of religious nonprofit organizations. As these organizations grow in financial strength and become more politically active, they merit serious and careful examination and discussion.

Print editions of NCRP's new report, *Funding the Culture Wars: Philanthropy, Church and State*, and previous conservative grantmaking research reports (*Axis of Ideology* and 1997's *Moving a Public Policy Agenda*) can now be ordered online at [www.ncrp.org](http://www.ncrp.org) or via telephone at (202) 387-9177, ext. 20 at the cost of \$25 per copy (\$12.50 for NCRP members, and free for journalists).

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