Chapter 12
Charitable Trusts and Solicitations

The supervision and oversight of charitable trusts and solicitations are critical roles for Attorneys General, and the recent growth of the charitable sector, both in terms of the number of organizations and the charitable assets they control, presents new and important challenges for regulators. Charitable giving by individuals, corporations and foundations in 2005 was estimated at $260 billion.1 Equally impressive is the fact that, by 2004, foundations and endowed nonprofits had accumulated almost $1.9 trillion in investment assets2 and an additional $2 to $3 trillion in charitable assets is expected to be controlled by charitable organizations by the year 20203. In 2005, there were more than 1.4 million tax-exempt organizations in the United States; more than 104,000 of which are public charities4. In 2004, “nonprofits . . . accounted for 8.3 percent of the wages and salaries paid in the United States.”5

I. Legal Authority

The Attorney General’s supervisory authority over charitable trusts and corporations has its historical roots in the English common law. In the fifteenth century, the courts of chancery began to enforce trusts for the benefit of the poor, the support of churches, the repair of highways and for other projects that benefitted the community. The Attorney General, representing the Crown as parens patriae, occasionally brought enforcement actions.

In 1601, Parliament enacted the Statute of Charitable Uses, which provided a new mechanism to enforce charitable trusts by appointing commissioners to inquire into abuses of charitable bequests or donations. This new mechanism did not displace the court of chancery and gradually fell into disuse, leaving the task of enforcing charitable trusts to the

2The Foundation Center; IRS Form 990 data.
4Internal Revenue Service, Business Master File
Attorney General. According to Scott’s *The Law of Trusts*, although the remedy provided in the Statute of Charitable Uses was eventually repealed, the Statute’s preamble remained intact and has played a major role in shaping the law of charitable trusts, both in England and in the United States.

During the post-revolutionary war period, American courts refused to recognize a common law authority to enforce charitable trusts. However, in *Vidal v. Girard’s Executors*, the Supreme Court held that charitable trusts were enforceable under common law despite the absence of a state statute. In many states, as in England, the common law authority to enforce the proper administration of charitable trusts fell upon the Attorneys General. This authority has been described as follows:

> [It] implies the duty to oversee the activities of the fiduciary who is charged with the management of the funds, as well as the right to bring to the attention of the court any abuses which may need correction. Thus, a duty to enforce implies a duty to supervise (or oversee) in its broader sense. It does not, however, include a right to regulate, or a right to direct either the day-to-day affairs of the charity or the action of the court.

Common law authority alone offers Attorneys General little of the routine information-gathering and investigatory authority necessary to monitor the performance of charitable entities and initiate appropriate enforcement actions. Beginning with the codification of the common law in New Hampshire in 1943, states began to enact charitable trust registration and reporting statutes. These state statutes generally require charities to register and to file periodic financial reports, and authorize investigations into their activities to determine whether a breach of fiduciary duty has occurred. The statutes vary from state to state in their scope and content, and exemptions are common. Several state laws, including those of California, Illinois, Michigan, and Oregon, are based on the Uniform Supervision of Trustees for Charitable Purposes Act, which was promulgated in 1954 by the National Conference of Commissioners on Uniform State Laws. Other statutes, including those of New Hampshire, Ohio, and Massachusetts, predate the Uniform Act, yet still contain some or all of its substantive provisions.

II. Registration of Charitable Trusts and Corporations

---

6 43 U.S. (2 How.) 127 (1844).
Thirty-eight states have statutes that require charitable trusts, including private foundations, to register and file periodic financial reports: twenty of these jurisdictions require registration and reporting with the Attorney General; the other eighteen jurisdictions require registration and reporting with another government agency.

The registration process entails the filing of basic information about the charity, such as its name, address, names of officers and directors, its charitable purpose and whether it is tax exempt. Registration may be an annual event or a one-time-only requirement, as in Connecticut, New Hampshire, and New York. A registered charity must also file an annual financial report within a certain time period, generally three to six months, following the close of its fiscal year. Most states also require that the financial reports of large organizations be accompanied by an opinion of an independent auditor as to whether the report fairly presents the financial operations of the charity, although the threshold amount that triggers the audit requirement varies by state. The registration and financial reporting requirements under state laws are not universal or consistent, and all states exempt one or more classes of organizations from the registration process. Typically the exempt entities include churches and other religious organizations, educational institutions, hospitals, and organizations that annually raise less than $25,000.

