

# GOVERNMENT RELATIONS INFO AND ACTION

FOR INDEPENDENT SECTOR MEMBERS AND ADVOCATES

• **UPDATE ON CONGRESSIONAL EFFORT TO MUZZLE THE VOICE OF CHARITIES**

- **Your Action Needed Immediately on a Gag Initiative, Which May Be Voted on in Committee the Week of July 10 - 14**
- **Please Sign On to Our Attached Position Statement by July 14**

Proposal by Congressmen Istook (R-OK), McIntosh (R-IN), and Ehrlich (R-MD) would Bar the Use of Privately Contributed Dollars by Charities that are Federal Grantees and Engage in Substantial Advocacy Activity

In a move that can only be viewed as an effort to still the voice of charitable organizations, Congressmen Istook, McIntosh, and Ehrlich held hearings on June 29 on what they called "Washington's dirty little secret" that charities "lobby with taxpayers' money to create political operations that lobby for even more money." The three Congressmen have proposed legislation which they say is in response to rampant grant abuse by charities and an attempt at grant reform. Their legislation, which is presently in draft form, could come up for vote before the full House Committee on Government Reform and Oversight during the week of July 10 - 14. Please contact now those Committee Members (see Attachment #1), urging them to oppose the Istook, McIntosh, Ehrlich proposal to substantially curtail the lobbying rights of charitable organizations.

The proposal's sponsors maintain that when a charity receives a federal grant, it frees up the charity's privately contributed funds to lobby. They want to end that, although charities have always been permitted to spend their private dollars on lobbying, up to the limits permitted by legislation enacted in 1976. They also charged that charities use federal grant dollars to lobby. That is prohibited by law, and the sponsors have provided no evidence of systematic patterns of such grant abuse.

Mr. McIntosh, in his statement to the press, said, "Americans need to have confidence that their hard-earned dollars are not being wasted, and under this program their money is going down a rat hole."

Their draft bill would prohibit federal grant funds from being used for "political advocacy," which includes a number of activities not now considered lobbying under the Internal Revenue Service Code. Nonprofits that engage in political advocacy—even with private funds—would be ineligible for federal grants if more than 5% of their non-grant related funds were used for political advocacy. Although nonprofits now file IRS Form 990, which includes information regarding the amount charities spend on lobbying, the bill would require another annual report for grantees that engage in political advocacy. They would be required to provide a description of their advocacy activities, with the resulting additional burden of another layer of reporting. For additional information, see Attachment #2.

A NATIONAL FORUM TO ENCOURAGE GIVING, VOLUNTEERING AND NOT • FOR • PROFIT INITIATIVE  
1828 L Street, N.W. • Washington, D.C. 20036 • (202) 223-8100  
FAX: (202) 457-0609

INDEPENDENT SECTOR's testimony at the hearing was presented by Charles C. Brown, Jr., President Judge of the Court of Common Pleas of Center County and Chairman of the Public Policy Committee of the YMCA of the USA. The YMCA of the USA is a Member of INDEPENDENT SECTOR. Judge Brown made the following points in his testimony.

- To argue that nonprofit organizations receiving federal grants should be barred from substantial advocacy reflects a fundamental misunderstanding of the historic relationship between nonprofits and government.
- Nonprofits have always been involved in both service delivery and advocacy, and the public benefits from these dual roles. Both by providing an alternative to direct governmental delivery of public services, and by enabling individuals to speak out effectively on public policy issues, nonprofits serve to limit rather than expand the power of the state.
- Barring federal grantees from substantial advocacy activity is neither grant reform nor good government. No one knows better the extent of a community's needs for services or how best to improve the effectiveness of federal programs than the nonprofits on the front lines of service delivery. Excluding these nonprofits will diminish, not protect, the policy process.
- Existing law properly prohibits the use of grant funds to cover either the direct or the indirect costs of lobbying. This rule is enforced by federal auditors, and the level of compliance appears to be quite high. There is simply no justification for imposing more restrictive rules and burdensome new administrative requirements at a time when nonprofits are being called on to expand their services to help offset cuts in federal spending. This is particularly true when no similar restriction is proposed for federal contractors, who would remain free to lobby with their nongovernment funds.
- Finally, conditioning the receipt of federal grant funds on grantees' renunciation of their First Amendment right to lobby with private funds raises serious constitutional concerns. While Congress can refuse to subsidize grantees' lobbying, and can require strict separation of federally-funded and privately-funded activities, it cannot limit grantees' right to lobby with their private funds.

This action to gag charities comes at a time when Congressional budget committees have proposed cutting the funding of social programs by \$712 billion (House Budget) over the seven-year period 1996-2002. It comes after twelve years of cuts from 1982 - 1994, that totaled \$77 billion, exclusive of Medicare and Medicaid, compared to what would have been spent had 1980 spending levels been maintained. It comes after Congress ended for the 88 million taxpayers who are nonitemizers the ability to take a tax deduction for their charitable contributions.

Contact the Government Reform and Oversight Committee Members now. Tell them the voice of charities, speaking on behalf of their causes, clients, and communities, will not be muted. **Tell them enough is enough.**

It will be important for our Members and others to sign on to the attached position statement (Attachment #3) to let Members of Congress know the broad support for our position on this issue. To sign on, please return Attachment #4 to us.

