



**U.S. House of Representatives  
Committee on Oversight and Government Reform  
January 17, 2008 - 10:00 a.m.  
2154 Rayburn House Office Building**

**Testimony of Belinda J. Johns  
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**Assessing Veterans' Charities**

Good morning, Chairman Waxman and distinguished members of the U.S. House of Representatives Committee on Oversight and Government Reform.

My name is Belinda Johns. I am the Senior Assistant Attorney General in charge of the Charitable Trusts Section of the California Attorney General's Office. Thank you for the opportunity to appear before you today and for your leadership on this important issue.

The California Attorney General has broad supervisory and investigative powers over the activities of charitable organizations and their fundraisers. Pursuant to our Supervision Act<sup>1</sup>, all charitable organizations incorporated or operating in California and fundraising professionals

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<sup>1</sup>“The Supervision of Trustees and Fundraisers for Charitable Purposes Act,” Government Code section 12580 et seq., enacted in 1955.

soliciting in California are required to register and report annually to the Attorney General's Registry of Charitable Trusts.

The Charitable Trusts Section carries out this oversight role for the Attorney General. Our mandate is to detect fiscal abuse and mismanagement that results in a loss of charitable assets and to take the action necessary to return the diverted assets to charity. The Section is divided in two parts: the Registry and the Legal and Audit Unit.

**The Registry's** 6 analysts and 5 staff persons are responsible for administering the registration and reporting requirements, as well as a separate registration process for charitable organizations authorized to conduct raffles.<sup>2</sup> Staff is also responsible for the analysis of annual reports filed by fundraisers, analysis of waiver requests for corporations that wish to dissolve, and response to the high volume of inquiries received from both the charitable sector and members of the public. The Registry's 3 auditors are responsible for intake, review and investigation of complaints, and provide audit support to Section attorneys.

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<sup>2</sup>Hospitals, healthcare service plans, educational institutions, political action committees, federally-chartered entities (such as American Red Cross) and religious corporations are exempt from registration and reporting. The Attorney General retains jurisdiction over the activities of these entities, with the exception of religious corporations, over which he has minimal jurisdiction.

**The Legal and Audit Unit**, composed of 11 attorneys and 7 auditors statewide, is responsible for carrying out the enforcement component of the Attorney General's jurisdiction. That jurisdiction extends to enforcement of the Nonprofit Corporation Law, trust law, and portions of the Unfair Business Practices Act which govern solicitation for charitable purposes.<sup>3</sup> Audits and investigations are conducted into allegations of fiscal abuse, fraud, diversion and mismanagement of assets, with regard to both charitable organizations and fundraising professionals, both registered and unregistered. Based on the results of those inquiries, legal staff takes corrective action to recover charitable assets, remove trustees and board members, involuntarily dissolve corporations, and restore assets to charities.

Cases of note which are relevant to this inquiry include:

- our civil prosecution of Mitch Gold,
- a series of cases which eradicated storefront solicitation for sham veterans charities,
- a multi-state action filed against a large direct mailer and its captive charities,
- a criminal case filed against an executive director who embezzled funds from a small veterans charity in Northern California, and
- involuntary dissolution of two car-donation scams.

Section attorneys are also responsible for reviewing and approving transfers of the assets of nonprofit hospitals, and reviewing specific transactions such as mergers and sales of assets.

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<sup>3</sup>Corporations Code section 5000 et seq., California Probate Code and Business and Professions Code sections 17200 and 17500 et seq., respectively.

Our Section faces three major challenges. The first, which will soon be resolved, is our limited ability to address compliance because our Registry is paper-based. We are in the final phase of an automation project, however, which, once completed, will allow us to more comprehensively supervise registrants and obtain compliance with the Act. As an example, we currently have over 92,000 registrants, and estimate that 50,000 of them are delinquent in reporting. Another 90,000 have incorporated as public benefit corporations in California but are not registered. And while many of this latter group may be exempt from registration, or never received assets, we estimate that at least half should be registered and reporting to the Registry.

Our second challenge is related to the first. Case selection is primarily complaint-driven at this time. Once the Registry is automated, we will be able to track abuses in a more sophisticated fashion and to target specific issues, like excess compensation, for review and correction.

Our third challenge is to effectively protect charitable assets given our limited staff and budget resources. Our response to this latter challenge is multi-pronged: We encourage compliance by offering guidance on our website and offering charities the opportunity to take corrective action before we take legal action. We have also formed relationships with other government agencies, both state and federal. In this regard, we *triage* each complaint we receive to determine which agency may most expeditiously address the issues raised. We have also

participated in multi-agency task forces and multi-state litigation as a way of extending our enforcement capability. And last, but not least, we publish guidance to assist donors in gathering the information they need to make wise giving choices.

Our ability to address high fundraising costs is limited by the holdings in a line of cases decided by the U.S. Supreme Court in the late 1980's<sup>4</sup>. The California Attorney General's response to this line of cases was to amend the Act<sup>5</sup> to require fundraising professionals to register and file annual financial reports. These reports are available for review on our website and we publish an annual report summarizing their content.

With regard to addressing fundraising abuses, we rely primarily upon complaints received, generally from donors and law enforcement. Donors are often not aware that they have been victims of unscrupulous charities or fundraisers, however, because, unlike consumers who purchase and expect delivery of a product, donors are expecting to receive only a receipt or canceled check confirming the gift. To help donors make wise giving decisions, we publish and post on our website a guide to charitable giving. The guide includes a primer to help donors find relevant information on the Form 990 and a checklist of questions donors can ask and factors

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<sup>4</sup>Culminating in *Riley v. National Federation of the Blind*, 487 U.S. 781 (1988).

<sup>5</sup>Section 12599, enacted in 1989 for commercial fundraisers, and section 12599.1 and 12599.2, in 1998, for fundraising counsel and commercial co-venturers.

that should be considered to assure that contributions are used in the way they intend. Separate chapters discuss public safety fundraising appeals and victimization of senior citizens.

Problem areas in solicitation, in our experience, include telemarketing and direct mail appeals, primarily because of misrepresentations. Again, donors are the first level of defense against this type of abuse because they can refuse to give. If, before making a donation, donors review the financial information filed by both charities and their fundraisers, they are less likely to make gifts to charities that have high ratios of fundraising or administrative expense. And while state charity offices cannot set limits on these expenses, there are resources available to donors to help them make that decision.

In our guide, we urge donors to ask some threshold questions before writing a check:

- Is the charity effective in achieving its stated mission?
- Is the charity spending its funds prudently?
- Are the charity's solicitation and informational materials accurate, truthful and not misleading?
- Is the charity's board of directors active, independent and free of self-dealing?
- How much of your charity dollar do you want the charity to devote to program services?

Asking these questions and using the 20-point checklist in the guide will provide donors with information needed to make informed decision.

We have found no mechanism to quantify fraud in this area. Nor will fraudulent schemes necessarily come to the attention of state charity officials. For these reasons, donors must be vigilant and willing to take the time to assure they know who will benefit from their contribution and how that contribution will be used.

The bottom line is that both donors and state charity regulators have roles in controlling abuses in the solicitation of charitable contributions and in the operation of the charities themselves.

Again, thank you for providing me the opportunity to appear before you today. I welcome any questions you may have at this time.