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## **Charitable Solicitation Regulation for the Nonprofit Sector: Paving the Regulatory Landscape for Future Success**

Executive Summary

by *Jamie Usry*

Hundreds of billions of dollars in private charitable contributions filter to 501(c)(3) public charities each year. The GivingUSA Foundation reports \$260.28 billion in total charitable giving in 2005 and an even more impressive \$295.02 billion in 2006. Of these donations, individuals gave 75-76%, or \$199.07 billion in 2005 and \$222.89 billion in 2006.<sup>[1]</sup> Unfortunately, according to the Federal Trade Commission, 1% of all charitable giving is misused or collected using fraudulent means.<sup>[2]</sup> By FTC estimates, in 2005 and 2006 \$2.6 to \$3 billion of total charitable donations were not spent as the donor expected, or were received using fraudulent practices. In light of these statistics, the need for regulatory mechanisms should be clear. Such mechanisms are necessary to deter the misuse of funds, to protect organizations and the sector from legitimacy threats and negative public opinions, to hold organizations accountable, to ensure professional ethics, and to protect the public interest.



Although the Federal Trade Commission is the federal government's primary consumer protection agency, state governments have assumed the role of oversight of charities through registration and reporting. State regulations on charitable giving are codified in a variety of Charitable Solicitation Acts. In states where such laws have been enacted, the office of Attorney General typically assumes the responsibility for registration, reporting and enforcement of charitable giving.<sup>[3]</sup> These laws vary regarding what information charitable organizations are required to submit with their registration applications and annual reports. Some of the various categories of requirements include: IRS 501(c)(3) determination letters, fundraising contracts, bylaws, IRS 990 forms, audit paperwork, notarized signatures, and fees. Further, every state maintains a different fee structure for initial and recurring registration and reporting costs.<sup>[4]</sup>

Currently, there are only nine states that have no statutory regulations in place for 501(c)(3) organizations that solicit private donations in their borders. At the far end of the spectrum are Delaware, Wyoming, Iowa, Idaho, Nevada, and Nebraska, which have no registration or reporting requirements contained in their various nonprofit sector statutes.<sup>[5]</sup> The three remaining states in this group (Indiana, Vermont, and South Dakota) have each enacted a form of charitable solicitation statutes for professional fundraisers and consultants, but these laws do not govern 501(c)(3) nonprofit organizations.<sup>[6]</sup>

In 1998, the National Association of Attorneys General (NAAG) and the National Association of State Charity Officials (NASCO) released the Unified Registration Statement (URS) under their concerted effort, known as the Multi-state Filer Project. The URS is an effort to consolidate the information and data requirements of all states requiring registration and reporting for charitable organizations. In other words, the URS format is a compilation of the information required by most states. It is intended to "standardize, simplify, and economize compliance under the states' solicitation laws."<sup>[7]</sup> The URS is an alternative to the state specific forms and requirements. It is comprised of a three page application with instructions that can be downloaded online at [http://www.multistatefiling.org/c\\_statement.htm](http://www.multistatefiling.org/c_statement.htm) by all nonprofit organizations. The form requires basic information, such as federal tax ID number (EIN), state business ID number, IRS 501(c)(3) determination, incorporation information, organization name and contact information, board member names and titles, and current fiscal figures.

Of course, because all state governments still have regulatory authority over nonprofits physically present in their state and those soliciting donations in their state, state legislators may or may not choose to accept the URS as an alternative to their current forms. Currently, thirty-five states, including Utah, and the District of Columbia accept the URS as a method of registration. This means that only three states that require registration and reporting do not currently accept the URS: Oklahoma, Florida, and Colorado. All thirty-five states and the District of Columbia require some sort of supplemental application form or supplemental documents with the URS application: 97% require the previous year's Form 990; 86% require a copy of the IRS determination letter; 69% require a copy of the certificate of incorporation; and 64% require the previous year's financial audit documents.<sup>[8]</sup>

In Utah, a supplemental application form and some additional documents, such as the articles of incorporation, bylaws, form 990 and IRS determination letter, must accompany the URS. Despite these additional requirements, 501(c)(3) public charities soliciting funds in multiple states will find the ability to complete and reuse only *one* URS application as a significant benefit for multi-state registering.

The issue of multi-state registration and reporting has become increasingly important for the nonprofit sector in our Internet based world. Before the Internet, only organizations with very large budgets could afford to launch fundraising

campaigns extending outside of their local jurisdictions or outside of their own states. Consequently, small organizations rarely had to deal with the process of multi-state registration. However, Internet and e-mail fundraising have become increasingly economical and effective strategies for small charities to solicit more effectively from a larger population of people. As a result, for the first time ever, many small organizations must complete numerous state applications—resulting in increased man hours and administrative costs that can be prohibitively expensive.<sup>[9]</sup> Of course, at the same time, increasing numbers of registering charities also means a significantly larger workload for state charity officials to process.

