



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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Opening Statement of Chairman Chuck Grassley
Committee on Finance Hearing, "The Tax Code and Land Conservation:
Report on Investigations and Proposals for Reform"
Wednesday, June 8, 2005

Today, the Finance Committee will hear testimony on two very significant reports. The first is the report on The Nature Conservancy (TNC) prepared by the staff of the Committee. The second report, prepared by the Department of Interior's Inspector General, discusses the Department of Interior's proposed purchase of mineral rights in Florida from a private organization. The report on The Nature Conservancy provides the Committee and the public a window into the workings of not just The Nature Conservancy but large charities in general. The report and attached documents show that The Nature Conservancy at times participated in tax planning activities affecting it and its donors that can result in substantial tax benefits.

Charities have gone far beyond raising money by just having Santa ring a bell. Santa now is often engaging some of our nation's top tax lawyers and accountants with the sharpest pencils. The exhibit here is a copy of a document, which I am submitting for the record, used by TNC in discussions with potential donors involving a "Bargain Sale" to The Nature Conservancy. In this document, the charitable deduction is based on the slippery slope of the donor's own appraisal. The kicker is that the calculation shows that a better deal can be had using the "Plus Value of Tax Shelter from charitable contributions." I'm troubled enough when I see the words "tax shelter" appearing in tax planning documents of for-profit corporations. When I see "tax shelter" being used in documents of charities I really get worried. But, not only are charities engaging in sophisticated tax planning, they are also at times engaging in complex transactions and joint ventures. The staff report discusses, and educates us on, The Nature Conservancy's actions in this area.

While doing such deals are not in of themselves good or bad, they raise issues about whether charities are acting within the laws governing them as Congress intended and within a manner that justifies their tax-exempt status to the public. There is also a very real concern, highlighted by the staff report, that complex transactions can shift a charity's focus far away from their areas of competency while potentially wasting contributors' dollars. These concerns are well articulated in a memorandum from TNC's Director of Internal Audit to Mr. McCormick, President of TNC, who will be testifying today. The report, which I am also submitting for the record, primarily talks about a lawsuit involving TNC's oil and gas exploration activities in Galveston, Texas. The report states: "TNC Texas' attempt to balance the welfare of the prairie chickens with gas/oil exploration at the Galveston Bay Prairie Preserve seems to be a picture postcard strategy of the new Conservancy. However, were the events that transpired at the Preserve to become public knowledge, the Conservancy's good reputation could be badly damaged."

It goes without saying that this is not what should be happening at The Nature Conservancy

or any charity, for that matter. The Nature Conservancy and all charities should be operating with a view that all transactions and activities will withstand public scrutiny. I will come back to this Internal audit memorandum in my questions but I strongly encourage everyone to read it closely. It provides a great deal of caution of the dangers to charities when they operate outside of their areas of core competency and values.

While the report discusses at length areas of concern, I should also note that I recognize and appreciate that The Nature Conservancy has engaged in significant reforms since the Finance Committee announced its investigations. While there are still improvements that can be made, I appreciate the leadership of Mr. McCormick and Mr. Paulsen on behalf of The Nature Conservancy. Reforms their organization has undertaken are informative as the Finance Committee considers changes in the law, particularly in the area of land and easement donation as well as governance.

Now, for the Inspector General's report. The country is well served by having Mr. Devaney serving at the Department of Interior. He is without question one of the finest IG's we've had over the years. It is because of his excellent work, and that of his staff, that we have had him before the Committee several times in recent years. This is the second report I have recently received on problems of land transactions at the Department of Interior. To be candid, Mr. Devaney, I thought you had already found the bottom of the cesspool when it comes to land transactions at Interior, but this new report shows that it is even deeper than we first thought. It appears that since the mid-1990s, the Department of Interior has basically thrown out the rules book when it comes to this deal for Florida mineral rights. If that wasn't bad enough, I would note that once again we have another federal agency basically undermining the work of the Department of Treasury and IRS. The IG reports in detail about the Interior officials happily and ignorantly signing off on whatever tax planning is requested by the private party.

We've seen similar problems with the Department of Transportation in the LILO/SILO transactions, the SEC and other agencies on fines and penalties and the Department of Interior on façade easements. I would hope that the administration recognizes the need to make sure that the rest of the government doesn't make the IRS' tough job even tougher. I thank you all for being here today to present these two sweeping reports and also thank the enormous number of staff who made these reports possible.

Closing Statement of Chairman Grassley

This hearing has been of great benefit to the committee. It has provided a detailed look at the realities of today's major charities and will inform members and the public as we consider reforms. In addition, we have had a good discussion about the problems and issues facing us as we look at ensuring that the tax code provisions that encourage donations of conservation easements are effective. Senator Baucus and I have been in close discussions on this matter, and I'm hopeful that in the next few weeks we will be able to propose reforms in the area of conservation easements. Issues that we will look at in such reforms include: valuation, especially improving appraisals; adequate monitoring and enforcement of easements; ensuring conservation purposes of easements; proper reporting and limitations on modifications of easements; accreditation of land trusts; and greater transparency and reporting by land trusts.