

RESTATEMENT OF THE LAW,  
CHARITABLE NONPROFIT ORGANIZATIONS

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**CHAPTER 4**  
**RESTRICTIONS ON ASSETS; PLEDGES; SOLICITATION**

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**§ 4.05. Solicitation of Charitable Assets**

**If required by applicable law of a state or subdivision thereof, both a charity, for itself and on behalf of its board members, officers, employees, and volunteers, and any person who is compensated for soliciting donations on behalf of or providing fundraising advice to the charity must:**

- (a) register with the state attorney general or other designated authority before soliciting donations in the state;**
- (b) file periodic financial reports on the solicitation of donations with the state attorney general or other designated authority; and**
- (c) comply with any other requirements related to solicitation in the state or subdivision thereof.**

**Cross-References:**

For the powers of the state attorney general, see § 5.01. For the creation of a specific restriction on a charitable asset by a solicitation, see § 4.02. For the enforcement of a specific restriction on a charitable asset that was created by a solicitation, see §§ 4.01 and 4.03, Comment *d*.

**Comment:**

*a. General comments and history.* Many areas of law may affect fundraising, including securities, antitrust, and intellectual-property law, as well as the First Amendment of the U.S. Constitution. In addition, the vast majority of states and the District of Columbia oversee

fundraising conducted by or on behalf of a charity by requiring one or more of the following: some form of registration to solicit donations in the state, reporting of such solicitation to a designated state authority, or disclosure of certain types of information to potential donors. Some state statutes requiring registration prior to solicitation explicitly allow local governmental units, such as counties and municipalities, to enact their own solicitation ordinances or regulations, and some have done so. The solicitation rules discussed in this Section are separate from rules discussed in § 5.04 that require a charity to register in a state before doing business in that state. A state or local government may require registration for both solicitation of donations and doing business in the jurisdiction, or it may require registration for only one or neither of those purposes.

Registration, reporting, and disclosure rules, which are largely governed by state statute and the U.S. Constitution, are complex and varied. Because solicitation techniques employed by charities, fundraisers, and supporters of charitable causes are rapidly evolving, regulators increasingly are exploring new regulatory approaches. Consequently, this Section provides only a brief overview of solicitation law.

As explained in § 5.01, under the common law, the state attorney general has all the powers necessary to protect charitable assets. Those common-law powers include the regulation of solicitation of charitable donations regardless of whether, as is the case in some states, a statute explicitly confirms the state attorney general's broad enforcement power over charities. In addition, the state attorney general commonly enforces the statutes discussed in this Section, as well as other laws that may implicate fundraising, such as statutes that prohibit unfair or deceptive acts or practices. Subsection (c) of this Section encompasses the application of those powers and enforcement of those laws to the extent they are not addressed in subsections (a) and (b). Subsection (c) also incorporates common-law fraud or various tort actions that may impose liability for economic harm to persons, including charities and donors.

A charity will often solicit donations through its board members, officers, employees, and volunteers, and generally must comply with solicitation laws even if it only solicits in this manner. If the charity is large, a compliance officer typically has the responsibility to comply with the registration, reporting, and disclosure rules on behalf of the charity. Independent contractors—including individuals and organizations—that solicit donations on a charity's behalf must also comply with laws discussed in this Section. If a charity contracts with a third party to provide

fundraising services, the charity’s fiduciaries must exercise reasonable care and oversight regarding the solicitation activities.

Regulation of solicitation finds its historical roots in the beginning of the 20th century in the form of municipal ordinances, largely concerning door-to-door solicitation. In 1919, Pennsylvania passed a statute making it “unlawful for any person, copartnership, association, or corporation . . . to appeal to the public for donations or subscriptions in money or in other property, . . . for any charitable, benevolent, or patriotic purpose [with some exceptions,] . . . unless the appeal is authorized by a valid certificate of registration” issued by the Board of Public Charities. Act of June 20, 1919 (P.L. 505, No. 248). In 1954, New York and Massachusetts passed the first modern requirements that a charity register with the state before fundraising in the state. Since then, solicitation laws, exemptions from them, and parties covered by them have multiplied. Moreover, fundraising techniques have grown both more complex and more geographically far-reaching through developments such as internet fundraising and crowdsourcing, which may be used by charities, fundraisers, and donors in many states.