While all states have authority to investigate alleged violations, some have larger staffs and better tools to do so than others. For example, penalties for violations vary from state to state -- some states impose both civil and criminal (usually a misdemeanor) sanctions, while others impose only one or the other. Civil remedies generally include revocation or suspension of the right to solicit in the state, injunction against specific conduct, civil penalties, and restitution.

Even in those jurisdictions that do not have a comprehensive registration and reporting statutory system, other laws may permit the Attorney General to obtain information and enforce the proper application of charitable assets. For example, nonprofit corporation acts and trust law will sometimes grant broad authority to the Attorney General to enforce charitable trusts. Some states require trustees to file periodic accountings with a specified court to which the Attorney General, as an interested party, may object. Finally, brief statutory reference to the Attorney General’s authority may, if liberally construed, enable the Attorney General to exercise some control over the management and disposition of charitable funds.
III. Fundraising

A. Regulation of Fundraising

As the number of charities increased following World War II, fundraising became more sophisticated, and the use of professional fundraisers proliferated. The dramatic rise in the sums of money being collected from the public, together with some well-publicized scandals and related congressional hearings, provided the impetus for state legislation dealing specifically with charitable solicitations.

Solicitation laws impose registration and reporting requirements on outside persons and firms retained by a charity to solicit the public on the charity’s behalf (fundraiser or solicitor) or to provide advice and counsel to the charity on the conduct of its fundraising campaign (fundraising counsel). Most state statutes require bonding, the filing of contracts between the charity and the fundraising professional, and periodic financial reporting for each campaign. Many laws also set forth a list of prohibited acts and practices that include misrepresenting the purpose for which solicited money will be used, making false or misleading statements in the course of a solicitation, failing to file an annual financial report, and failing to register prior to soliciting in the state.

These charitable solicitation laws are designed to serve two equally important purposes. First, the registration material and financial reports are public records to which potential donors may refer for information to assist them in making informed giving decisions. Second, Attorneys General and other law enforcement agencies use the information contained in these filings and their investigatory authority to detect and prosecute illegal conduct.

In 1954, New York was one of the first states to enact a comprehensive law to regulate charitable solicitations. Thirty-six states now have laws imposing a registration requirement as a precondition to engaging in charitable solicitation, whether by mail, telephone, print, electronic media or door-to-door. Of these states, twenty require registration with the Attorney General while sixteen jurisdictions require registration with another government agency, such as the Secretary of State.

B. Limitations on the Regulation of Fundraising

The laws regulating fundraising have changed significantly since 1954 and, similarly, the remedies available to protect charitable assets have changed. By 1980, more than 20 states had enacted statutory provisions that placed a limitation on how much a charity could spend on fundraising activities. Typically, such laws placed limits on fundraising and
administrative costs by mandating, for example, that no more than a certain percentage of a charity's income could be used for those costs. Other statutes prohibited a charity from entering into a contract with a professional fundraiser if that contract allowed more than a specified percentage of the funds contributed be paid to the fundraiser.

During the 1980s, there were several legal challenges to state laws that limited the amount of money a charity could spend on fundraising and management expenses and the laws that required the remaining funds be used for the charitable programs for which the organization was established. Three of these cases reached the United States Supreme Court. In that trilogy of cases, Village of Schaumburg v. Citizens for a Better Environment,7 Secretary of State of Maryland v. Joseph H. Munson Co.,8 and Riley v. National Federation of the Blind,9 the Supreme Court held that such state statutes imposed unconstitutional restrictions on the soliciting organizations' freedom of speech and, accordingly, invalidated their restrictions.

