COMBINED FEDERAL CAMPAIGN: LAWYERS AND LOBBYISTS VS. PEOPLE IN NEED?

HEARING

BEFORE THE

SUBCOMMITTEE ON
CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENT
REFORM AND OVERSIGHT
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

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COMBINED FEDERAL CAMPAIGN: LAWYERS AND LOBBYISTS VS. PEOPLE IN NEED?

WEDNESDAY, JUNE 7, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:34 a.m., in room 2154, Rayburn House Office Building, Hon. John L. Mica (chairman of the subcommittee) presiding.

Present: Representatives Mica, Morella, Clinger, Moran, and Mascara.

Staff present: George Nesterczuk, staff director; Garry Ewing, counsel; Caroline Fiel, clerk; and Cedric Hendricks and Miles Q. Romney, minority professional staff.

Mr. MICA. Good morning. I want to welcome you to this hearing of the Civil Service Subcommittee, of the Government Reform and Oversight Committee.

This morning I wanted to make a few opening comments, and then we will have comments from my colleagues on the panel. We have a rather lengthy hearing schedule, so we will move right ahead.

First of all, ladies and gentlemen, in today's hearing we will examine the activities of the Combined Federal Campaign, also known as the CFC. The CFC is a taxpayer-supported annual fundraising drive conducted by Federal employees in the Federal workplace.

The issue before us today is, should the Combined Federal Campaign be returned to its original role of being a legitimate charity drive or continue as another mushrooming taxpayer-financed grab bag?

Few taxpayers, I suspect, would object to having their tax dollars used to encourage contributions to organizations that assist people in a charitable fashion. And I'm certain that if the average taxpayer is told that his or her money will be used to support a charity drive, he or she would immediately form a mental image of the kinds of groups they thought were being helped. Some would see people who give of their time and resources to feed the hungry. Others would picture disaster relief workers. Some might see medical researchers searching for a cure for diseases, and others might picture doctors and nurses providing free medical care to the poor.

Not many would imagine a well-paid troop of lawyers marching to court to change public policy. Not many would picture lobbyists and propagandists attempting to steer public opinion. And not

many would think of policy advocates issuing position papers on issues before Congress.

Without exception, I believe taxpayers would be appalled to learn that their tax dollars were underwriting the current hodgepodge of objectionable activities. In fact, the average taxpayer in my district—I just came back from a nice long recess and a lot of time with these folks—but I believe that the average taxpayer in my district would croak if they knew that tens of millions of his or her hard-earned dollars were underwriting some of these programs and activities.

As I said, the CFC was originally established as a charity drive. The organizations participating were human health and welfare agencies such as the Red Cross, the National Association for Retarded Children, and the United Cerebral Palsy Association. Beginning in the 1980's, however, the character of the CFC was changed. Although the CFC is still commonly referred to as a charity drive, it would be more accurate to say that the CFC is now a fundraiser for nonprofit organizations that qualify for tax exemption under section 501(c)(3) of the Internal Revenue Code.

In 1980, the Reagan administration and others knew that the CFC was headed in the wrong direction. Advocacy groups got their foot in the door then, and they used the courts and congressional pressure to continue what I term as a bad policy. As a result of court decisions and congressional action, many political and ideological advocacy groups now participate in the CFC.

The views represented by these organizations span the range of political and ideological spectrum. Some are very liberal while others are very conservative. Some are my personal friends and some are not my friends. But wherever they fall in the political ideological spectrum and whatever the issues they address, many of the causes these groups champion are extremely controversial.

In some instances, their entry into the CFC caused a great upheaval, including boycotts and threats of boycotts. Some of these groups litigate to advance their causes through the courts. Others use funds to sell the public on their particular special interests or ideas. But the one thing they all have in common is that they want to influence public policy.

Also, other groups participate now that are not as focused on human health and welfare or at all connected to human health and welfare, and their connections can be regarded as tenuous at best and often debatable.

When President Reagan attempted to return the CFC to its original role of helping agencies, he issued two Executive orders. Executive Order 12404 proposed to limit participation in the CFC to health and welfare organizations, and specifically excluded groups that, "seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying or litigation."

President Reagan noted that he took action to "avoid the reality and appearance of the use of Federal resources in aid of fundraising or advocacy of public policy, lobbying or philanthropy of any kind that does not directly serve the needs of human health and welfare."

A number of advocacy groups challenged this court order, arguing that it violated their rights under the first amendment. Ultimately, however, the Supreme Court ruled that the government does have the right to exclude such groups through, "a viewpoint-neutral restrictions system." Congress, however, stepped in and prohibited OPM from implementing regulations to enforce the Executive order.

We can see from the mess that has been created that President Reagan was really on the right track. That is why I have proposed restoring the CFC's mission and role to its original purpose: supporting human health and welfare charities. I would like to make the CFC a genuine charity drive. Federal employees can return to a supporting role for people who help other people—not lawyers, lobbyists, and other propagandists.

Some say the CFC currently offers Federal employees a wide range of choices, and I do not deny that for a minute. Federal employees can choose whether to participate in the CFC or not. They can choose whom they want to support. They do have choices. But the taxpayers who fund the CFC have no choice. Public resources are being expended to support the collection of donations for these advocacy groups. Taxpayers now lack the option of not participating.

Restricting the CFC to human health and welfare charities will still leave Federal employees free to donate as they see fit, but taxpayers would not see their money go to aiding political or ideological groups they dislike.

When we are asking everyone to belt-tighten today, advocacy groups of every stripe must stop taking advantage of taxpayer-funded fundraising.

We will hear today from the Deputy Director of the Office of Personnel Management, which administers the CFC. She will present the administration's position on this proposal. We will also hear from a number of advocacy groups that would be affected by this proposal, some who are in favor and some who oppose the proposal.

Finally, we will hear from individuals who are intimately familiar with the CFC and support this proposal, including Donald Devine, the former Director of the Office of Personal Management in the Reagan administration, and Mr. Ron Burrus of the National Voluntary Health Agencies San Diego Committee, which represents human health and welfare organizations.

So those are my opening comments. I see that we also have our chairman of our full committee here, and I will now recognize Mr. Clinger if he has an opening statement?

Mr. CLINGER. Thank you very much, Mr. Chairman. I want to commend you for holding this very important hearing and also commend you on the leadership you have demonstrated in identifying this very odd situation that we have with the organization.

I know that the purpose of this hearing today is to raise the question of whether or not groups which do not fit the traditional notion of a charitable organization should continue to be eligible to participate in the Federal Government's annual charity drive. I think the fact that so many questions have been raised about the recipients of the aid under the combined drive really calls into question the credibility of the whole effort and, therefore, probably

affects the contributions that are being made to the organization because of the questions that have been raised about it.

So, again, I want to commend you for raising the question because I think it is important for the Congress and the administration to address the issue to make absolutely sure that the combined Federal program remains true to those who work so very hard, so very diligently and devote so much of their time and money to charitable causes.

What is troubling to me, as I know it is to you, is the growing presence of these advocacy groups representing both sides—oftentimes several sides—of the ideological spectrum who now receive charitable donations from the CFC, but whose organizational mission clearly does not seem to fit the conventional definition of a charitable organization. This has happened over a period of time over a period of years where these organizations have been added to the roster of eligible organizations.

Perhaps these groups do, in fact—I would not dispute the fact—offer valuable services; but the larger issue before us is whether or not it's appropriate for the American taxpayer to subsidize, in effect, the collection of funds from Federal workers for advocacy groups.