Solicitation under the law is typically broadly defined to include direct or indirect, and oral or written requests for contributions that will be used for charitable purposes—whether specifically requested from a potential donor or directed more broadly. Solicitation laws apply regardless of whether the appeals are successful in generating contributions. Moreover, in the context of solicitation laws, the term “contribution” is also expansive. It generally applies to various conventional types of donations, including contributions of money and other assets for which nothing is received in return. It also generally includes “purchases” that the buyer intends to be in part a contribution to a charity, such as the purchase of cookies, tickets to an event, or raffle tickets.

*b. Regulation of solicitations for donations.* Among the states actively regulating solicitations, many have implemented a form of the Model Act Concerning the Solicitation of Funds for Charitable Purposes, which was adopted by the National Association of Attorneys General in 1986. State laws regulate all or some combination of the following: charities that solicit donations, professionals who provide fundraising advice or who fundraise on behalf of charities, and businesses, known as commercial coventurers, that sell products or services and promise to donate a portion of the sales proceeds to charity. Importantly, because the laws address the act of soliciting donations rather than the charities themselves, the regulated parties include not only charities but also individuals, for-profit entities, and others.

Solicitation laws are meant to protect charitable assets, provide transparency, help potential donors make informed decisions, and prevent or remedy deceptive or fraudulent solicitation. Among those states with active regulation, the state attorney general is the primary regulator in about half the states; in the others, registration and reports must be filed with the secretary of state or other state official, but enforcement remains with the state attorney general.

All of the states that actively regulate solicitation provide some exemptions. Most commonly, the exemptions are provided to certain categories of charities (e.g., churches and certain other entities holding property for religious purposes that are not required to file Form 990 with the Internal Revenue Service, educational institutions, hospitals, and governmental charities or agencies) and to charities with members if the solicitations are limited to the members. However, exemptions that apply to charities that solicit only from their members tend not to apply to charities that use professional solicitors who receive as compensation a percentage of the amount raised through their efforts, and may not apply to fundraising consultants or others who assist with fundraising. In addition, although exemptions from regulation tend to apply to fundraising below a threshold dollar amount in a state, sometimes those exemptions are applicable only to campaigns conducted by volunteers.

Registration requirements vary a great deal by state. For example, a charity may have to provide one or more of the following to a state: signatures from multiple officers, copies of organizational documents, a copy of the federal application for recognition of exemption (IRS Form 1023) and determination letter, a list of officers and board members, and a fee. Reporting requirements similarly vary. States require various types of financial reports, such as reports on particular fundraising campaigns, gross and net proceeds, and the various types of fundraisers employed. Those reports typically are made available to the public. Consequences for failure to comply with registration or reporting requirements can include fines, civil and criminal actions against members of the board, and denial of the right to solicit funds.

In addition, some states regulate the information that a fundraiser must disclose to potential donors. Those disclosure rules vary not only by state but also within a state. They differ depending on whether the solicitation is written, live, by telephone, or online. They also differ depending on whether the fundraiser is the charity, a coventurer, an employed fundraiser, or counsel, the last of whom generally advises the charity rather than directly fundraises. Examples include requirements to provide a potential donor with specific information about the charity, the fundraiser, or the

fundraising fees when requested by the potential donor. Finally, state attorneys general will investigate if there is alleged deceptive or fraudulent solicitation activity, such as fundraising by a sham charity, a fundraiser who falsely claims to be a member of a charity or falsely misrepresents the nature of a charity or how donations will be used, fraud by charities, or misuse of donated assets.

Many of the statutes regulating solicitation authorize the imposition of criminal penalties for violations, such as making fraudulent representations while fundraising. However, effective enforcement has been difficult given the rapid development of new fundraising techniques, such as peer-to-peer fundraising and crowdsourcing, and the ability of fundraisers to relocate to different jurisdictions, sometimes using new names.