The law at issue in Schaumburg was a local ordinance that required that 75 percent of funds solicited by a charity be used for its charitable purposes as opposed to administrative and fundraising costs. At issue in Munson was a statute that prohibited contracts between a charity and a professional fundraiser if the contract permitted the fundraiser to retain more than 25 percent of funds contributed. The North Carolina statute which was the subject of Riley created a three-tiered standard for the reasonableness of fundraising fees, with 20 percent presumed to be reasonable; 20 percent to 35 percent presumed unreasonable, unless the solicitation included the dissemination of information and advocacy related to the charity’s purpose; and more than 35 percent presumed to be unreasonable. The North Carolina law also required solicitors to tell potential contributors the percentage of funds contributed that were actually received by the charity and paid for fundraising and administrative costs in the prior 12 months.

In Schaumburg, the court held that charitable solicitation constitutes constitutionally protected speech. In Munson, the court held that the states could not use a limitation of fundraising costs as a method of preventing fraud and again recognized that charitable solicitation is protected speech. In Riley, the court stated “[o]ur prior cases teach that the solicitation of charitable contributions is protected speech, and that using percentages to decide the legality of the fund-raiser’s fee is not narrowly tailored to the

7 444 U.S. 620 (1980).
The Riley court held that the three-tiered definition of reasonableness did not protect charitable solicitation from infringement of the free speech rights of those soliciting contributions. It rejected the idea that permitting a charity to prove its solicitation was reasonable avoided an unconstitutional burden. The Court also found that “small or unpopular charities . . . must often pay more than 35 percent of the gross receipts collected to the fundraiser due to the difficulty in attracting donors.”\textsuperscript{11} The Court again confirmed its holding in Munson, “that there is no nexus between the percentage of funds realized by the fundraiser and the likelihood that the solicitation is fraudulent.”\textsuperscript{12} In invalidating that section of the North Carolina law that compelled disclosure of financial information, the Court held that “[m]andating speech that a speaker would not otherwise make necessarily alters the content of the speech.”\textsuperscript{13}

Aside from basic and neutral identifying information (solicitor’s name and professional status), the Court held that solicitors acting on behalf of charitable organizations may not be compelled to advise the public of financial information concerning prior solicitations at the point of solicitation. The Court found that such a requirement “will almost certainly hamper the legitimate efforts of professional fundraisers . . . [since] this provision necessarily discriminates against small or unpopular charities which must usually rely on professional fundraisers.”\textsuperscript{14} In confirming the First Amendment rights of charitable organizations and those who solicit on their behalf, the Court also underscored the role of the Attorney General when it confirmed that, in spite of the unconstitutionality of the North Carolina’s law, “the State may itself publish the detailed financial disclosure forms it requires professional fund-raisers to file. This would communicate the desired information to the public. . . .”\textsuperscript{15}

The Riley Court also stated that “the State may vigorously enforce its antifraud laws to prohibit professional fundraisers from obtaining money on false pretenses or by making false statements.”\textsuperscript{16} Attorneys General accepted the Court’s suggestion by taking action against charities and their

\textsuperscript{10}487 U.S. 781 at 789.
\textsuperscript{11}487 U.S. 781 at 793.
\textsuperscript{12}Id.
\textsuperscript{13}487 U.S. 781 at 795.
\textsuperscript{14}487 U.S. 781 at 799.
\textsuperscript{15}487 U.S. 781 at 800.
\textsuperscript{16}Id.
fundraisers to curtail fraudulent and misleading solicitation. They have taken such action individually and together in multistate actions against charities and fundraisers that prey on the citizens of many states. Several states, including California and New York, have also published compilations of the financial reports of fundraisers as an educational tool for contributors and charities seeking to hire fundraisers. (See “Financial Disclosure”, infra)

In 2003, the U.S. Supreme Court confirmed that the First Amendment cannot be used as a shield against prosecution for fraud. In its unanimous decision in Madigan v. Telemarketing Associates, Inc., the Court held that “consistent with our precedent and the First Amendment, States may maintain fraud actions when fundraisers make false or misleading statements designed to deceive donors about how their donations will be used.”