We put ourselves in the shoes of our constituents who I think would agree that the CFC is perhaps another example of a government program that started out with clearly the best of intentions but has over a period of time gotten out of control. So I'm looking forward to hearing the testimony being presented today and, again, want to thank you and commend you, Mr. Chairman, for calling this hearing.

Mr. MICA. Thank you.

I would now yield to Mr. Mascara, the gentleman from Pennsylvania, for his opening remarks.

Mr. MASCARA. Thank you, Mr. Chairman. Good morning. It's good to be back in Washington, DC, after spending a busy and productive week back in my Pennsylvania district.

The only trouble is it is hot and humid and controversial subjects seem to be our only greeters this morning. From the moment the word went out in the charitable community that this committee wanted to limit so-called political and ideological advocacy groups from participating in the annual combined campaign, my fax began to hum, and the post office began delivering stacks of letters.

I have received in the neighborhood of 100 letters from all types of charitable groups, including approximately 10 from my part of the world. They range from groups representing refugees to the National Right to Life Educational Trust Fund. They include PCTV–21, a community television station in Pittsburgh, and a foundation from McKeesport, PA, which said it received $654 as a result of last year's campaign.

Letters from Oregon, California, Durham, NC, Boulder, CO, and Rochester, NH, the message was the same: The current Combined Federal Campaign allows groups of all stripes and objectives to participate. We like it that way. Don't fix it. It isn't broke.

I think we should heed that advice. OPM officials will testify this morning that the cost for operating the annual campaign is much less than the $50 million to $60 million figure cited in the Chair-

man's original press release. In fact, Ms. Green will tell us that, at most, last year's direct costs were a little over $731,000. That's not bad for a campaign that raised nearly $200 million. Remaining costs are fixed costs, which would essentially stay the same no matter how many or how few groups are included on the eligible list.

After mulling the issue over for a while, I have decided that the basic issues confronting us this morning are should we continue with the Combined Federal Campaign and do Federal workers deserve the right to choose from a broad list of organizations where to give their charitable dollars? The answer in my book to both of these questions is a rousing yes.

A Federal worker from Pennsylvania summed up the argument in a letter to me saying: "It is my money and should be my choice. The Combined Federal Campaign is a convenient place I can make an informed decision about my charitable contribution for 1 year. I would like my full range of options open."

I think Federal employees and worthy charities all across the country deserve no less. If we attempt to restrict which groups are on the list, who will be the arbitrator? We will be creating a subjective mess that will only result in added costs for OPM and a long line of lawsuits.

My Republican colleagues are usually all for open markets, freedom of choice and no hint of big brotherism. Unfortunately, this venture is exactly the opposite. If we are going to end up creating a monster of an annual charitable campaign, the next step is simply ending the campaign altogether. I do not think that's what my Republican colleagues want.

I think we should step back and ponder this whole issue. I think the Federal employees and the charities would be better served if we did.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. MICA. Thank you, Mr. Mascara.

I would like to call our first panel forward: Lorraine A. Green, Deputy Director of the Office of Personal Management, who I understand oversees the program. And you have someone with you?

Ms. GREEN. Yes, I do, Mr. Chairman.

Mr. MICA. Could you identify her, please?

Ms. GREEN. Gerri Mason Hall.

Mr. MICA. It's the custom of this subcommittee and committee to swear in our witnesses. So if you would stand and raise your right hand.

[Witnesses sworn.]

Mr. MICA. Let the record reflect that the witnesses answered in the affirmative.

Mr. MICA. Welcome, Ms. Green and Ms. Hall. We look forward to your comments. If you have a prepared statement, we will be glad to include the entirety of it in the record. If you would like to summarize, we would appreciate that. Ms. Green, you are recognized.

STATEMENT OF LORRAINE A. GREEN, DEPUTY DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY GERRI MASON HALL, COUNSEL, DEPUTY DIRECTOR'S OFFICE

Ms. GREEN. Thank you very much, Mr. Chairman.

As I stated, seated with me today is Gerri Mason Hall. She is a counsel in the Deputy Director's Office, and she's responsible for the day-to-day operations of the Combined Federal Campaign. So she will be assisting me today.

Mr. Chairman, I thank you and the members of the subcommittee for this opportunity to testify on the Combined Federal Campaign, or CFC.

Before addressing the questions raised in your letter of May 30, permit me to offer some background on the program.

In 1957, President Eisenhower created the United Federal Fundraising Campaign, as it was then known, by Executive order. His action consolidated some 20 separate fundraising drives into three campaigns, for the United Way and the Red Cross, and for two new groups, the National Health Agencies and the International Service Agencies.

This Executive order spoke of "true voluntary giving to such agencies for charitable and other purposes" and of solicitations "as will occasion minimum interruption of government functions."

In 1961, President Kennedy established the Combined Federal Campaign. His Executive order called for participation by "such national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate."

Mr. Chairman, these Executive orders embody a recognition, bipartisan and at the highest level, of the importance of volunteerism in the American tradition. It is a value that most Americans hold dear.

But these Executive orders do more. They also recognize the inherent inefficiency, indeed the disruption, of having a multiplicity of competing fundraising drives in the Federal workplace. And they embody another American tradition—free and informed choices—by broadening the alternatives available to Federal employees who wish to donate to charity.

Mr. Chairman, in summarizing my statement I would like to say the CFC program has worked well for a long time, and we at OPM do not believe it is in need of major changes. Some observers may think that this or that charity out of the hundreds on the list, is inappropriate. But the people the CFC serves value their freedom of choice. They vote with their paychecks. For their selections to be restricted, for what some may perceive as ideological reasons, strikes me as a form of big-government-style paternalism we should avoid.

Now, Mr. Chairman, let me address your specific questions.

First, should participation in CFC be restricted to human health and welfare organizations?

The answer is yes. And, as I've said, we do require that all organizations certify and document that they provide services affecting human health and welfare. The underlying question is how these terms are defined.

Our present criteria are consistent with the principle of inclusion that has guided CFC eligibility determinations over the past decade. This principle of inclusion was validated by Federal Courts and was subsequently mandated by Congress. If we narrow or restrict participation now we run a serious risk of not only of overregulation but of reviving the kind of divisive litigation we saw in the 1980's.

Second, you asked, what should be the central purpose of the CFC?

One original purpose, as the 1957 Executive order made clear, was to minimize disruption in the Federal workplace by replacing a multiplicity of charitable campaigns with a single one. But the campaign also embodies the American tradition of volunteerism and, at the same time, gives Federal workers an efficient way to contribute to the causes of their choice.

Third, how much did it cost the Federal Government to conduct the CFC in 1994, including the pay and benefits of all employees who helped to conduct the campaign? And how many employees were involved?

Mr. Chairman, the Federal Government's cash outlay for the CFC is limited to certain direct costs expended by OPM in its oversight capacity. For 1994, these included $300,000 for a small staff, about $350,000 for the Inspector General's random audits, and 25 compliance reviews performed at a cost of $81,000. Thus we estimate our direct costs for 1994 at a total of $731,000.

A larger amount is devoted to indirect costs. We are dealing here with fixed costs and employees' time. The cost of the campaign does not significantly differ if we include a hundred charities or a thousand charities. To arrive at a total for indirect costs we must estimate the value of time donated by Federal employees.