Despite various congressional proposals to extend its authority, the Federal Trade Commission (FTC) does not have the authority to apply consumer-protection laws to a charity's direct solicitation of donations. It does, however, have the power to file civil enforcement actions against sham charities and for-profit organizations that solicit on behalf of charities. The Federal Trade Commission Act grants the FTC authority to stop corporations and trusts from engaging in "unfair or deceptive acts or practices." 15 U.S.C. §§ 44-45. Importantly, it defines a corporation subject to the Act as an entity "which is organized to carry on business for its own profit or that of its members." *Id.* The FTC's Telemarketing Sales Rule also prohibits for-profit telemarketers soliciting charitable contributions from certain abusive telemarketing acts or practices. 16 C.F.R. § 310.4. The FTC coordinates with state attorneys general enforcement initiatives targeting fraud and corruption in charitable solicitations, as in the case of solicitations by sham charities. Since 1997, the FTC has organized several such initiatives. Increasingly, the FTC and state attorneys general have partnered as co-plaintiffs in federal enforcement actions against sham charities.

Finally, constitutional limits have stopped states and localities from imposing percentage limits on the amount of raised funds that a fundraiser can take as a commission. Between 1980 and 2003, the U.S. Supreme Court decided four cases involving fundraising commission percentages. In the first three cases, the Court held that laws imposing limits on fundraising commission percentages were unconstitutional because they infringed on the First Amendment right to free speech. Each of those three cases, none of which has been overruled, has had the effect of limiting the power of a state legislature to impose limits on speech related to charitable solicitations. However, lower courts have since decided a number of cases and, based on the facts, distinguished

them from the three U.S. Supreme Court cases; this trend suggests that regulation of solicitation while complying with constitutional constraints is occurring.

In the fourth case, the Illinois Attorney General alleged “that fundraisers defrauded members of the public by falsely representing that ‘a significant amount of each dollar donated would be paid over to [a veterans organization] for its [charitable] purposes while in fact the [fundraisers] knew that . . . 15 cents or less of each dollar would be available’ for those purposes.” *Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 605 (2003). That case differed from the others in that it did not risk imposing a prior restraint on speech; the case involved an individual fraud claim filed after a donation was made rather than a challenge to a law designed to avoid fraud by identifying particular percentage commissions as unreasonable in advance. In holding that the allegation could survive a motion to dismiss, the Court explained that, “[s]o long as the emphasis is on what the fundraisers misleadingly convey, and not on percentage limitations on solicitors’ fees *per se*, such actions need not impermissibly chill protected speech.” *Id.* at 619.

In addition to free-speech concerns, state regulation of fundraising by religious organizations raises questions of religious liberty. It is unclear to what extent state regulators may assert jurisdiction over religious organizations. To address religious-liberty concerns, state statutes typically exempt religious organizations from filing requirements, although commercial contractors working for such entities may need to comply. Outside of those exemptions, the state attorney general retains the authority set forth in the black letter of this Section so long as the exercise of authority rests on application of neutral and generally applicable law and, therefore, does not violate the First Amendment rights of the religious organizations.

## REPORTERS’ NOTES

### **Comment a. General comments and history.**

1. For histories of the regulation of charitable solicitation, see Putnam Barber, *Regulation of US Charitable Solicitations Since 1954*, 34(3) *VOLUNTAS: INT’L J. VOLUNTARY & NONPROFIT ORGS.* 737-762 (2012); Ellen Harris, Lynn S. Holley & Christopher J. McCaffrey, *Fundraising into the 1990s: State Regulation of Charitable Solicitation After Riley*, 24 *U.S.F. L. REV.* 571 (1990); MARION R. FREMONT-SMITH, *FOUNDATIONS AND GOVERNMENT: STATE AND FEDERAL LAW AND SUPERVISION* 272-351 (1965). For a survey of fraudulent charitable solicitation and suggestions for future regulation, see James J. Fishman, *Who Can Regulate Fraudulent Charitable Solicitation?*, 13 *PITT. TAX REV.* 1 (2015). For an argument that the federal tax system, rather than state authorities, is better positioned to regulate solicitation, see *Developments in the Law—Nonprofit Corporations, IV. Charitable Solicitation*, 105 *HARV. L. REV.* 1634 (1992). On the need