IV. Problem Areas in Charitable Solicitation

A. Telephone solicitation

Regulators have noted persistent problems with telephone solicitation by fundraising professionals on behalf of certain charities and some police and firefighter organizations, including express or implied misrepresentation of the identity of the caller and the identity and purpose of the organization on whose behalf the call is being made, and failure to respond accurately to requests for information about fundraising expenses. Telemarketers, through their contracts with charities, often retain as much as 95% of each donation as their profit and expenses. The beneficiary charity typically receives five to 30% of each contributed dollar.

B. Public Safety Organizations

In response to increases in both the number of police, fire and sheriff (public safety) associations, and solicitation abuses by their fundraisers, some states were prompted to review accountability of these organizations. Most public safety organizations are membership organizations, to which donations are not tax-deductible unless they are solicited for public charitable purposes and not to benefit members. As such, in many states these organizations are subject to registration and

---

17 538 U.S. 600 (2003)
18 538 U.S. at 624.
reporting requirements only if contributions are solicited for public purposes.

Additional scrutiny was necessitated by the increase in the number of complaints received by state charity officials about solicitors who allegedly engaged in deceptive and abusive tactics, such as impersonating police officers, misleading donors into thinking their contribution would benefit police or fire departments in their community or the families of officers who died in the line of service, and, most egregious, threatening reluctant donors with loss of emergency services if they failed to make a contribution.

In response to the numerous complaints and the inherent potential for deception and intimidation when the name of a public safety officer is used to solicit donations, some states, including California, New Mexico, New Hampshire, New York and Tennessee enacted statutes that clarify the application of registration and reporting requirements to public safety organizations. Those statutes specifically require registration and reporting by organizations of law enforcement personnel, firefighters, or other persons who protect public safety if the organizations solicit the public, thereby enabling regulators to better enforce existing law.

C. Unfair Trade Practices Acts

In prosecuting persistent abuses by paid solicitors, Attorneys General have increasingly relied on unfair and deceptive trade practices statutes. These consumer protection laws provide a broad range of remedies not available in many state charity laws, including injunctive relief and civil penalties, which are particularly effective. California’s Unfair Competition Law, for instance, includes provisions specific to charitable solicitation which define “solicitation or sales solicitation for charitable purposes” and fiduciary relationship, and require the disclosure of specific information at the time of solicitation. Violations of the UCL are punishable by a $2500 fine per violation.

D. Nonprofit Accounting Standards

19 Cal. Gov’t Code §12599.6(f) (2004).
In 1964, major national health and welfare organizations and the United Way published the first set of uniform accounting standards for charities. One of these standards addressed the issue of joint cost allocation and required that all costs associated with an activity in which a significant appeal for funds was an integral part, except for the direct cost of a program message, be classified as a fundraising expense. In 1978, this standard, which provided an unbiased criterion for objectively comparing the financial performance of charities, was included in the American Institute of Certified Public Accountants’ (AICPA) Statement of Position (SOP) 78-10. SOP 78-10 permitted the cost of an activity that contained both educational information and an appeal for funds to be allocated between program expenses and fundraising expenses based on certain criteria. The criteria, however, did not provide the detailed definitions required to assure uniform and objective application. As a result of the adoption of SOP 78-10, a growing number of charities began to attribute to program expenses a significant portion of the cost associated with fundraising appeals, based on the rationale that the content of the appeal also accomplishes a public education objective.

After adopting a series of Statements of Position superseding SOP 78-10, AICPA adopted SOP 98-2, effective December 1998, which clarified when and how to allocate joint costs by stating that if the majority of income from an activity depends on actually raising money from that activity, it must be deemed by accountants to be fundraising and not program service. Also, if the target audience is selected based on prior contributions or the likelihood of contributing, even if there is also a call for action or program-related activity in the solicitation, the cost of the solicitation must be deemed fundraising.

Unfortunately, as of early 1999, at least one association of fundraisers, in a guide published for nonprofits and their fundraisers, interpreted 98-2 to allow the very practice that its drafters sought to remedy, that is, allocating as program service the cost of a fundraising letter which included educational tips. Given the tendency by some fundraisers to circumvent the law, state charity officials will have to continue their vigilance in the area of fundraising oversight and, for the most egregious abuses, prosecute the offenders under the state’s unfair and deceptive trade practices statutes.