Even more troublesome is the fact that “the Internet transcends local, national, and international borders, thus making jurisdiction impossible to establish.”<sup>[10]</sup> Indeed, there has been a general lack of consensus among state charity officials and the nonprofit community regarding the application of existing state charitable solicitation statutes to the borderless Internet. In 1996, in *United States v. Thomas*,<sup>[11]</sup> the Court found that the Internet is a means of interstate commerce and that the transmittal of any data via the Internet constitutes contact between two states. With regards to Internet fundraising by 501(c)(3) charitable organizations, the implications of *Thomas* are clear: “where users download Web pages residing in foreign jurisdictions...will constitute sufficient contact to subject the organization to the jurisdiction of the foreign state or states and therefore to the foreign charitable solicitation regime.”<sup>[12]</sup>

Following the *Thomas* decision, NASCO and NAAG published “The Charleston Principles: Guidelines on Charitable Solicitations Using the Internet” in 2001. In general, the Principles state, “An entity that is domiciled within a state and uses the Internet to conduct charitable solicitations in that state must register in that state.”<sup>[13]</sup> If an organization *actively* solicits via an Internet website to residents of a certain state, or if the organization receives contributions within the state “on a repeated and ongoing basis,” then it must register within that state.<sup>[14]</sup> State charity officials must quantify for themselves what they will consider “repeated and ongoing” in terms of the actual number of contributors and the total dollar amount of contributions received in a fiscal year. Furthermore, e-mail solicitations will be treated the same as mail or telephone solicitations, and registration will be required when a state’s residents are solicited via e-mail.<sup>[15]</sup> Also, organizations that invite further “offline” activity to residents of a certain state via a website must register within that state.<sup>[16]</sup>

Following *Thomas*, nonprofit organizations and the fundraisers that they employ should assume that state statutes do apply to Internet and e-mail fundraising. For a detailed analysis of best practices and recommendations for the nonprofit sector, [access the full report here](#).

Note: Ms. Usry is an MPA student at the University of Utah specializing in the nonprofit sector. This executive summary is based upon her Major Research Paper (MRP) that was written for her MPA degree in correlation with the class Developing Fundraising/Revenue taught by Scott Mietchen. Ms. Usry will complete the MPA program in Spring 2009.

**Table 1:**

**State Officials Responsible for Charitable Solicitation Laws**

Alabama	Attorney General
Alaska	Attorney General
Arizona	Sec. of State; Attorney General
Arkansas	Attorney General
California	Attorney General
Colorado	Sec. of State
Connecticut	Dept. of Consumer Protection
Delaware	None
District of Columbia	Mayor and Council of District
Florida	Dept. of Agriculture and Consumer Services
Georgia	Sec. of State
Hawaii†	Dept. of Commerce and Consumer Affairs
Idaho	None

Illinois	Attorney General
Indiana	None
Iowa	None
Kansas	Sec. of State; Attorney General; District Attorney
Kentucky	Attorney General
Louisiana*	Attorney General; District Attorney
Maine	Commissioner of Business Regulation; Attorney General
Maryland	Sec. of State; Attorney General
Massachusetts	Attorney General (Division of Public Charities)
Michigan	Attorney General
Minnesota	Attorney General
Mississippi	Sec. of State; Attorney General; District Attorney; County Prosecuting Attorneys
Missouri	Attorney General
Montana	None
Nebraska	None
Nevada	None
New Hampshire	Attorney General
New Jersey	Attorney General
New Mexico	Attorney General
New York	Attorney General
North Carolina	Sec. of State; Attorney General
North Dakota	Sec. of State; Attorney General; State Attorney
Ohio	Attorney General
Oklahoma	Sec. of State; Attorney General; District Attorney
Oregon	Attorney General
Pennsylvania	Sec. of State; Attorney General; District Attorney
Rhode Island	Dept. of Business Regulation; Attorney General
South Carolina	Sec. of State
South Dakota	None
Tennessee	Sec. of State; Attorney General
Texas‡	Sec. of State; Attorney General
Utah	Division of Consumer Protection of Dept. of Commerce
Vermont	None
Virginia	Commissioner of Agriculture and Consumer Services; Attorney General; Commonwealth, City, County or Town Attorney
Washington	Sec. of State; Attorney General
West Virginia	Sec. of State; Attorney General
Wisconsin	Dept. of Regulation and Licensing; Attorney General
Wyoming	None