for transparency in fundraising, see Leslie G. Espinoza, *Straining the Quality of Mercy: Abandoning the Quest for Informed Charitable Giving*, 64 S. CAL. L. REV. 605 (1991).

2. For an example of a case in which a charity's fiduciaries failed to exercise reasonable care in overseeing a fundraising contractor, see *State ex rel. Petro v. Gold*, 850 N.E.2d 1218 (Ohio Ct. App. 2006).

3. For an example of a county solicitation regulation, see L.A. CTY., CAL., CODE OF ORDINANCES, tit. 7, div. 2, ch. 7.24, Charitable Solicitations. (Sept. 18, 2018).

4. For more on the development of New York's 1954 law, see Scott L. Cagan, *Charitable Fraud in New York: The Role of the Professional Fund Raiser*, 33 N. Y. L. SCH. L. REV. 409, 429-430 (1988). For a summary of the 1954 Massachusetts law, see Ernest R. D'Amours, *State Supervision of Charities: Present Status*, 4 N.H. B.J. 76, 80 (1962).

#### **Comment b. Regulation of solicitations for donations.**

5. For a 2015 survey of regulation of charitable solicitations, see Cindy M. Lott & Marion R. Fremont-Smith, *State Regulatory and Legal Framework*, in NONPROFITS AND GOVERNMENT: COLLABORATION AND CONFLICT 163 (Elizabeth T. Boris & C. Eugene Steuerle eds., 2017). For a survey of states requiring charities conducting public solicitation for charitable funds to register and file reports, see Urban Inst., Legal Compendium, Regulation of the Charitable Sector Project, <http://www.urban.org/policy-centers/center-nonprofits-and-philanthropy/projects/regulation-charitable-sector-project> (last visited Dec. 11, 2016).

6. For the full text of A Model Act Concerning the Solicitation of Funds for Charitable Purposes, see NAT'L ASS'N OF ATTORNEYS GEN. COMM. ON TRS. & SOLICITATION, A MODEL ACT CONCERNING THE SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES (NAT'L ASS'N ST. CHARITY OFFICIALS 1986). In that Act, the states are left to determine whether the state attorney general is to regulate charitable solicitations or whether the duty to regulate solicitations will be bifurcated, with a secretary of state or other state official receiving registrations from fundraisers and the state attorney general regulating charities more broadly.

7. For an example of a statute in which charitable organizations that raise over \$25,000, are required to register before soliciting, see N.Y. EXEC. LAW § 172-a (McKinney 2002). For an example of a statute that requires professional fundraisers to register, see N.Y. EXEC. LAW § 173 (McKinney 2002).

8. For examples of statutes requiring charitable organizations and/or professional fundraisers who solicit charitable funds to submit financial reports to the state attorney general or other registration office, see N.Y. EXEC. LAW § 172-b (McKinney); N.Y. EXEC. LAW § 173-a (McKinney).

9. Some state statutes require virtually all charities, with few exceptions, to register before soliciting. See, e.g., MASS. GEN. LAWS ANN. ch. 68, §§ 19, 20.