E. Financial Disclosure

The Riley decision removed a powerful enforcement tool from state charity officials and ultimately from donors. The fundraising and administrative cost of a charitable organization is a material fact for prospective donors to consider when making an informed giving decision.
When donors later discover that a high percentage of their donation goes to the professional fundraiser, many donors are stunned and wonder why this information is not readily available to them when making a giving decision.

Another major challenge for state charity officials has been how to communicate financial data to prospective donors in a manner that will assist them in deciding whether or not to make a gift to a specific organization. In addition to public education efforts, many state laws mandate that all written solicitations contain information for donors on how to receive information about a charitable campaign undertaken by the solicitor in that state.

In the wake of *Riley*, state charity officials have struggled with the issue of point-of-solicitation disclosure by paid professional fundraisers and effective public education. Many attorneys general use the information from filed registration statements and financial reports as a basis for public reports that detail how the charity spent its donated funds in the previous year on program, management and fund raising. The New York Attorney General’s report, *Pennies for Charity*, is one example of these public education efforts.  

While these public reports are popular with citizens and the press, they have also been criticized by some in the charitable and professional fundraising community. Critics assert that these reports can mislead donors if they do not distinguish between various types of fundraising efforts. Donor acquisition campaigns, for example, tend to have higher costs than campaigns that target existing supporters to renew gifts to a charity that they have previously supported. Others criticize the use of fundraising ratios as an oversimplification of a charitable organization’s performance and a poor substitute for some evaluation of the effectiveness of an organization.

The technology that is now available to charitable entities and the governmental agencies that regulate them has increased exponentially over the past decade and state charity officials have used this technology to make information more readily available to donors. State attorneys general are devoting staff and other resources to automate their registration databases, which will enhance enforcement capability and provide increased information to the public.

Two major developments during the 1990s helped to increase the public availability of financial information and program-related disclosure. First, in 1998, the Internal Revenue Service adopted new disclosure rules for tax exempt organizations, which require nonprofits to provide copies of their annual informational tax return (the IRS Form 990) to the public upon

---

request. The growth and popularity of the Internet has made these documents even more widely available.

Second, Philanthropic Research, Inc., a Virginia-based tax-exempt organization, launched its GuideStar Internet site in the late 1990s. The GuideStar website contains a searchable database of all IRS-recognized tax exempt organizations and scanned images of IRS Forms 990 that have been filed with IRS since 1998.

In 2005, IRS launched its e-filing initiative, which allows charities to file 990s electronically, and is developing the “fed-state retrieval system,” allowing state charity offices with automated databases to receive an electronic copy of 990s filed with IRS. California, New York and Pennsylvania are among the states developing or upgrading automated databases to allow them to participate in this system.

The increased visibility of the IRS Form 990 as a public disclosure report has raised many concerns about the accuracy and reliability of the financial disclosures on the report. An investigative report by the Chronicle of Philanthropy in 2000 suggested that many charitable organizations reporting no fundraising costs were not filing accurate reports.

As financial information about the activities of charitable organizations is more available and transparent, state charity officials’ concerns about the accuracy and reliability of this information are taking on more importance. The contributing public can, and does, look at those reports for information and, increasingly, makes its decisions to contribute or not based on what is stated in those reports.

The tragic events of September 11, 2001 resulted in unprecedented charitable giving and, likewise, unprecedented interest in how charitable funds are spent. Charities received an unequivocal message from the public, which demands that charitable trustees fulfill their fiduciary responsibilities and provide full disclosure to contributors and beneficiaries, and Attorneys General have been in the forefront of the demand for improved accountability by charities.

