
CHAPTER ONE

Government Regulation of Fundraising for Charity

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§ 1.2 CHARITABLE FUNDRAISING: A PORTRAIT

pp. 9–11. *Replace the text and headings with the following:*

(a) Scope of Charitable Giving in General

Charitable giving in the United States in 2022 is estimated to have totaled \$ 499.33 billion.^{25.1} Giving by individuals in 2022 amounted to an estimated \$319.04 billion (declining 6.4% in 2022). Grantmaking by private foundations grew 2.5 percent to an estimated \$105.21 billion in 2022. Giving by bequest totaled an estimated \$45.60 billion in 2022, growing by 2.3 percent over 2021. Giving by corporations is estimated to have increased by 3.4 percent in 2022, totaling \$29.48 billion (a decline of 4.2 percent, adjusted for inflation). Corporate giving includes cash and in-kind contributions made through corporate giving programs as well as grants and gifts made by corporate foundations.

Contributions to religious organizations in 2022 totaled \$ 143.57 billion, the largest percentage of giving recipients in that year. Giving to human services reached \$71.98 billion in 2022, and declined by 0.6% in current dollars, staying relatively flat with 2021. Giving to education is estimated to have declined -3.6 percent between 2021 and 2022 to \$70.07 billion. Adjusted for inflation, giving to education organizations declined 10.7 percent. Giving to foundations is estimated to have increased by 10.1 percent in 2022 to \$56.84 billion. Giving to health is estimated to have grown by 5.1 percent between 2021 and 2022 (a decline of 2.6 percent, adjusted for inflation) to \$51.08 billion.

Giving to public-society benefit organizations decreased an estimated 8.4 percent between 2021 and 2022 to \$46.86 billion. Giving to international affairs is estimated to be \$33.71 billion in 2022, growing over 2021 with 10.9 percent growth. Giving to arts, culture, and humanities is estimated to have increased 2.9 percent between 2021 and 2022 to \$24.67 billion. Giving to environmental and animal organizations is estimated to have decreased 1.6 percent between 2021 and 2022 to \$16.10 billion.

(b) Online Charitable Fundraising

Not that many years ago, use of the Internet for charitable fundraising was only nascent. One analysis of online fundraising, in its beginnings, did not have statistics on this approach to gift solicitation.^{25.1} But it was clearly coming, and was expected to someday be a major force in charitable fundraising. Now that “someday” has arrived.

In mid-2014, *The Chronicle of Philanthropy* gave a special report on online fundraising with the theme being “Digital Giving Goes Mainstream.”^{25.2} Among the findings in this report was that Internet gifts had climbed 13 percent in 2013 in relation to 2012, although online fundraising “still accounts for a very small portion of the money charities rely on.”^{25.3} Nonetheless, in 2013, the Leukemia & Lymphoma Society raised more than \$98 million online, the California Community Foundation raised more than \$95 million online, and the American Heart Association raised \$59 million in that manner; other totals were more than \$45 million (World Vision), about \$40 million (Campus Crusade for Christ International, Cystic Fibrosis Foundation, National Christian Foundation, Salvation Army), about \$30 million (March of Dimes Foundation, Young Life), and about \$20 million (Global Impact, Memorial Sloan Kettering Cancer Center, United States Fund for Unicef, University of Michigan).^{25.4}

About one year later, another report speaks of the “transformative promise of online fundraising” that has yet to materialize.^{25.5} This report looks at the “short history of online fundraising” and finds that it “is not without signs of progress.” It summarizes the successes of online-giving websites and notes that “[y]ear to year, more people give money online to charity.” Still, for most charitable organizations, this report states that online giving

25.1. Hopkins, *The Nonprofits' Guide to Internet Communication Law* (John Wiley & Sons, 2003), Chapter 4.

25.2. 26 *Chron. of Phil.* (No. 13) F-1 (May 22, 2014).

25.3. Daniels and Narayanswamy, “Online Giving Grows More Sophisticated,” 26 *Chron. of Phil.* (No. 13) F-3 (May 22, 2014).