10. Some states have statutes of general applicability that exempt certain types of charities. For example, New York exempts religious organizations; educational institutions that only solicit students, alumni, faculty, trustees, and their families; certain organizations that solicit only their

own members; and persons soliciting contributions for an individual. N.Y. EXEC. LAW § 172-a. Maine's statute exempts charities that solicit primarily within their membership as well as solicitations solely for the benefit of a named individual, educational institutions, hospitals, and free clinics. ME. REV. STAT. tit. 9, § 5006. South Carolina's statute includes a similar, though not identical, list of exemptions but also exempts certain veterans' organizations. S.C. CODE ANN. § 33-56-50. Georgia's statute includes a long list of exemptions that include, among others, "educational institutions and those organizations . . . operated, supervised, or controlled by or in connection with a nonprofit educational institution, provided that any such institution or organization is qualified under Section 501(c) of the Internal Revenue Code of 1986 . . ."; fraternal organizations; religious organizations; volunteer fire departments; political organizations that have to file information with election commissions; and certain organizations of hunters, fishermen, and target shooters. GA. CODE ANN. § 43-17-9 (West). Oklahoma's statute exempts religious organizations, educational institutions, fraternal organizations, and solicitations solely for the benefit of a named individual. OKLA. STAT. ANN. tit. 18, § 552.4 (West).

California's solicitation statute, the Supervision of Trustees and Fundraisers for Charitable Purposes Act, extends to "all charitable corporations, unincorporated associations, trustees, and other legal entities holding property for charitable purposes, commercial fundraisers for charitable purposes, fundraising counsel for charitable purposes, and commercial coventurers, over which the state or the Attorney General has enforcement or supervisory powers." CAL. GOV'T CODE § 12581. However, some entities, including religious organizations holding property for religious purposes, are explicitly exempt from filing, registration, and reporting requirements in California. CAL. GOV'T CODE § 12583. Nonetheless, because there has never been a clear definition of what constitutes "holding property" under California's solicitation statute, it potentially reaches farther than typical state statutes in that even holding a small investment account in a California bank could potentially trigger the California attorney general's oversight of an out-of-state charity. Douglas M. Mancino, *California Regulation of Out-of-State Charities*, 17 TAX'N EXEMPTS 243, 247 (2006). The full extent of that authority has never been tested, but scholars have discussed the extent to which California may have overasserted its jurisdiction. See Roderick M. Hills, *Jurisdiction and Non-Profit Organizations: Making Federalism Safe for the Independent Sector* (2006) (unpublished draft); Mancino, *supra*, at 243.

11. Some state statutes apply only to charities of a particular legal form. For example, Minnesota's statute requiring registration and annual filing of tax returns or accounting information is confined to charitable trusts. MINN. STAT. ANN. §§ 501B.36-501B.38.

12. Some state statutes are extremely narrow and apply only to charities with certain purposes or that engage in certain types of solicitations. For example, Arizona requires only charitable organizations raising money for veterans to register with the secretary of state. ARIZ. REV. STAT. ANN. § 13-3722. Texas regulates only "Professional Sports Team Charitable Foundation Raffles," TEX. OCC. CODE ANN. §§ 2004.001-2004.010; "Law Enforcement Telephone Solicitations," TEX. BUS. & COM. CODE ANN. §§ 303.001-303.154; public-safety organizations and

publications and their solicitors, TEX. OCC. CODE ANN. §§ 1803.001-1803.155; and solicitations for veterans, TEX. OCC. CODE ANN. §§ 1804.001-1804.206.

13. Some state statutes apply to a broad range of types of contributions. For example, in Florida, a “‘Contribution’ means the promise, pledge, or grant of money or property, financial assistance, or any other thing of value . . .” FLA. STAT. ANN. § 496.404. Other state statutes exclude particular categories of donations. For example, New Jersey explicitly excludes “personal services rendered by a volunteer.” N.J. STAT. ANN. § 45:17A-20.