V. Emerging Issues

A. Cause-related marketing

Branding is an important marketing tool in the for-profit sector and there is a growing trend among nonprofit organizations to raise money by lending their names and logos to commercial firms for use in advertising or labeling their products. Regulators have been monitoring these activities in light of their potential use for deceptive purposes. One example is the practice of some health-related nonprofits to lend their names to commercial products related to their purpose but whose qualities they have neither tested
nor intend to endorse. Another is the advertisement by a for-profit institution that a percentage of every purchase of a product will be donated to a charity, when in fact the contract between the for-profit and the charity provide for a fixed dollar contribution regardless of the number of products purchased. The attempt to sell a good or service by referring to the name or purpose of a charitable organization is defined as a charitable solicitation under the Model Act Concerning the Solicitation of Funds for Charitable Purposes and in most states. Many states, including Alabama,\textsuperscript{26} Maine,\textsuperscript{27} Massachusetts\textsuperscript{28} and Washington,\textsuperscript{29} have laws that specifically govern cause marketing, called “commercial co-venture”, which generally define the elements of deception, contracts, accountability, disclosures and remedies.

B. Internet Solicitation

During the late 1990s, many charities began turning to the Internet as a cost-effective way to raise money from the public. Charitable solicitation on the Internet presents state charity regulators with new legal and jurisdiction issues: Does a request for contributions via the Internet constitute solicitation within the meaning of state law? When does solicitation via the Internet require registration in a particular state? In 2000, NAAG/NASCO published the “Charleston Principles” for Internet solicitation to provide guidance to the states\textsuperscript{30}.

Although some states have amended existing registration and reporting statutes to specifically encompass Internet activity, the extent to which these statutes can be applied to Internet solicitations is currently the subject of debate, both by regulators and the regulated community. Regulators have a statutory duty to protect charitable assets and enforce registration and reporting statutes over all charities and solicitors over whom they have jurisdiction. They understand, however, that this mandate must be balanced with the concern of the nonprofit community regarding the burden of registering Internet activity in every state in which it can be viewed.

The goal of the Principles is to assist regulators in determining who has to register, or may be subject to enforcement actions, and in what

\textsuperscript{26}\textsc{ Ala. Code §13A-9-71} (2007).
\textsuperscript{30}These principles were developed at the 1999 NAAG\textsuperscript{\textsuperscript{30}}NASCO Conference in Charleston, South Carolina.
jurisdictions. In drafting the Principles, NASCO solicited and incorporated comments and suggestions from the regulated community. The Principles conclude that existing registration statutes generally, by their own terms, encompass and apply to Internet solicitations, and set forth guidelines for determining what specific acts would render a charity subject to a state’s jurisdiction and trigger the requirement to register.

The Principles apply the prevailing standard for personal jurisdiction over commercial Internet activity, first set forth in Zippo Mfg. Co. v. Zippo Dot Com, Inc.,31 and confirmed in more recent appellate court decisions; that is, whether state courts can constitutionally assert personal jurisdiction over a charity or its fundraiser. The Principles provide three models for determining jurisdiction. The first model establishes jurisdiction in every state in which the site actively transacts business and/or seeks contributions over the Internet; the second model, the mere maintenance of a site, does not establish jurisdiction; and the third model creates jurisdiction based on the level of interactivity and number of transactions, other contacts, and indicia of intent to do business in a particular state.

While the Principles are not enforceable and do not purport to describe the law of any particular state, they were intended to give guidance to charity regulators and to promote understanding and compliance with applicable state law. Drafting of the Principles is one of many cooperative efforts of state Attorneys General and other charity regulators designed to encourage compliance with and facilitate enforcement of state charity registration laws. The Principles are posted on the NASCO website.32

C. Healthcare Conversions

Healthcare conversions have raised profound and complex issues about both charitable entities involved in delivery of healthcare services to the public. Because the issues are so broad and important, conversions are often controversial, involving legal disputes over the proper role of Attorneys General, the criteria to be used in approving or disapproving a proposed conversion, and the appropriate use of the charitable proceeds resulting from a conversion. In many instances Attorneys General have utilized the proceeds in the creation of “conversion foundations.” Between 1986 and 2000, more than 140 new charitable foundations, with approximately $16 billion in charitable assets, were created, Attorneys General played an important role in many of these transactions.