25.4. 26 *Chron. of Phil.* (No. 13) F-4 (May 22, 2014).

25.5. “Click, Click, Cash?” 27 *Chron. of Phil.* (No. 9) 10 (May 2015).

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“represents a sliver of their overall fundraising.” The “promised revolution” is “moving at glacial speed” because of ancient tech infrastructure, reluctance on the part of fundraising management to place more emphasis on online operations, and lack of understanding by senior executives and board members of the potential of online fundraising. This report concludes that “effective online fundraising doesn’t eliminate the human touch at the core of giving.” Every day, the report states, “you see more meaning and substance on the Internet, more people forging thoughtful, deep connections—deeper connections, perhaps than a professional fundraiser could ever hope for with a yearly newsletter.”^{25.6}

p. 12. Delete the text preceding the heading.

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p. 15. Insert the following after the first full paragraph of text:

On February 18, 2022, New York Attorney General Letitia James filed a civil complaint against Shirley Goddard, the former executive director and chair of the board of directors of the Humanitarian Organization for Multicultural Experiences, Inc. (H.O.M.E.) and her husband Tyrone Goddard. It is alleged that between 2012 and 2018, Mrs. Goddard improperly diverted or misused nearly a million dollars in H.O.M.E.’s charitable assets for her personal gain. Mr. Goddard, the former board chair, was aware of and helped to conceal his wife’s unlawful conduct. The money that the Goddards stole hindered H.O.M.E.’s ability to fulfill its mission to provide critical services to individuals with developmental disabilities in the Syracuse area. The attorney general’s complaint seeks restitution of the funds that were diverted from H.O.M.E. as well as a permanent bar on any fiduciary role for Shirley or Tyrone Goddard in any New York charitable organization.

State charity officials continue to crack down on charities engaging in unauthorized and unethical activities. The following examples are taken from the National Association of State Charity Officials (NASCO)’s Annual Report on State Enforcement and Regulation.

On January 26, 2021, the FTC, 38 states, and the District of Columbia filed a multistate action against Michigan-based professional fundraiser Associated Community Services (ACS), two businesses related to ACS, and the owners/operators of each of those businesses (the “ACS defendants”). Other defendants

25.6. *Id.* at 11, 12, 14, 16, 19. In general, “The Best of Online Fundraising,” articles beginning on pp. 9, 10, 12, 14, 16, 18, 20, and 22, 28 *Chron. of Phil.* (No. 7) (May 2016).

included Directele and The Dale Corporation and their owners and managers (the “Directele defendants”) that operated as ACS spin-off fundraising companies. The ACS defendants and Directele defendants made billions of solicitation calls nationally on behalf of multiple charities almost exclusively using soundboard technology (robocalls). Callers used deceptive claims about the charities, and collected more than \$110 million, almost all of which went to the defendants, not to charitable programs. Under the court-ordered settlements, the defendants are subject to a \$110-million judgment, which was partially suspended. Funds collected were distributed via cy pres to three not-for-profit corporations. Also, under the settlement, all defendants were permanently prohibited from engaging in charitable fundraising.^{42.1}

On January 12, 2021, the states of California, Florida, Illinois, Maryland, Minnesota, New Mexico, Ohio, Oregon, Washington, and the Commonwealth of Virginia announced a settlement agreement with the Healing Heroes Network, a veterans’ charity based in Florida. The states found that the organization had falsely promised to use donations to help wounded veterans of the wars in Iraq and Afghanistan receive medical treatments that the Department of Veterans Affairs did not readily provide. The charity also falsely claimed on social media in 2016 and 2017 to dedicate 100 percent of proceeds to wounded veterans. The investigation revealed that very little of the contributions received by the Healing Heroes Network, Inc., were used to further this charitable mission. Under the settlement agreement, the defendants agreed to permanently cease all charitable solicitations, and the individual defendants will pay \$95,000 to the State of Washington to be used by a veterans’ charity whose mission matches the representations made by Healing Heroes Network. The individual defendants are also banned from overseeing, managing, or soliciting charitable contributions for any nonprofit organization for five years.^{42.3}

