

**TESTIMONY OF ROBERT S. TIGNER  
BEFORE THE SUBCOMMITTEE ON FEDERAL WORKFORCE,  
POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA  
OF THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**

**April 24, 2008**

Mr. Chairman, Mr. Marchant, and members of the Subcommittee. I am Robert Tigner, General Counsel to the Association of Direct Response Fundraising Counsel (ADRFCO). Thank you for the invitation to appear here today to testify about an obscure -- and highly technical -- Postal Service regulation known as the "cooperative mail rule (CMR)." There is, however, nothing obscure about the importance of preferred rate mail to America's nonprofits. Affordable mail assures the financial well-being of many, many charities and enables effective communication with their constituents and supporters. Anything under consideration by this Committee that may affect the use of the preferred rate -- such as the present CMR discussion -- is of vital importance to the entire nonprofit community.

Committee staff has asked me to comment upon changes made to the CMR in 2003 and how the changed rule may have affected the organizations with which I work. I am happy to do so but first wish to further identify who these organizations are.

ADRFCO is the professional association for firms that provide direct response fundraising services to nonprofit organizations. Members provide counsel on the conduct of direct mail fundraising campaigns and do not themselves solicit funds from the public. The forty-two member firms are bound by a comprehensive ethics code known as *the Rules of Business Ethics and Practice* (copies have been provided to staff). A more important number is the upwards of 600 nonprofit organizations that use the services of ADRFCO members to aid their direct mail fundraising and communication. Among these client organizations are the household names of American charity.

I'll ask your indulgence to name a few of them. Clients of ADRFCO member firms include Christian Children's Fund, the American Heart Association, Public Citizen, United States

Holocaust Museum, Habitat for Humanity, the American Red Cross, Mothers Against Drunk Driving, the Salvation Army, Susan G. Komen for the Cure, Disabled American Veterans, World Vision, the American Civil Liberties Union, Toys for Tots, the San Diego Zoo, Special Olympics International, and St. Jude Children's Research Hospital. These organizations and, thousands of others, make worthy use of nonprofit preferred-rate mail to communicate with their constituencies and raise the vital funds necessary to conduct their missions that improve the lives of countless people -- billions of dollars are needed each year. I say these things as a reminder to all of us -- most especially those of us promoting changes to the status quo -- of the high stakes.

The CMR was conceived to prevent third parties from exploiting the preferred rate privileges bestowed on nonprofit organizations. An authorized nonprofit may employ as much help as it needs or desires from third parties to create and execute its mailing program. But, in the framework of the CMR, its helpers must be "agents" of the mailer rather than participants in a "joint venture" *with* the mailer. Applying these deceptively simple labels to real-world relationships is complicated stuff, at best. It is more complex still in the context of the practically infinite variety of fundraising program design and execution. A finding that there has been a joint venture (an "unauthorized cooperative mailing") has big consequences. It subjects the mailer and the third party to an assessment for full commercial postage (less what was actually paid) for all the mail involved. It could even result in the revocation of preferred rate mailing privileges.

For the first twenty years or so of CMR enforcement by USPS (say, until the early 1990s), the focus was upon the sale of goods and services by authorized nonprofits. But changes in law and some notorious cases involving dubious fundraising practices slowly changed this. By the mid-to-late 90s, USPS began to take enforcement actions against "pure" fundraising transactions (that is, where no products or services were offered -- only contributions were sought -- and the third party was in business as a fund raiser). In the opinion of many in the fundraising community, the scrutiny was warranted. On the other hand, a number of

controversial decisions by USPS sent chills through the community, and seemed to put much of conventional fundraising by mainstream organizations at risk.

It was in this environment that a small group of commercial fundraising companies launched a legislative initiative aimed at insulating fundraising from CMR enforcement. The organized fundraising community, through a coalition of prominent umbrella organizations, developed a nearly universal and uniform response. This response appeared in reply to the 2003 USPS rulemaking that resulted in the present version of the CMR. It proposed to maintain CMR oversight over fundraising but, at the same time, offer reasonable and certain protections for nonprofit mailers through the provision of a "safe harbor" (Committee staff has this 2003 proposal). In other words, questionable practices could be interdicted and/or sanctioned by USPS through the CMR but legitimate, ethical fundraising could proceed without jeopardy. In the end, contrary to the wishes of most of those who would have been subject to the regulation, USPS chose to remove fundraising from CMR oversight altogether.

We believe that USPS could have -- and should have -- found a finer balance in its 2003 rulemaking. To be sure, ADRFCO member firms and their hundreds of clients were relieved to be freed of the threat of uneven and unpredictable enforcement. At the same time, the price for the security was the certain knowledge that aggressive and sometimes unscrupulous fundraisers would exploit this protection for their own gain and would institute arrangements carrying the hallmarks of joint venture (such as exercising control over donor lists and mailings, propping up clients with loans and cash advances, using the provision of fundraising services as a "loss leader" covering the sale of products to clients, and the like).

It is safe to say that the relaxation of CMR oversight has produced an increase in fundraising arrangements that might be described, under the old CMR regime, as joint ventures. While many of these -- perhaps even most -- are not disadvantageous to the nonprofit mailer or the public, some surely are. There is no practical way to know either numbers or proportions.

But here's what we can be very certain about: with no CMR to occupy the field, those that would seek to caution reckless nonprofit mailers and restrain overreaching fundraisers are missing a very valuable tool.

We respectfully suggest that the Committee act to restore a proper balance to the CMR. Joint ventures can be deterred *and* reasonable certainty for fundraising can be provided. Most important, this delicate balance can be accomplished, we are certain, without any deleterious effect on fundraising. To that end, ADRFCO has joined in an informal coalition with five other umbrella groups representing fundraising and the nonprofit community\*\* to revive the proposal from 2003. In fairly short order, we expect to present the Committee with an updated consensus proposal for revising the current CMR. As did the 2003 proposal, it would offer strictly qualified protection for fundraising but at the same time provide more than ample space for CMR enforcement.

In its 2003 CMR rulemaking, the Postal Service gave great deference to the immense importance of direct mail fundraising to America's charities. USPS said, in effect, "in case of any doubt, we will dispose in favor of free rein for fundraising." This is a prejudice with which we cannot argue (and it is one we commend to the attention and respect of this Committee). But our coalition IS the fundraising community and we don't believe there is any serious doubt. A revised, balanced CMR will not only *allow* fundraising to thrive, it will *help* it thrive.

Thank you for your attention and for your consideration of our views. It would be my pleasure to respond to any questions you may have.

\*\* Alliance of Nonprofit Mailers  
Association of Fundraising Professionals  
DMA Nonprofit Federation  
Independent Sector  
National Catholic Development Conference