

AMERICAN CHARITIES FOR REASONABLE FUNDRAISING REGULATION
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MEMORANDUM

TO: WHOM IT MAY CONCERN
FROM: GEOFF PETERS
SUBJECT: ABOUT THE BRIEFS TO BE FILED IN RYAN V. TELEMARKETING ASSOCIATES
DATE: 12/8/02

American Charities (“ACFRFR”) will be coordinating the filing of three amicus curiae (friend of the Court) briefs in the Ryan case.

The first brief will be available to be signed only by nonprofit organizations. It is being prepared by Bonnie I. Robin-Vergeer of Public Citizen with help from other lawyers in the nonprofit community (see separate memo “Who are the Lawyers”). It will focus primarily on the 1st Amendment free speech rights of nonprofits and the importance of the precedent set 14 years ago in the Riley case. Numerous nonprofits have already agreed to sign this brief but many more are needed to reach the desired 125 charities.

The second brief will be available to be signed only by umbrella organizations in the nonprofit and fundraising community. It is being drafted by Geoffrey W. Peters with help from other lawyers in the nonprofit community. It will focus on problems with using the “cost of fundraising ratio” as the measure of a charity. The signers will include:

- Association of Fundraising Professionals (AFP formerly NSFRE) on behalf of its 28,000 individual members
- Direct Marketing Association - Nonprofit Federation (DMA-NF) on behalf of its 350 nonprofit members and its 75 corporate partner members
- Direct Marketing Association (DMA) on behalf of its entire membership.
- Direct Marketing Association of Washington (DMAW) on behalf of its entire membership.
- Association of Direct Response Fundraising Counsel (ADRFCO) on behalf of its 40 fundraiser members
- National Catholic Development Conference on behalf of its 287 nonprofit members, 22 affiliated nonprofit members, and 85 corporate members.
- Others have been and are being approached including: Alliance of Nonprofit Mailers, Direct Mail Fundraisers Association, Free Speech Coalition – and still others are being approached to join.

The third brief will be available to be signed only by commercial fundraising organizations. It is being drafted by Charles H. Nave with help from other lawyers in the nonprofit community. It will focus on how fundraising actually works and the complications of various media and methods and why “one size fits all” solutions are too simplistic and unrealistic to be used by an Attorney General seeking to find a “bright line test” for fraud.

I cannot emphasize enough that no one is asking that there be any endorsement of either Telemarketing Associates or VietNow or percentage compensation contracts. Each of these three amicus curiae briefs will make clear that the brief signers do not necessarily endorse or approve of the actions of the specific party in the case (Telemarketing Associates) as well as from the decisions of the Board of VietNow. These briefs will point out that while the signers may not approve of or agree with either organization, the case raises important issues to all in the nonprofit community about which the signers wish to comment.

What the briefs will show is the nonprofit community’s widespread opposition to permitting a state’s Attorney General to decide -

- (a) after the fact;
- (b) without any standards;
- (c) without limitation as to time (fiscal year, calendar year, campaign duration, month, week);
- (d) without limitation as to marketing method (mail, special event, capital campaign or telemarketing);
- (e) without limitation as to type of campaign (e.g. prospect, lapsed donor, house); and
- (f) using the single measure of “percentage cost of fundraising” (without any definition of that measure)

- that a fundraiser or charity has engaged in fraud.

I am, as always, available to answer any questions.

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