On May 24, 2021, the Kansas Office of the Attorney General secured a judgment against A Ride for the Wounded. A Ride for the Wounded and its owner were permanently banned from doing business in Kansas and ordered to pay more than \$11,000 in damages that were used for personal expenses in violation of the Kansas Charitable Organizations and Solicitations Act. In May 2021, the Maryland Attorney General’s Office entered into an assurance of voluntary compliance (AVC) with the Animal Welfare Society of Howard County. The AVC followed a cease and desist order that had been issued in

42.1. See <https://www.ftc.gov/legal-library/browse/cases-proceedings/162-3208-associated-community-services-inc>.

42.3. See <https://www.marylandattorneygeneral.gov/press/2021/011221.pdf>.

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August 2019. The Maryland OAG alleged that the organization had made false and misleading solicitations, willfully submitted materially false registration information, and made a misrepresentation that was likely to affect a person's decision to make a contribution. The organization underwent internal changes and installed new leadership. New leadership was able to satisfy the issue addressed in the cease and desist order. The AVC allows the organization to solicit in Maryland again and levies a \$15,000 penalty. The penalty will be waived if the organization complies with all provisions of the assurance of voluntary compliance. And on July 23, 2021, the Michigan Attorney General and the Michigan Department of Licensing and Regulatory Affairs obtained a default judgment dissolving 10 fraudulent entities for failing to comply with state nonprofit and charity laws and permanently enjoining defendants from serving as an officer or director of a Michigan nonprofit or seeking a certificate of authority to operate a foreign nonprofit entity in the state. In 2020, the Department of the Attorney General identified defendants Ian Richard Hosang, Claudia Stephen, and Lincoln Palsey as involved with the fraudulent entities American Cancer Foundation (ACF) of Detroit, ACF of Grand Rapids, ACF of Lansing, and ACF of Michigan; American Cancer Society (ACS) of Detroit and ACS of Michigan; American Red Cross (ARC) of Detroit and ARC of Michigan; United Way of Detroit and United Way of Michigan.

In the area of executive compensation, on August 26, 2021, Attorney General Ashley Moody and Governor Ron DeSantis announced a global settlement agreement with Florida Coalition Against Domestic Violence (FCADV) and the organization's former CEO, Tiffany Carr. A complaint had been filed in March 2020, alleging that the FCADV board severely mismanaged funds, and that Ms. Carr had been paying herself excessive compensation. The settlement agreement requires former FCADV officers and directors to pay more than \$3.9 million to Department of Children and Families (DCF) and the court-appointed receiver, including a more than \$2 million payment by Ms. Carr. Per the settlement agreement, former FCADV officers Patricia Duarte and Sandra Barnett must pay a total of \$60,000. FCADV insurers may pay the remaining funds from the \$3.9 million payment, totaling more than \$1.7 million. Additionally, more than \$1 million currently in accounts of the FCADV's foundation will go directly to domestic violence centers across the state. The dissolution of FCADV will include a claims process for creditors, overseen by the receiver and court. The process will establish a claims priority, giving DCF priority as a creditor with an allowed claim of more than \$2.8 million. There is a possibility of additional recovery by DCF through the liquidation of FCADV's assets, and the sale of property will be applied to the judgment balance. Additionally, FCADV will stipulate to a judgment for

more than \$6 million, with the \$3.9 million settlement funds to be applied to the judgment balance. Under the settlement agreement, eight non-party state agencies agreed to provide releases to the directors and officers to facilitate the agreement.^{42.4}

§ 1.4 CONTEMPORARY REGULATORY CLIMATE

p. 22. *Insert the following immediately following the heading:*

In its 2021 Annual Report, the National Association of State Charity Officials listed the following as the four top trends and issues currently facing nonprofits: (1) it is a transitional time for many nonprofit and tax-exempt organizations, with financial strains and staff turnover; (2) increases in requests to borrow from restricted endowments and cy pres applications; (3) increases in online donations, “virtual” organizations, and viral charitable causes; and (4) lack of or delinquent charitable solicitation registrations.

42.4. See <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/35B3BC44ABBD0C388525873D00535E93?Open&>.