DRAFT

SIGN-ON STATEMENT

DRAFT

## **Serving the Public Good**

### **A Position Statement on Advocacy By Nonprofit Organizations**

The nonprofit sector plays a key role in our society today. In partnership with government, nonprofit organizations are engaged in service delivery, research, public education, and much more -- in general, they work to build a better America. Nonprofit organizations also speak to policymakers and the public on behalf of the people they serve, as well as empower them to speak for themselves. The advocacy voice of the nonprofit sector has led to significant improvements in public policies at the local, state, and federal level.

Because nonprofit organizations do not stand to profit by lobbying and can provide enormous insight on public policy issues, Congress has encouraged them to lobby, but has placed detailed restrictions on the amount of money that can be used for lobbying purposes. The federal government also bars nonprofits from using any federal funds for lobbying purposes, and prohibits nonprofit organizations from engaging in partisan politics.

Nonprofit organizations faithfully comply with all these restrictions and support enforcement of penalties when the rules are violated. However, some in Congress are proposing to go beyond current restrictions to silence the advocacy voice of the nonprofit sector. They would, for example, expand the lobbying restrictions to include all "political advocacy" activities, bar certain organizations that engage in advocacy from receiving any federal grants, and prohibit federal employees from giving contributions to nonprofits that engage in advocacy. Such efforts will have a chilling impact on the democratic process as well as the rights of individuals and organizations to participate in public policy debates.

We strongly oppose any effort to limit the advocacy voice of the nonprofit sector. Curtailing the historical responsibility to speak to the public and to policymakers on behalf of the people nonprofit organizations serve would be a severe blow to our democratic freedoms.

Endorsed by,

American Heart Association  
OMB Watch  
INDEPENDENT SECTOR

# Summary of a Bill to Stop Taxpayer-Funded Political Advocacy by Congressmen Istook, McIntosh, Ehrlich

## General Description

Tens of thousands of special interest groups representing the entire political spectrum receive more than \$39 billion in federal grants each year. While no one knows exactly what happens with all this money, we do know that large sums are being wrongly spent on political advocacy. This bill puts a stop to taxpayer funded political advocacy.

This bill attacks the problem both directly and indirectly. It *directly* prohibits any recipient of a federal grant from spending any grant funds on political advocacy. Because money is fungible, however, it also *indirectly* attacks the problem by setting limits on the amount of political advocacy that a grantee can perform with non-grant funds.

## Section 1 -- Prohibition on the Use of Federal Funds

Section (a) sets out the limitations that will apply to all federal grantees. It permanently prohibits grantees from using funds from any grant to engage in political advocacy. It also bars grant applicants from receiving grants if they have expended a significant amount of money in the past 5 years on political advocacy, and bars grantees who retain possession of federal funds from spending a significant amount of their money from any source on political advocacy. The direct ban is absolute. Section (a) also places an obligation on the grant makers to inform all grantees that they are subject to this law.

Section (b) is the enforcement provision. Each grantee is subject to audit by the GAO, is required to follow generally accepted accounting principles (GAAP), and (if it engages in political advocacy) bears the burden of proving by clear and convincing evidence that it is in compliance with this law. Subsection (b)(2) incorporates the current *qui tam* provisions that authorize private attorney general actions for false claims made to the United States. Finally, government officials who violate this law are subject to administrative discipline and/or a \$5,000 civil penalty.

Section (c) is the definitional section. "Political advocacy" is carefully defined. It starts with the definition used in the tax code that applies to 501(c)(3) non-profit charities, and expands beyond those limits where necessary. For example, it extends that definition to include participating in certain types of judicial litigation, lobbying federal and state agencies, and the laundering of funds through organizations that engage in a significant amount of political advocacy. The safe harbors that currently exist in the tax code for 501(c)(3) non-profits are retained. The definition of a "grant" is adapted from

current law (31 U.S.C. 6304) to include the provision of any Federal funds used to carry out a public purpose of the United States, but does not include funds used to acquire property or services for the direct benefit or use of the United States, or to pay loans, debts or entitlements, or funds provided to Article I or III courts. "Grantee" is defined to include any recipient of a grant, except for states or local government, but does include grantees that receive Federal funds from state or local governments.

## **Section 2 -- Disclosure Requirements**

This section requires all grantees to submit an annual report to the Federal entity awarding or administering the grant. Grantees that do not engage in advocacy need only submit a simple statement to that effect. Politically active grantees must disclose basic information about the grantee, the grant awarded, and the political advocacy conducted by the grantee.

## **Section 3 -- Federal Entity Report**

This section requires each Federal entity awarding or administering the grant to report to the Bureau of the Census the names of all grantees, as well as the information provided to it by each grantee that engages in political advocacy. In order to facilitate public access to this information, this information shall be included in the Bureau of the Census database on grants, and made available through the Internet.

## **Section 4 -- Public Accountability**

This section makes all of the above information available to the public through the Freedom of Information Act.

## **Section 5 -- Severability**

This section is a saving provision that preserves the validity of the remainder of the Act in the event that any provision of the Act is held invalid for any reason.

## **Section 6 -- First Amendment Rights Are Preserved**

This section restates the intent of the drafters that nothing in the Act shall be deemed to abridge any First Amendment rights, including the right of free speech and the right to petition the Government.