While most conversions have involved the sale of nonprofit hospitals to for-profit entities, some conversions have focused upon the sale of state-based Blue Cross/Blue Shield health insurance plans to for-profit entities. Although the term “conversion” did not originally include mergers and consolidations of nonprofit entities with other nonprofit entities, these “nonprofit-to-nonprofit” transactions are viewed by attorneys general as part of the conversion dialogue. This is especially appropriate in cases where proposed transactions involve mergers, consolidations, and sales across state boundaries, thereby shifting control of healthcare assets out of one state and into another. In addition, mergers and sales involving religious hospitals have presented unique issues of their own.

Conversions involve issues of process and many states have adopted statutes setting forth standards and procedures to be followed. In July 1998, the National Association of Attorneys General adopted a model conversion act based upon experiences in California, Ohio, Massachusetts and New Hampshire. The Model Act addresses a variety of concerns: (a) fair valuation of the charitable assets being sold, (b) public disclosure of all material documents involved in the proposed transaction, (c) scrutiny of conflicts of interest on the part of the governing boards, (d) the opportunity for public comment on the proposed transaction, and (e) review and consent by the Attorney General. In the model act, conversions also include sales of only a portion of a charitable entity to a for-profit entity.

The creation of these new charitable foundations also raises basic legal, procedural, and public policy issues: What is the mission of the new health foundation? What type of structure should the governing board and the foundation have? What is the proper role of the Attorney General in this process? Because the size of the charitable assets is so significant, decisions taken have profound consequences for public health and the indigent. Consequently, Attorneys General find public discussion of these issues helpful.

D. Terrorist Financing

Few working in the field of charitable regulation prior to September 11, 2001, would have connected their work to fighting terrorism and/or terrorist financing. However, as part of the aftermath of the terrorist attacks on September 11, state Attorneys General have been asked to coordinate their regulation of charities with federal authorities to prevent the use of charitable organizations to fund terrorism. In July 2004, the U.S. Justice Department’s 42-count indictment against The Holy Land Foundation for Relief and Development alleged that more than $12.4 million in charitable donations were misused to fund terrorism. State Attorneys General can play an important role in referring relevant
information to federal authorities and, when appropriate, filing state court actions to redirect any seized assets for appropriate charitable purposes.

E. Trust Issues

The Attorney General’s standing to supervise and enforce charitable trusts is well established through common, statutory, and case law. Recently, however, the authority of the Attorney General as the parens patriae of charitable trusts is being reexamined on an unprecedented scale.

Corporate fiduciaries, the academic community, and foundations holding large endowment funds have begun to question the efficacy of certain fiduciary duties as these standards relate to investment strategies in rapidly changing financial markets and the role of the Attorney General as the sole representative of the public interest in charitable trusts. These discussions have led to the drafting of The Uniform Trust Code and proposed amendments to the Uniform Management of Institutional Funds Act (now the Uniform Prudent Management of Institutional Funds Act) by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The work of the NCCUSL in drafting both documents illustrates the profound changes now under discussion in the trusts and estates area of the law. Issues of importance to state charity officials in both the UTC and UPMIFA include amendments to the definition of endowment funds, the modification of traditional fiduciary duties, the broadening of investment standards and legal standing, and the fragmentation of trustees’ powers in both private and charitable trusts.

The UTC has been adopted by 15 states and UMIFA by 46 states. As the trusts and estates laws continue to evolve, enforcement of charitable trusts by state charity officials will continue to be challenging for even the most experienced regulator.

VI. NASCO

To support the efforts of state Attorneys General and to protect the interests of the donating public and the beneficiaries of charity, the National Association of Attorneys General works together with the National Association of State Charity Officials (“NASCO”) by providing an annual continuing education seminar, which features a public session and provides regulators the opportunity to discuss issues of mutual interest with

33 The National Association of State Charity Officials was created to support the efforts of the National Association of Attorneys General because state laws governing charitable solicitations involve other state offices, including Secretaries of State.
nonprofit leaders, their attorneys, and fundraisers. NASCO also facilitates discussion and networking among charity regulators throughout the year.