\*Only organizations employing professional solicitors must register

†Only professional solicitors working for charities must register

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

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

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

<b>Table 2:</b>		
<b>State Registration Fees</b>		
Alabama	\$25.00	initial registration fee only
Alaska	\$40.00	initial registration fee only
Arizona	None	
Arkansas	None	
California	\$25.00	initial registration and annually
Colorado	\$10.00	initial registration fee only
Connecticut	\$50.00	initial registration fee only
Delaware	None	
District of Columbia	\$80.00	initial registration fee only
Florida	\$10.00-\$400.00	initial, dependent on annual revenue
Georgia	\$25.00 and \$10.00	initial and annual renewal
Hawaii †	\$250.00	initial registration fee only
Idaho	None	
Illinois	\$15.00	initial registration fee only
Indiana	None	
Iowa	None	
Kansas	\$35.00	initial registration fee only
Kentucky	None	
Louisiana*	\$25.00	initial registration fee only
Maine	\$100.00 and \$25.00	initial and annual renewal
Maryland	\$50.00-\$200.00	initial, dependent on annual revenue
Massachusetts	\$50.00	initial registration fee only
Michigan	None	
Minnesota	\$25.00	initial registration fee only
Mississippi	\$50.00	initial registration fee only
Missouri	\$15.00	initial registration fee only
Montana	None	
Nebraska	None	
Nevada	None	
New Hampshire	\$25.00 and \$75.00	initial and annual renewal
New Jersey	60-250	initial, dependent on annual revenue
New Mexico	None	
New York	\$39,746.00	initial, dependent on annual revenue
North Carolina	50-200	initial, dependent on annual revenue
North Dakota	\$25.00 and \$10.00	initial and annual renewal
Ohio	\$50.00-\$200.00	initial, dependent on annual revenue
Oklahoma	\$15.00	initial registration fee only
Oregon	\$10.00-\$200.00 & % required	initial, dependent on annual revenue
Pennsylvania	\$15.00-\$250.00	initial, dependent on annual revenue
Rhode Island	\$75.00	initial registration fee only

South Carolina	\$50.00	initial registration fee only
South Dakota	None	
Tennessee	\$50.00-\$300.00	initial, dependent on annual revenue
Texas†	\$50.00	initial registration fee only
Utah	\$100.00	initial and annual renewal
Vermont	None	
Virginia	\$100.00 + \$30.00-\$325.00	initial, dependent on annual revenue
Washington	\$20.00 and \$10.00	initial and annual renewal
West Virginia	\$15.00-\$50.00	initial, dependent on annual revenue
Wisconsin	\$15.00	initial registration fee only
Wyoming	None	

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<b>Table 3:</b>									
<b>Checklist for Initial URS Registrations</b>									
	<b>Fee</b>	<b>State Forms</b>	<b>IRS Letter</b>	<b>FR Contracts</b>	<b>Bylaws</b>	<b>Inc Letter</b>	<b>990</b>	<b>Audit</b>	<b>Notarized</b>
Alabama	X		X		X	X			X
Alaska	X			X			X	X	
Arizona			X				X		X
Arkansas		X	X	X			X	X	X
California	X	X	X		X	X	X	X	
Connecticut	X						X	X	
D.C.	X	X	X	X	X	X	X		X
Georgia	X	X	X				X	X	X
Illinois	X		X	X	X	X	X	X	
Kansas	X		X			X	X	X	
Kentucky							X		X
Louisiana	X			X	X	X	X	X	
Maine	X		X				X	X	X
Maryland	X		X	X	X	X	X	X	
Massachusetts	X		X		X	X	X	X	
Michigan			X	X	X	X	X	X	
Minnesota	X		X	X		X	X		
Mississippi	X	X	X	X	X	X	X	X	X
Missouri	X		X	X		X	X		X
New Hampshire	X		X		X	X	X	X	X
New Jersey	X		X	X	X	X	X	X	

New Mexico			X	X		X	X	X	X
New York	X		X		X	X	X	X	
North Carolina	X		X	X			X		X
North Dakota	X	X	X	X		X	X		X
Ohio	X		X		X	X	X		X
Oregon	X		X		X	X	X		
Pennsylvania	X		X		X	X	X	X	
Rhode Island	X		X	X		X	X	X	X
South Carolina	X			X			X		X
Tennessee	X	X	X	X	X	X	X	X	
Utah	X	X	X	X	X	X	X		X
Virginia	X		X	X	X	X	X	X	
Washington	X		X	X			X		
West Virginia	X	X	X	X			X	X	X
Wisconsin	X	X	X		X	X	X	X	X
	<b>86%</b>	<b>25%</b>	<b>86%</b>	<b>58%</b>	<b>53%</b>	<b>69%</b>	<b>97%</b>	<b>64%</b>	<b>53%</b>

Notes: Table acquired from the Multi-State Filer Project Appendix of Cooperating States, [http://www.multistatefiling.org/p\\_checklist.htm](http://www.multistatefiling.org/p_checklist.htm).

**Statistical averages calculated by author.**

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*United States v. Thomas*. 74 F.3d 701. 6<sup>th</sup> Cir. 1996.

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[1] GivingUSA, <http://www.givingusa.org/>.

[2] "The Charleston Principles," 7.

[3] See Table 1.

[4] See Table 2.

[5] Delaware Uniform Unincorporated Nonprofit Association Act; Wyoming Nonprofit Corporation Act; Iowa Nonprofit Corporation Act; Idaho Charitable Solicitation Act; Nevada Nonprofit Corporations Act; Nebraska Nonprofit Corporation Act.

[6] Ind. Code § 23-7-8-1 (1983); Vt. Stat. Ann. § 2472 (1989); S.D. Codified Laws § 37-30-3 (1990).

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

[8] See Table 3.

[9] Johnston, 50. Hart, 268.

[10] Ibid.

[11] 74 F.3d 701 (6<sup>th</sup> Cir. 1996).

[12] Hart, 269.

[13] "The Charleston Principles," 3.

[14] Ibid.

[15] Ibid,4.

[16] Ibid,3.

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