Let me note, Mr. Chairman, that the 1988 report of the Director's Task Force on the Combined Federal Campaign estimated that the campaign that year cost between $55 million and $60 million. However, we strongly believe the methodology used in that report was seriously flawed. For example, it assumed one key worker for every 10 Federal employees and that the average key worker was a GS–9. We find those and other assumptions to be highly questionable.

One major problem with the report is that it based most of its assumptions on the National Capital Area Campaign, which is not at all typical of most of the more than 400 campaigns.

The report assumed also that every hour spent on the CFC is an hour lost by the government. We do not share that assumption. Employees also often work on their own time, such as their lunch break. They often make special efforts to combine their work on the campaign with their normal duties.

Unlike the 1988 report, we do not assume the campaign has a negative impact on productivity. We believe the campaign has a positive impact. A successful CFC drive is a matter of great pride to thousands of Federal employees, and I think that kind of enthusiasm should be encouraged.

Mr. Chairman, the 1988 report concedes at the outset that it is impossible to quantify the cost of the campaign. It proceeds, how-

ever, to make its estimate of $55 million or $60 million based on very questionable assumptions.

We have, since receiving your inquiries, taken a close look at the indirect costs of the CFC campaign. We could not examine all 435 campaigns, but we polled the top 40 campaigns, those that raised $1 million or more, to achieve as accurate an estimate as we could of the indirect costs of donated time. We asked their financial officers to provide data on the number of key workers they used, their hours worked and their average hourly pay, as well as the number of LFCC members and their total hours and average hourly pay.

On the basis of their responses, the average grade of a key worker is GS–7 and the average ratio of key workers to potential donors is 1 to 30, which you will note is three times the 1988 assumption.

Assuming that each key worker dedicates 8 hours to the CFC, we estimate the contribution of key workers, both military and civilian, at about $12.3 million. This assumes 136,937 key workers, at an average daily rate of $90.28, who contact about 4.1 million of their fellow employees, civilian and military.

Again summarizing, combining all of the figures, our estimate of the total cost of the salaries for the 1984 CFC on a national basis comes to $17.7 million. If we add to that a 25 percent multiplier for benefits, the total reaches about $22.1 million.

I note again that the vast majority of that is in indirect, noncash-outlay costs. The $22.1 million is about 11 percent of the $195 million raised that year.

I have no doubt that our figures are more reliable than the 1988 estimate. The 1988 estimate was based on assumptions that are clearly faulty. Our estimate, which I have outlined in detail in my written remarks, is based on a good-faith effort to arrive at realistic figures.

However, even our $22.1 million figure overestimates the indirect costs because, as I've stated earlier, we believe that every dollar spent on the CFC campaign is not an hour lost to the government.

Your fourth question was how much money the CFC raised in 1994 and how long the campaign lasted.

Mr. Chairman the 1994 campaign lasted 6 weeks, although local officials can extend that period, and, as indicated earlier, raised about $195 million in donations from more than 1.8 million contributors.

Fifth, you asked if it is proper for the taxpayers to subsidize the CFC, particularly when many of its donees may be considered controversial.

Mr. Chairman, Americans believe in volunteerism, and there exists in the private sector a well-known tradition of giving at the workplace. I believe it is entirely proper for Federal workers to make this outstanding effort that over the years has raised literally billions of dollars for worthy causes.

I agree that there are individuals up and down the political spectrum who may find certain organizations not to their liking, but I believe most CFC participants think theirs is a broad and balanced list that includes literally hundreds of charities they consider worthy of support.

I might note that little controversy has surrounded the campaign in recent years in contrast to the 1980's when there were many

lawsuits and much acrimony regarding participation. It would be a mistake to return to the ill will and turmoil of the past.

If the subcommittee has specific proposals for improving CFC, we would be glad to comment on them. If the Congress passes new rules to guide the CFC, we will enforce them. But in candor I must say that we do not consider CFC to be in need of major changes.

Thank you very much, and I'll be glad to take your questions.

Mr. MICA. Thank you Ms. Green.

[The prepared statement of Ms. Green follows:]

STATEMENT OF

HONORABLE LORRAINE GREEN, DEPUTY DIRECTOR
OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON CIVIL SERVICE
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES

at an oversight hearing on

THE COMBINED FEDERAL CAMPAIGN

June 7, 1995

Mr. Chairman, I thank you and the members of the subcommittee for this opportunity to testify on the Combined Federal Campaign, or CFC.

Before addressing the questions raised in your letter of May 30, permit me to offer some background on the program.

In 1957, President Eisenhower created the "United Federal Fund-Raising Campaign," as it was then known, by Executive Order. His action consolidated some twenty separate fund-raising drives into three campaigns, for the United Way and the Red Cross, and for two new groups, the National Health Agencies and the International Service Agencies.

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Mr. Chairman, these Executive Orders embody a recognition, bipartisan and at the highest level, of the importance of volunteerism in the American tradition. It is a value that most Americans hold dear.

But these Executive Orders do more. They also recognize the inherent inefficiency, indeed the disruption, of having a multiplicity of competing fund-raising drives in the federal workplace.

And they embody another American tradition -- free and informed choices -- by broadening the alternatives available to federal employees who wish to donate to charity.

Mr. Chairman, as you know, in the 1980s a series of court decisions, as well as Congressional action, ensured that these alternatives remained open to federal employees.

We at OPM believe that federal employees have been well served by this wide range of choice.

Today, CFC has a national list of charities that have been ruled eligible by OPM, as well as local lists approved by Local Federal Coordinating Committees, or LFCCs. To be approved for the national list, organizations must meet certain basic standards. These include meeting the IRS definition of a tax-exempt organization, under 26 U.S.C. 501 (c) (3), having provided services in fifteen or more states over a minimum of three years, and demonstrating that they are providing services, benefits or assistance affecting human health and welfare.

As of 1994, CFC's national list included some 985 organizations. Of these, about 655 were represented by seventeen national federations and the rest were unaffiliated.

In addition, CFC's 435 campaigns have their own lists, which include thousands of charities they have approved.

Although OPM has oversight responsibilities, day-to-day decisions regarding the campaigns are made by the LFCCs, which are made up of federal employees.

Let me note that although we now have 435 campaigns, as recently as 1988 there were 536. The number is declining because we urge local campaigns to merge, whenever that will achieve greater efficiency and reduced operating costs.

No one is required to contribute to the CFC, but those who choose to contribute may designate the specific charities they want to receive their contributions, or they may choose to make an undesignated contribution.

CFC believes in informed choice. Each donor has access to information about potential donees and no one is asked to contribute blindly to any cause.

CFC is primarily designed to serve federal employees, not the charities. To give at the workplace, most often by deductions from your paycheck, with a wide range of choices before you, is an opportunity that most employees greatly value. This system results in significantly higher levels of giving than would occur if CFC did not exist.

In this era of tight budgets and cutbacks on federal programs, there is all the more reason to encourage the sort of private giving that CFC embodies.

The CFC program has worked well for a long time, and we at OPM do not believe it is in need of major changes. Some observers may think that this or that charity, out of the hundreds on the list, is inappropriate, but the people it serves value their freedom of choice. They vote with their paychecks.

For their selections to be restricted, for what some may perceive as ideological reasons, strikes me as a form of big-government-style paternalism that we should avoid.

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For 1994, these included $300,000 for a small staff, about $350,000 for the Inspector General's random audits, and 25 compliance reviews, performed at a cost of $81,000.

Thus we estimate our direct costs for 1994 at a total of $731,300.