14. Some state statutes exempt solicitation activity below a certain dollar threshold. For example, Illinois exempts all charities that do not solicit or receive more than \$15,000 per year. 225 ILL. COMP. STAT. ANN. 460/3. Florida exempts charities with less than \$25,000 a year in revenue, as long as the charity does not employ professional fundraisers. FLA. STAT. ANN. § 496.406 (West). New Jersey has a similar law with a limit of \$10,000 a year. N.J. STAT. ANN. § 45:17A-26 (West). Massachusetts exempts charities that raise less than \$5,000 per year “if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of, or is paid to any officer or member.” MASS. GEN. LAWS ANN. ch. 68, § 20 (West). Pennsylvania exempts charities that receive less than \$25,000 per year if all fundraisers are unpaid. 10 PA. STAT. AND CONS. STAT. ANN. § 162.6 (West). Ohio exempts charities that receive less than \$25,000 per year, “if the organization does not compensate any person primarily to solicit contributions.” OHIO REV. CODE ANN. § 1716.03 (West). Michigan exempts charities that raise less than \$25,000 per year if all fundraisers are unpaid and the charity makes financial statements publicly available. MICH. COMP. LAWS. ANN. § 400.283 (West).

15. For examples of state registration statutes that explicitly allow local governmental units to enact their own solicitation ordinances or regulations, see, e.g., KY. REV. STAT. ANN. § 367.669; VA. CODE ANN. § 57-63. For an example of such an ordinance, see LOS ANGELES, CAL., MUN. CODE §§ 44.00-44.15. In the 1990s, professional fundraising consultants challenged the Pinellas County, Florida, registration ordinance as violating the Commerce Clause and the First and Fourteenth Amendments of the U.S. Constitution. The Eleventh Circuit had affirmed that the ordinance was facially constitutional, but had remanded the case to determine whether the ordinance violated due process as applied. *Am. Charities for Reasonable Fundraising Reg., Inc. v. Pinellas Cty.*, 221 F.3d 1211 (11th Cir. 2000). On remand, the U.S. District Court for the Middle District of Florida found that the consultants lacked minimum contacts with the county and, therefore, application of the ordinance violated their due process rights. *Am. Charities for Reasonable Fundraising Reg., Inc. v. Pinellas Cty.*, 189 F. Supp. 2d 1319 (M.D. Fla. 2001).

16. Registration to solicit funds is a separate requirement from registration to do business in a state. For a case in which a Colorado charity was barred from soliciting from New York residents because it lacked permission to fundraise there even though it had obtained a certificate of authority from New York to operate a hospital there, see *People v. Jewish Consumptives’ Relief Soc’y*, 92 N.Y.S.2d 157, 158 (N.Y. Sup. Ct. 1949).

17. In some states, charities must make disclosures when they solicit funds. At a minimum, such disclosures generally must include basic information about the name and address of the charity and the purposes for which the funds raised will be used. MASS. GEN. LAWS ANN. ch. 68, § 23 (West). See also OHIO REV. CODE ANN. § 1716.10 (purpose disclosure only required for charities that do not have a current § 501(c)(3) determination). A number of states also require charities to disclose how potential donors can request the charity's financial statement. FLA. STAT. ANN. § 496.411 (West); N.Y. EXEC. LAW § 174-b (McKinney); N.C. GEN. STAT. ANN. § 131F-9 (West); 10 PA. STAT. AND CONS. STAT. ANN. § 162.13 (West). In those states, charities include information on how to obtain financial information from the relevant state authority in their fundraising appeals, such as in text printed on the envelopes provided for donations.

18. The three U.S. Supreme Court cases in which attempts by states and local communities to regulate solicitations for charitable contributions were held to be unconstitutional were: *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980); *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947 (1984); and *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988).

In *Schaumburg*, the Supreme Court held that a local ordinance prohibiting charitable solicitation by any organization that used less than 75 percent of the amount collected for charitable purposes was a violation of the First Amendment because it was insufficiently related to the governmental interest advanced to justify interfering with protected speech. *Schaumburg*, 444 U.S. at 639. In *Munson*, the Court held that a state statute limiting the amount a charity could spend on fundraising to 25 percent of what it collected, even though the statute allowed for waiver of the restriction if the charity claimed the limit would prevent it from raising contributions, was also unconstitutional on First Amendment grounds. *Munson*, 467 U.S. at 969-970. Similarly, in *Riley*, the Court held that three provisions of North Carolina's charitable-solicitation statute applicable to professional fundraisers violated the First Amendment: (1) the presumption that a fundraising fee of more than 35 percent of funds raised was unreasonable; (2) the requirement that professional fundraisers disclose to donors the percentage of contributions collected that actually went to charity was compelled speech; and (3) the provision requiring licensure of professional fundraisers with no provision for a guarantee of a timely decision was also unconstitutional on the grounds that potential delay in the issuance of a fundraiser's license "compels the speaker's silence." *Riley*, 487 U.S. at 793-795, 799-800, 802.