A larger amount is devoted to indirect costs. We are dealing here with fixed costs and employees' time. The cost of the campaign does not significantly differ if we include a hundred charities or a thousand. To arrive at a total figure for indirect costs we must estimate of the value of time donated by federal employees.

Let me note, Mr. Chairman, that the 1988 **Report of the Director's Task Force on the Combined Federal Campaign** estimated that the campaign that year cost between $55 million and $60 million. However, we strongly believe the methodology used in that Report was seriously flawed. For example, it assumed one keyworker for every ten Federal employees and that the average keyworker was a GS-9.

We find those and other assumptions to be highly questionable. One major problem with the Report is that it based most of its assumptions on the National Capital Area Campaign, which is not at all typical of most of the more than 400 campaigns.

The Report assumed that every hour spent on the CFC is an hour lost by the government. We do not share that assumption.

Employees often work on their own time, such as their lunch break. They often make special efforts to combine their work on the campaign with their normal duties.

Unlike the 1988 Report, we do not assume the campaign has a negative impact on productivity. We believe the campaign has a positive impact. A successful CFC drive is a matter of great pride to thousands of federal employees. I think that kind of enthusiasm should be encouraged.

Mr. Chairman, the 1988 Report concedes at the outset that "it is impossible to quantify" the cost of the campaign.

It proceeds, however, to make its estimate of $55 million or $60 million, based on very questionable assumptions.

We have, since receiving your inquiries, taken a close look at the indirect costs of the CFC campaign.

We could not examine all 435 campaigns, but we polled the top 40 campaigns, those that raise $1 million or more, to achieve as accurate an estimate as we could of the indirect costs of donated time.

We asked their financial officers to provide data on the number of keyworkers they used, their hours worked, and their average hourly pay, as well as the number of LFCC members, and their total hours and average hourly pay.

On the basis of their responses, the average grade of a keyworker is GS-7 and the average ratio of keyworkers to potential donors is one to 30 -- which, you will note, is three times the 1988 assumption.

Assuming that each keyworker dedicates 8 hours to the CFC, we estimate the contribution of keyworkers, both military and civilian, at about $12.3 million. This assumes 136,937 keyworkers, at an average daily rate of $90.28, who contact about 4.1 million of their fellow employees, civilian and military.

As to LFCC volunteers, they average eight in top 40 campaigns, each contributing an average of 25 hours. In smaller campaigns the LFCC's are also smaller, with an average of four members. We estimate a total of 1940 LFCC participants, with an average grade level of GM 15, and an estimated total value of about $1.7 million.

In addition, many campaigns have federal executives detailed to them, often on a part-time basis. The number on loan might range from ten or more in the largest campaigns to one or two in mid-sized campaigns to none in the smallest campaigns.

We estimate a total of 427 loaned executives, with an average GS level of 14, each averaging 30 hours a week during the six-week campaign, for a total cost of about $2.2 million.

We further estimate the cost of processing payroll deductions at $750,000.

Thus, combining all these figures, our estimate of the total cost of salaries for the 1994 CFC, on a national basis, comes to about $17.7 million. If we add to that a 25% multiplier for benefits, the total reaches about $22.1 million.

I note again that the vast majority of that is in indirect, non-cash-outlay costs. The $22.1 million is about 11% of the $195 million raised that year.

I have no doubt that our figures are more reliable than the 1988 estimate. The 1988 figure was based on assumptions that are clearly faulty. Our estimate, which I have outlined in detail, is based on a good-faith effort to arrive at realistic figures.

However, even our $22.1 million figure overestimates the indirect costs, because we believe that every dollar spent on the CFC campaign is not an hour lost to government.

Your fourth question was how much money the CFC raised in 1994 and how long the campaign lasted.

Mr. Chairman, the 1994 campaign lasted six weeks, although local officials can extend that period, and, as indicated, raised about $195 million in donations from more than 1.8 million contributors.

Fifth, you asked if it is proper for the taxpayers to subsidize the CFC, particularly when many of its donees may be considered controversial.

Mr. Chairman, Americans believe in volunteerism, and there exists in the private sector a well-known tradition of giving at the workplace. I believe it is entirely proper for federal workers to make this outstanding effort that over the years has raised literally billions of dollars for worthy causes.

I agree that there are individuals up and down the political spectrum who may find certain organizations not to their liking, but I believe most CFC participants think theirs is a broad and balanced list that includes literally hundreds of charities they consider worthy of support.

I might note that little controversy has surrounded the campaign in recent years, in contrast to the 1980s, when there were many lawsuits and much acrimony regarding participation. It would be a mistake to return to the ill-will and turmoil of the past.

If the subcommittee has specific proposals for improving CFC, we will be glad to comment on them. If the Congress passes new rules to guide the CFC, we will enforce them. But in candor I must say that we do not consider CFC to be in need of major changes.

I will be glad to take your questions.

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Mr. MICA. Ms. Hall, did you have any comments?

Ms. HALL. Not at this time.

Mr. MICA. OK. Thank you.

We will proceed with several questions for you, Ms. Green.

First of all, let's take a minute and look at the cost. Your testimony today directly conflicts with the 1988 study. As I understand it, in 1988, on page 5 of the CFC task force report, it states that with these three additional components factored in, an estimate of the size of the CFC subsidy in the neighborhood of $55 million to $60 million would not appear unreasonable. So you're saying that since 1988 you think we're actually spending less money than they projected then for this activity?

Ms. GREEN. Well, after going back and looking at their projections and several of the flaws that I mentioned, one is that they used the National Capital Area Campaign to base their estimate on and the campaign here is a much larger campaign because we have a higher concentration of Federal employees and also we have the leadership of the Federal Government here which is encouraging the Federal employees' participation. So we thought it would be more representative if we went to 40 campaigns across the country, the ones that are the largest campaigns, to get more accurate figures. We could not find in our records where the 1988 calculation was done to look at the $55 million or $60 million figure. But, we came nowhere near that.

Mr. MICA. Well, it seems like they did a rather in-depth review of the activities, and they concluded it was $55 million to $60 million in 1988. It is hard for me to believe that in this day and age the costs would actually go down. You are disputing some of the basis on which they calculated this figures.

Ms. GREEN. Exactly. Not that the cost went down, that it was never that high.

Mr. MICA. Now it's my understanding that some of the costs are recouped from the charity fees that are involved. The participants, there is some cost to them. What percentage is that or what amount of this $22 million?

Ms. GREEN. Gerri, would you?

Ms. HALL. That is not included in that $22 million.

Mr. MICA. That's on top.

Ms. HALL. Right. That is recovered from the campaigns, and the administrative expenses run an average of 7 percent of the donations.

Mr. MICA. So they are paying about 7 percent of the total figure, the cost, is that correct?

Ms. HALL. By campaign. Each individual campaign is reimbursed for their administrative expenses, and that averages 7 percent per campaign.

Mr. MICA. Now, that's reimbursement or you are subtracting that from their distribution?

Ms. HALL. It is subtracted from the distribution. However, the entity which administers the campaign, the principal combined fund organization, puts out the cost up front and is reimbursed.

Mr. MICA. Well, I don't have any problem with the Federal Government being sponsor of a Combined Federal Campaign; and, in fact, I would encourage it. And I think that the truly charitable or-

ganizations—those that deal with human health and welfare, direct benefits—should have our support.

I begin to question when a number of these advocacy groups have wormed their way into the process, either through the Court process or congressional pressure. We have not been able to get a complete list of what each of these groups receive. Can you provide our subcommittee with a list of the specific amounts that each and every organization receives, their total contribution, and the net they receive? Can you provide us with that, Ms. Green?

Ms. GREEN. Not without some difficulty. The OPM——

Mr. MICA. So you're taking in $200 million.

Ms. GREEN. Yes.

Mr. MICA. And you have taxpayer money involved in the collection of this and a taxpayer agency, and you can't provide this subcommittee or the Congress with a list of who is getting what?

Ms. GREEN. OPM manages the national campaign. We have the information on the national campaign. The federations that manage the local campaigns have the information for each of the organizations that are under their federation.

Mr. MICA. One of the changes that I would like to see is that there be some public disclosure of who is getting what and where the money goes. Is that possible?

Ms. GREEN. Certainly. And the federations, I'm sure, would be glad to provide that information for the charitable organizations that come under their umbrella.

Mr. MICA. So that is a change that OPM could support.

Ms. GREEN. Yes.

Mr. MICA. OK.

Another question is, should the taxpayer be responsible for this activity and to what degree? Do you believe that we should increase the administrative or overhead costs or the charges to these agencies for participation?

Ms. GREEN. Well, it certainly is a way of recouping some of the costs. We could have a—if the committee so desires, we could certainly have something similar to a 1, one-half percent charge to participate in the campaign.

Mr. MICA. Do you announce that by agency rule or is there some standard that is applied for charging back a cost?

Ms. GREEN. To make a change like that, Gerri? I think it would be statutory.

Ms. HALL. If you would like to have a charge, an assessment, for the organizations to participate?

Mr. MICA. Now, are you doing it under legislative or rulemaking authority?

Ms. HALL. I believe it would be legislative.

Mr. MICA. OK. So that would require a legislative change in assessing a fee. It couldn't be done by rule.

Ms. GREEN. No, it would have to be legislative.

Mr. MICA. All right. And could you support it if we propose something of that nature so we have a nod in the affirmative?

Ms. GREEN. Certainly.

Mr. MICA. Are there any other changes? One problem is the definitions of the organizations that qualify—and I would guess you used a general IRS category for definition. Are there any other defi-

nitions that could help us in better defining eligibility as a real charity and not an advocacy group?

Ms. GREEN. Well, all of the charities that we deal with have to meet eligibility criteria, as you stated, not only those of the IRS but also the CFC regulations and legislative criteria and all of that. So short of being very specific about which charities you want included and which you don't, there's always going to be a gray area in the definitions.

There are some gray areas now that we're trying to clear up in proposed regs that we have now. So I think more specificity—being very specific would assist in not having the litigation such as we've had in the past.

Mr. MICA. So you say there are some gray areas, and there are some areas that you are having problems with in defining their eligibility.

Ms. GREEN. We're not having problems now——

Mr. MICA. But you did state that there are——

Ms. GREEN [continuing]. In defining their eligibility criteria.

Mr. MICA. So that there are some gray areas. What did you mean by that?

Ms. GREEN. In defining—well, for the health and human welfare part of it, we don't have the problems in defining eligibility based on a definition.

Mr. MICA. Well, some of these advocacy groups, for example: Firearms Civil Rights Legal Defense Fund, American Civil Liberty Unions Foundation, the Federation for American Immigration Reform, and the National Abortion and Reproductive Rights Action League Foundation. These are all advocacy groups. How do they qualify?

Ms. GREEN. They meet the criteria for human health and welfare.

Mr. MICA. And you don't find that within your rulemaking ability to limit these advocacy groups?

Ms. GREEN. Again, as I mentioned in my opening statement, the definition of human health and welfare would be the issue—we're saying that it affects human health and welfare. So, using the criteria that we have if those organizations meet that criteria for eligibility—affecting human health and welfare——

Mr. MICA. Again, based on the historical experience, I believe that you can either set these standards by statute or by law or by court decision. You have no recommendation to us at this time for any changes to better clarify the definitions legislatively and you don't have the power to do that by rule; is that the case?

Ms. GREEN. We don't have the power to do it by rule.

Mr. MICA. And you have no recommendation to us to change it?

Ms. GREEN. Well, one of the things that we use is to consider the type of services rendered to the beneficiaries—that always makes it clearer for us. We look at basic human health and welfare looking at the type of services that are rendered, using a common sense definition. So, no, we don't have any other recommendations as far as definitions.

Mr. MICA. I don't want to consume all of the time. I will yield now to Mr. Mascara for his questions.

Mr. MASCARA. If the 1986 regulations are reapplied, wouldn't some of the very worthwhile organizations such as the 4–H, U.S. Olympic organization and groups like the PCTV–21 in Pittsburgh and the Pauline Auberly Foundation be dropped? Is that a possibility?

Ms. GREEN. Yes, it is a possibility. And when we looked at the terms used for the 1986 criteria it did raise some concerns because we wouldn't know how to distinguish between certain areas. Some of the terms that are used are needy versus poor and indigent. How do you identify persons otherwise in need of social adjustment which is in there?

So that's what I'm referring to as a gray area. Without a definition of needy, organizations such as the Ronald McDonald House or YMCA or Points of Light who—it's very unclear whether they'd be eligible or not. And the U.S. Olympic committee and the 4–H groups would not be eligible. So, again, we would have to be very specific.

Mr. MASCARA. While I do not agree philosophically and idealogically with some of the groups you have qualified who participate in the checkoff, I am just wondering do these organizations have to qualify under the Internal Revenue Service Code to be a charitable organization? Must they all be qualified to participate?

Ms. GREEN. They must qualify to be 501(c)(3) organizations.

Mr. MASCARA. So then we are not questioning the fact that they should be on the list because they have been qualified by the Internal Revenue Service?

Ms. GREEN. That's correct. We are not questioning that.

Mr. MASCARA. So maybe there are some things wrong. And I haven't seen any specific numbers, and I come from an accounting background—as a former accountant—and I'd like to take a closer look at these costs. It seems almost incomprehensible that it would cost 25 percent of the total amount that is raised, or was raised last year, to operate a charitable checkoff—25 percent. That sounds like a lot of money—$50 million. I mean, can we get some figures, Mr. Chairman, from GAO or from OPM?

Mr. MICA. Mr. Mascara, just in response to your question, if you would yield.

Mr. MASCARA. Sure.

Mr. MICA. We do have the 1988 report from OPM, which is probably the most extensive study. And, again, we have a dispute between the current Deputy Director and the facts that were presented there. I did quote the estimate from that report. She bases her calculations on a different set of assumptions.

Mr. MASCARA. Well, according to the information I have, we are talking about some kind of indirect cost. Because the information I have, the direct costs are in the neighborhood of three-quarters of a million dollars and not the kind of money that we are talking about here. Who is extrapolating the numbers to come up with this $50 million?

Mr. MICA. Even the administration and OPM has calculated the expenses at $22.1 million, which is 11 percent cost. Again, there is a difference of opinion on what the cost is, and one of the purposes of this hearing is to try to determine what the real costs are.

Ms. GREEN. Sure.

Mr. MICA. But by their own testimony here today they have testified that it is 11 percent, and $21.2 million is their best guesstimate today. I question that, because in 1988 they had a larger figure and I have not seen the cost of anything in government or business go down in that timeframe.

Thank you.

Ms. GREEN. We do feel——

Mr. MASCARA. You want to explain the $731,000 you were talking about?

Ms. GREEN. Let me just start, and I will let Ms. Hall complete the thought on that.