19. There are many examples of cases in which courts upheld various registration and disclosure requirements. The U.S. District Court for the District of Rhode Island found that requiring door-to-door charitable solicitors to register for a permit, and setting a 7:00 p.m. curfew, was constitutional. *Ass'n of Cmty. Orgs. for Reform Now v. Town of E. Greenwich*, 453 F. Supp. 2d 394 (D.R.I. 2006), *aff'd sub nom. Ass'n of Cmty. Orgs. for Reform Now v. Town of E. Greenwich ex rel. Town Council Members*, 239 F. App'x 612 (1st Cir. 2007). Two challenges to state laws that required charities to disclose information about major donors before soliciting donors within the state were unsuccessful. *Ctr. for Competitive Politics v. Harris*, 784 F.3d 1307 (9th Cir. 2015); *Citizens United v. Schneiderman*, 115 F. Supp. 3d 457 (S.D.N.Y. 2015). The Tenth

Circuit Court of Appeals permitted the required disclosures of purpose and method of solicitation, including disclosure of adverse legal actions, but found that Utah's requirement for consultants to be bonded, which included a 100 percent collateral provision, created an unconstitutional burden. *Am. Target Advert., Inc. v. Giani*, 199 F.3d 1241 (10th Cir. 2000). The Fourth Circuit found that requiring professional solicitors to disclose that donors could access financial statements from the state was permissible, but requiring solicitors to file scripts of oral communications at least 10 days before soliciting violated the First Amendment. *Telco Commc'ns, Inc. v. Carbaugh*, 885 F.2d 1225 (4th Cir. 1989). The Tennessee Supreme Court found that requiring professional solicitors to file materials used in soliciting and to disclose their status as professionals, while exempting charities' employees and volunteers, did not violate the federal or state constitutions. *Tennessee v. Smokey Mountain Secrets*, 937 S.W.2d 905 (Tenn. 1996). For cases upholding solicitation registration fees or bonding requirements, see, e.g., *Nat'l Awareness Found. v. Abrams*, 50 F.3d 1159 (2d Cir. 1995); *Special Programs, Inc. v. Courter*, 923 F. Supp. 851 (E.D. Va. 1996), *Ctr. for Auto Safety, Inc. v. Athey*, 866 F. Supp. 237 (D. Md. 1993).

20. There are several articles that canvass the speech concerns raised by regulation of solicitation; e.g., David D. Johnson, *Do California's Laws on Commercial Fundraising Violate the First Amendment?*, 10 U.C. DAVIS BUS. L.J. 83 (2009); Kevin R. Knight, *The Life of Riley: Complete First Amendment Protection Versus Deferential Commercial Speech Standards for Professional Fundraising Solicitors*, 23 IND. L. REV. 145 (1990); Matthew M. Ogburn, *Regulation of Charitable Fundraising: Riley v. National Federation of the Blind of North Carolina, Inc.*, 24 U.S.F. L. REV. 205 (1989); Ellen Harris, Lynn S. Holley & Christopher J. McCaffrey, *Fundraising into the 1990s: State Regulation of Charitable Solicitation After Riley*, 24 U.S.F. L. REV. 571 (1989-1990).