I do want to state again that our figure is a very generous amount. It is our best estimate. But we also are reluctant to say that an employee's time spent on CFC is not time spent working for the government—because we don't feel that every hour they spend on CFC is not a productive hour. And the $55 million to $60 million figure in the 1988 study certainly exaggerated the value of the employees' time. They utilized many more key workers in their estimate and also a higher grade level which we have not been able to substantiate.

Ms. Hall.

Ms. HALL. The difference in our two costs is that the first amount, the approximately $730,000, are the direct costs for my office, the IG audits and the compliance reviews. Those are the actual costs of appropriated funds.

The estimated amount—the remaining amount which was compared to the $50–$60 million amount—is based on the value of time for people who participate in and support the campaign. And the difference is not that the costs went down over the years but the assumptions that were made in 1988 resulted in exaggerated amounts.

And that is because they used the national capital area, which is a unique campaign unlike most of the current 435 campaigns.

In addition, back in 1988 there were approximately 536 campaigns, so that required more workers. The LFCC's, the local Federal officials who make eligibility determinations, there were more of them because you had more campaigns.

In addition, they assumed high grade levels. We know that the key workers, the people who pass out the pledge cards, are relatively low-graded employees. They assumed a grade level of a GS–9.

Even our numbers are generous. We assumed all employees on LFCC's were at a grade level of GS–15. And we know, nationwide, there are not that many GS–15's. So our numbers are a very good-faith effort to come as close as possible to accuracy, and we've explained all the distinctions.

Mr. MASCARA. Well, the CFC task force report of 1988, says it is impossible to quantify precisely the dollar amount of that subsidy. And I guess it's my training—I'm not from Missouri. I'm from Pennsylvania. Show me. I want to see. Someone has to show me.

We have a tendency and proclivity to throw numbers around here in DC. Even as a new Member, I learned very early on to watch out. Someone will say $10 billion or $15 billion; and when you ask about it, it is really not $10 or $15 billion. It is this or that.

I'm not saying, Mr. Chairman, that we don't need some reform, that we do not need to look at this very closely. I'm just saying that when we make a decision, at least when I make a decision, I want to make a decision that is informed and is based upon fact rather than someone saying it cost $55 million to $60 million in order to operate the campaign. So I am going to be looking for some numbers.

I thank you. That concludes my questioning.

Mr. MICA. I thank the gentleman.

Another member of our panel has arrived, Mrs. Morella, the gentlewoman from Maryland, and I would recognize her for opening statement or questions or any combination of the above. Welcome.

Mrs. MORELLA. Thank you very much, Mr. Chairman.

I have looked forward to this hearing, and I want to thank you for calling it. Because there has been a lot of concern about the CFC, and I have certainly heard from a lot of people with regard to the whole question of whether or not there should be some changes made. I had thought about sending the correspondence to the chairman, stamped respectfully referred to Chairman Mica, but I think we will learn a great deal from this hearing.

My opening statement is more lengthy than some of the comments I want to make before I ask a question of Ms. Green.

Actually, the continuous improvement of governmental programs and policies is playing a very vital role in keeping our government responsive to the people. But the saying, if it ain't broke, don't fix it, I think still has relevance even in this government, even in this House.

I can't see that, really, the CFC is broken. In fact, I see a very healthy and successful program, where charitable contributions are approximately $200 million a year, where administrative costs for participating charities are low, where work flow interruptions are minimal, and where 100 percent of the designated donations go to the charities of choice. I want to emphasize—charities of choice.

As issues have grown more complex, the CFC, like any successful program and organization, has evolved from its embryonic state in the 1960's. And yet it stands as a symbol of goodwill, and that's something that we shouldn't lose sight of in this discussion. The funds collected through the program have been instrumental in assuring that children receive quality educations and less fortunate individuals receive food and other needed services.

I wanted to also point out the restriction—the restricting of CFC eligibility raises another issue that troubles me. It presupposes that Federal workers cannot and should not make their own decisions in selecting charitable organizations. As you know, I have immense respect for Federal workers. I have seen the faces of those who have contributed to CFC. I have shared their pride in receiving Eagle awards for contributions of 1 percent of their salaries.

These are uplifting experiences and, heaven knows, we need them now more than ever. And even with all that has happened to Federal workers and all that is proposed to happen, Federal workers remain the most giving, the most resilient, the most professional workers in the country; and I would have great problems about the concept of their freedom of choice being limited in this respect.

So I know that the proposal is well-intentioned. I know we are going to learn a great deal from it.

I would also point out that when Ms. Green said—or her colleague mentioned—that there are very few GS–15s, that is, in fact, true. And so I would certainly say that the GS–9 level, in trying to figure out whether or not it's $22 million, 11 percent, or whether it is 25 percent, is indeed something that could be verified.

So as an opening statement, I think you know my direction, but I am open-minded in terms of the issue at stake here.

[The prepared statement of Hon. Constance A. Morella follows:]

STATEMENT OF THE
HONORABLE CONSTANCE A. MORELLA
HEARING ON:
COMBINED FEDERAL CAMPAIGN:
LAWYERS AND LOBBYISTS VS. PEOPLE IN NEED?
SUBCOMMITTEE ON CIVIL SERVICE
JUNE 7, 1995

I would like to thank Chairman Mica for calling this hearing -- and for the influx of mail and phone calls received in my office since the announcement of his proposal to narrow the scope of CFC eligibility. I'm currently contemplating the most appropriate way to -- *thank him.* Maybe a rubber stamp labeled, "Respectfully Referred to Chairman Mica," would be most civil.

Nevertheless, here we are discussing the "Combined Federal Campaign: Lawyers and Lobbyists vs People in Need?" Clearly, "people in need" and "lawyers and lobbyists" are inextricably linked to one another. But, that is a debate for another day. Today, my concerns are for the CFC program, Federal workers, and taxpayers.

The continuous improvement of governmental programs and policies is playing a vital role in keeping our government responsive to the people. But, the saying, "if it ain't broke, don't fix it," still has relevance, even in this Government,

even in this House. I don't see the Combined Federal Campaign as being broken. In fact, I see a very healthy and successful program, where charitable contributions are approximately $200 million a year, where administrative costs for participating charities are low, where workflow interruptions are minimal, and where 100 percent of the designated donations go to the charities of choice. I want to emphasize -- "charities of choice."

As issues have grown more complex, the CFC, like any successful program and organization, has evolved from its embryonic state in the 1960's. Yet, it still stands as a symbol of good will, and that is something we should not lose sight of in this discussion. The funds collected through the program have been instrumental in assuring that children receive quality educations and less fortunate individuals receive food and other needed services.

I'm very concerned that if we limit the scope of eligibility, thereby limiting the option of payroll deductions, this could have a negative financial impact on all charities, including those that would remain in the Campaign. A Yale study concluded that employee morale and giving increased

when charitable drives were opened up to more charities. In addition, payroll deductions play a significant role in an employee's ability and willingness to give. It is easy to say that Federal workers should "...place their contribution in an envelope and drop their checks in the mail," but the truth is this will not happen, and the repercussions are modest donations and failed programs.

There are OPM regulations that outline the requirements for being CFC eligible and IRS regulations that outline requirements for being considered a public charity. If organizations are outside this scope, they should scale back or face being removed from the program. We should not seek additional legislation. We should merely enforce the laws and rules that are currently on the books.

Regarding the issue of subsidizing "advocacy groups" with taxpayer money, James B. King, Director of the Office of Personnel Management, the agency which oversees the CFC, explained that the costs (staff time) to taxpayers are essentially fixed costs and "...are the same whether we have 10 organizations participating in the CFC, 100 participating or more participating." Director King also mentioned that the

costs of adding new organizations are marginal. We have not seen any detailed costing of these claims by OPM, but I would assume Deputy Director Green, who is here today, will provide this information.

The restricting of CFC eligibility also raises another issue that troubles me. It presupposes that Federal workers cannot (and should not) make their own decisions in selecting charitable organizations. As you know, I have immense respect for Federal workers. I've seen the faces of those who give to CFC. I've shared their pride in receiving Eagle awards for contributions of one percent of their salaries. These are uplifting experiences. And even with all that has happened to Federal workers and all that is proposed to happen to them, Federal workers remain the most giving, the most resilient, and the most professional workers in the country. And, I do not want their freedom of choice limited in this respect.

In addition to denying the rights of Federal workers to give to the organizations of their choice, modifications to program eligibility could exclude hundreds of organizations

that provide services to the most needy "people in need" and worthwhile groups and programs in the country.

So what kind of message are we, as lawmakers, giving the parents of school children, the hungry, and the people in need with this proposal? Of the hundred or so letters and phone calls received in my office, none of them were in favor of changes to the CFC. The phone calls suggest, "What's next? They're cutting pensions, education, and medicare. Now, they're going after charities."

I know and respect Chairman Mica, and I believe his proposal is well-intended. However, we should be promoting service to others and encouraging giving. The perception this proposal gives too many, including my constituents, is the contrary.

Mr. Chairman, let's rethink this proposal while there is still time.

This concludes my statement. I look forward to hearing from the witnesses.

Mrs. MORELLA. And I guess I would like to ask Ms. Green, do you know if private-sector organizations place limits on the kinds of charities that their employees can give to? And, if so, how are these drives working?

Ms. GREEN. No, I'm not aware that there are limitations. I do know that we're used as an example—the CFC is used as an example—of a successful workplace campaign, and the trend now is to be more inclusive, to give more choices to employees. So, if anything, I see that we're being modeled.

Mrs. MORELLA. If we limit CFC eligibility, would you like to speculate on what you think the ramifications would be? Would donations, for instance, go up for the remaining charities that are on the list? Would they go down? Would the removed charities suffer reductions in Federal worker contributions? Will we be back in court? I mean, what ramifications do you see of further restricting this?

It's interesting, because when you mentioned from 1988 in your testimony we are now down to 435, which is the exact membership of the House of Representatives—whether that has any connection or not, it just seemed interesting.

Ms. GREEN. Taking your latter statement first, yes, we would probably be back in court; and we would also probably have some resentment among Federal employees. The indication is that we would because we would be limiting their choice. It also wouldn't save money.

Again, talking about the time that it takes Federal employees to run the Combined Federal Campaign, the amount of employees' time that's spent wouldn't matter if it was 100 or 1,000 charities. We think we would see some downswing in the Combined Federal Campaign if there was more limitation.

Mrs. MORELLA. And you don't think there would be a significant reduction in the costs of implementing the program.

What is the percentage of individuals who give to CFC? You know—you know, the ones who use the payroll deductions.

Ms. GREEN. The payroll deduction of 88 percent of employees who give——

Mrs. MORELLA. Eighty-eight percent.

Ms. GREEN [continuing]. Eighty-eight percent of employees who give. Approximately 50 percent of the workforce gives and 88 percent of those who give, give in payroll deduction.

Mrs. MORELLA. Would you not say, looking around at other private sector organizations, that that is a pretty high percentage?

Ms. GREEN. It is high.

Mrs. MORELLA. Both of giving as well as payroll deductions?

Ms. GREEN. It certainly is. It's very high.

And just using my own personal experience, having an Eagle pin myself—if it wasn't for payroll deduction, I probably wouldn't have that Eagle pin. And I think we would see that throughout the country in Combined Federal Campaigns.

Mrs. MORELLA. Have you received any comments in your office about Chairman Mica's proposal?

Ms. HALL. Yes. I certainly did; and, obviously, a number of the panelists who will be speaking after us provided their comments. We received phone calls from outside campaigns, from Federal em-

ployees, asking about the status: "What's going to happen? How will this affect the 1995 campaign? It's a terrible thing. We want choice." That kind of thing.

Mrs. MORELLA. Have you received any in support of his proposal?

Ms. HALL. No, I have not—to date.

Mrs. MORELLA. Thank you. Thank you, Mr. Chairman.

Mr. MICA. I thank the gentlelady. I also thank her personally for not sending me any of her correspondence or communications in regard to this hearing or this matter. I have plenty to deal with only my own.

Again, my intent is not to disrupt charitable giving but to look at what we are doing and how this has mushroomed into a veritable grab bag for anyone who can latch onto this Combined Federal Campaign.

A couple of things concern me. One, we may dispute the amount of money: You say $22.1 million. This OPM report says $55 million to $60 million. There's even a survey done by Business Week or Forbes that when 20 different CPA's are given a tax return, I don't think any 2 of them come up with the same conclusion in their annual report; all with defined terms. There can be disputes at how you arrive at figures and calculations even in this exercise.

The question I have is regarding the groups that are supported by taxpayer dollars. And even if it is 50 cents or $1, do you think it's right, Ms. Green, that these advocacy groups be supported by your efforts?

Ms. GREEN. Well, I guess that I would have to say, Mr. Chairman, that all of the charities that we have in the Combined Federal Campaign are eligible. Our job is to determine that they are eligible for participation and that they have met all of the standards, all the criteria to participate. We're not making a distinction between charities.

Mr. MICA. You're just following the rules and the law as they now exist.

Can you tell me if participation is actually increasing or decreasing with the increasing number of organizations coming in to qualify as eligible for participation?

Ms. GREEN. The number of Federal employees who are participating in the campaign——

Mr. MICA. And the amounts of money given.

Ms. GREEN [continuing]. And the per capita giving is remaining steady and, in fact, is going up.

Mr. MICA. But the actual participation since 1965 is dramatically decreasing, isn't it?

Ms. GREEN. Participation has been decreasing since the campaign started, but people are being more generous.

Mr. MICA. In 1965, we had this one-page list; and we had an 80.7-percent employee participation ratio. Now we've got this catalog of thousands of eligible groups, and we are down to 47.9 percent of the employees, and we have seen a steady decline. Is that correct?

Ms. GREEN. Yes, I would concede that. But we do have something with us today I would like to share with you which is a chart that shows that per capita giving has been increasing and has not been affected by the number of charities that have been participating.

Mr. MICA. We actually have fewer people participating but a larger per capita—is that adjusted for inflation?

Ms. GREEN. Yes, it is. Yes, it is.

Mr. MICA. OK. One of the things that concerns me is, I participated recently in a program relating to this matter, and one of the advocates on the other side said that there are literally hundreds of thousands of eligible organizations that can qualify under existing criteria and, in fact, felt that they should be participating. Which means that you would basically be publishing a catalog the size of the Washington telephone directory by the time we get through this. Is this true that there are hundreds of thousands of 501(c)(3)'s that could qualify for this?

Ms. GREEN. There are. There are quite a few 501(c)(3)'s who could qualify, and the telephone book would probably be the size.

Mr. MICA. It could end up the size of a telephone book?

Ms. GREEN. Yes.

Mr. MICA. In fact, I think we have 489,891 501(c)(3)'s.