21. In the early 2000s, recognizing the burden that a charity soliciting funds via the internet would face if regulated by multiple states, state charities regulators and charities developed a set of guidelines on soliciting funds on the internet. Those guidelines, known as the Charleston Principles, state that a charity with a website must register in the state in which it has its principal place of business, as well as in any state in which the charity specifically targets donors or receives contributions from residents on a repeated and ongoing or a substantial basis and either (a) has a website through which donors can give; (b) has an informational website that invites offline giving; or (c) communicates with residents via email or other communication that promotes the website. Charities that operate websites that do not solicit donations but do provide programmatic services, such as public information, are not required to register, even if the site causes the charity to receive unsolicited donations. NAT'L ASS'N OF STATE CHARITY OFFICIALS, THE CHARLESTON PRINCIPLES (March 14, 2001), <http://www.nasconet.org/wp-content/uploads/2011/05/Charleston-Principles-Final.pdf>. Only two states have incorporated the Charleston Principles into their regulations. 8 COLO. CODE REGS. 1505-9, Rule 10; TENN. COMP. R. & REGS. 1360-03-01-.07.

Commentators have expressed concern that the Charleston Principles may be outdated, given changes in technology since their development. ELIZABETH SCHMIDT, *NONPROFIT LAW: THE LIFE CYCLE OF A CHARITABLE ORGANIZATION* 306 (2d ed. 2017). For discussion of online

fundraising, see Melissa G. Liazos, *Can States Impose Registration Requirements on Online Charitable Solicitors?*, 67 U. CHI. L. REV. 1379 (2000).

22. The Internal Revenue Service has attempted, and failed, to regulate arrangements with professional fundraisers that it deems disadvantageous to charities via the inurement and private-benefit rules under federal tax law. *United Cancer Council, Inc. v. Comm’r*, 165 F.3d 1173 (7th Cir. 1999). For a discussion of the state-law effects of that case, see Errol Copilevitz, *Looking Back to Assess the United Cancer Council Case*, 13 J. TAX’N EX. ORG. 63 (2001). Groups of charities that fundraise together may violate antitrust rules. See, e.g., Tara Norgard, *How Charitable Is the Sherman Act?*, 83 MINN. L. REV. 1515, 1518 (1999); *United Charities and the Sherman Act*, 91 YALE L.J. 1593 (1982).

23. In 2018, the Federal Trade Commission (FTC) and law-enforcement officials from 70 offices in all 50 states, the District of Columbia, American Samoa, Guam, and Puerto Rico announced “Operation Donate with Honor,” an enforcement initiative that included more than 100 state and federal actions against charities and fundraisers that solicited on behalf of veterans and service members. <https://www.ftc.gov/news-events/press-releases/2018/07/ftc-states-combat-fraudulent-charities-falsely-claim-help>.

In 2015, the FTC and representatives of all 50 states plus the District of Columbia cooperated in an enforcement suit against four entities that had purported to be charities. The suit alleged, among other things, fraud, misrepresentations to donors, and personal use of charitable assets by officers and directors. The entities were incorporated in Arizona, Delaware, and the District of Columbia, and were headquartered and operated in a number of states, including Arizona, Michigan, and Tennessee. The suit was brought in the U.S. District Court for the District of Arizona. The court entered one order against some defendants after several months of litigation and other defendants agreed to stipulated court orders that dissolved the organizations; permanently enjoined the directors from operating, managing, or soliciting on behalf of any charitable organization; and ordered the payment of monetary relief. See, e.g., *Order for Permanent Injunction and Monetary Judgment Against Cancer Fund of Am., Inc., Cancer Support Servs., Inc., & James Reynolds, Sr.*, No. 2:15-cv-00884 (D. Ariz. Apr. 1, 2016); the other orders can be found at <https://www.ftc.gov/enforcement/cases-proceedings/122-3005-x150042/cancer-fund-america-inc>. Importantly, the FTC, which has limited authority over charities, was able to proceed in that case because the facts alleged showed that the entities were sham charities, operated for the benefit of the individuals who controlled them, and that the vast majority of donations were spent furthering the private interests of those individuals and the telemarketers they hired. For a discussion of the FTC’s limited authority over charities and various approaches for regulating unscrupulous professional fundraisers, see James J. Fishman, *Who Can Regulate Fraudulent Charitable Solicitation?* 13 PITT. TAX REV. 1932 (2015).