Ms. GREEN. Yes.

Mr. MICA. That could end up almost a half a million, and most of those would be eligible under current definitions?

Ms. GREEN. I am not sure that most of them would be eligible under current definitions. Certainly, we have some new regs that are coming out.

Gerri, if you want to respond.

Mr. MICA. The other thing I asked you about before was the advocacy groups. And I begin to wonder about some of these nonhuman health and welfare groups—for example, the National Wild Turkey Foundation, the Rocky Mountain Institute, the Save Energy Communications Council, the Center for Investigative Reporting—well, maybe we should keep that one.

And if Dr. Kevorkian established a 501(c)(3), he also might qualify under some of your current definitions, is that correct? Is that appropriate?

Ms. GREEN. No, I don't think so. We have pretty strict eligibility standards and criteria. And unless an organization can show that they affect the health and human welfare they will not be admitted. So there are quite a few 501(c)(3)'s who would not be admitted.

Mr. MICA. Including the groups like the Safe Energy Communication Council. They do qualify——

Ms. GREEN. I'm not sure.

Mr. MICA [continuing]. Under the current criteria?

Ms. GREEN. I'm not sure about that particular organization.

Mr. MICA. They are listed—so they must qualify.

Well, there are basically two ways I think that we can bring about some positive changes to this—and one is by rulemaking and some changes in procedure.

Today, you have testified that you would support publishing or some disclosure of who is getting what and that you might look at supporting some adjustments in the cost to the taxpayer for some of these funds—even if we can't agree today on what they are. You are not willing, however, to get into any changes in definition or eligibility, is that correct?

Ms. GREEN. That's correct.

Mr. MICA. Well, again, I hope we can work with you in this regard because I would like to bring about some positive changes, particularly as we deal with the definition of the advocacy groups involved and, also, the nonhuman health and welfare groups that have latched on to this taxpayer-financed activity.

With that, Mr. Mascara, did you have any additional questions? I would yield.

Mr. MASCARA. Yes. Thanks, Mr. Chairman.

I believe the answer or response to the gentlelady's question regarding the use of public funds, even if some of the charities were cut, wouldn't that be so, regardless of the number, that there still would be Federal dollars used to collect those funds?

Ms. GREEN. Yes. There would still be Federal dollars.

Mr. MASCARA. So if you cut 100 or 200 out of the list it would still be Federal dollars used.

Ms. GREEN. Yes.

Mr. MASCARA. So that there would still be a subsidy from the Federal Government to the program.

Ms. GREEN. Well, it would be the direct costs, again, of the CFC office and then the indirect fixed costs of employees' time.

Mr. MASCARA. And one last question in reference to the chairman's question of a certain agency with a name maybe that doesn't indicate that they do health and human services type activities. You can't identify from the name what they do.

Ms. GREEN. That's correct.

Mr. MASCARA. And then the determination of them being a tax-exempt organization, someone would scrutinize the application to participate to verify that they did, in fact, engage in those kinds of activities that would qualify them.

Ms. GREEN. That's correct. And meet all other criteria, yes.

Mr. MASCARA. OK. Thank you.

Thank you, Mr. Chairman.

Mr. MICA. I thank the gentleman and would now like to yield for additional questions to the gentlelady from Maryland.

Mrs. MORELLA. Thank you very much, Mr. Chairman.

You know, I don't think it's easy for an organization to become part of the Combined Federal Campaign. I've had some examples from constituents with regard to educational institutions where it has taken them the longest time, most diligent effort to try to point out their eligibility.

Second, after that has been established and if they are lucky, they are part of this. And these are legitimate educational institutions.

Those people who are giving are giving for that organization, those special organizations, who have said to me that if that organization is removed they are not going to give to the Combined Federal Campaign or they will significantly reduce the amount. When you say per capita donations have increased, that they will reduce that amount so they can continue perhaps to give to that organization or give some of it. Is that a typical kind of response?

Ms. GREEN. Yes. I think it is. And one of the reasons why we have the brochure and all the information we give employees is we want them to be informed and we have a description of charities that they can give to. And our indication is that they enjoy going

through there, reading, seeing what various organizations can do. Because some of the names are very misleading and some of them are doing very good work in the health and human welfare arena. So the answer is yes.

Mrs. MORELLA. I just think it would stand to reason that they would reduce the kind of contribution they give if their particular charity or educational institution—health and human services institution isn't on there.

But I also wanted to emphasize that it ain't easy to become one of those beneficiaries. You have to work very hard to point out your qualifications.

Ms. GREEN. That's correct.

Mrs. MORELLA. Thanks. Thanks, Mr. Chairman.

Mr. MICA. I thank the gentlelady.

And now I would like to yield to the ranking member of our subcommittee—he has just joined us—for either an opening statement or questions or any combination of the above.

Welcome, Mr. Moran, our ranking member.

Mr. MORAN. Well, thank you very much, Mr. Chairman.

We had a little press conference on a piece of legislation that I hope all of my colleagues are going to sign on to with regard to violence, sex, and vulgarity on television screens. And I know that this is something you are opposed to and sounds like——

Mr. MICA. I'm glad that had nothing to do with this hearing.

Mr. MORAN. Not at all. Nor anything to do with your own private lives. But I just wanted to alert you so that there will be no question that you knew about it.

Mrs. MORELLA. I thought you said vulgarity in Bulgaria.

Mr. MORAN. No. That's international relations.

Anyway, I apologize for not being here earlier. This is an issue that, while it is not necessarily a national issue, it certainly is important for Federal employees. And I do think it is terribly important that Federal employees have the means to contribute as they do in significant amounts to voluntary charitable efforts.

I have been associated with the United Way for a long time, and so I have watched this issue and been interested in it for a good deal of my time down here in Washington, particularly.

You know, I was kind of shocked at a couple of things.

One was Mr. Armey's letter, the Majority Leader, who apparently wrote to corporations on what appeared to be official stationery about his desire to defund the left and tied it in to this CFC thing and how he is upset about the nonconservative and non-Rush Limbaugh type of organizations. For the life of me, I couldn't see the connection here until I noticed the Sierra Club is on this. Is this something that disturbs Rush? Maybe that's what it is all about.

But I was a little taken aback about the letter that was reported in Roll Call, and I think it was in the Post and other places. It caused some of us to look at the list of organizations that are on this list. I didn't see the SDS or any of the groups that used to be considered threatening groups, but I saw for the most part pretty mainline organizations, although there are some that were expected.

Is it true that the National Right to Work Committee is actually a recipient of this stuff? It is. Well, so there seemed to be some reason for reform.

And I would hope that we would proceed with an interest in constructive reform for what the Combined Federal Campaign does but that we would proceed on the basis of factual information on the most objective and constructive a basis as possible.

One of the facts that would be useful is how many complaints have actually been registered about the CFC other than the visible one from Mr. Armey. Can Ms. Hall or Ms. Green address that? Is that appropriate to ask them? How many complaints do you get about the CFC?

Ms. HALL. We receive very few complaints.

We did a search in terms of our office to see what kind of issues come in both in our immediate office and in our congressional relations office. And the types of complaints we actually receive, albeit few, have to do with the inclusion or exclusion, normally, of a given organization. A particular organization applied and was denied, and someone complains that she should have been let in. But we receive very few complaints, certainly during Ms. Green's tenure, regarding the program itself and the criteria.

Mr. MORAN. And you have pretty much taken the attitude the more the merrier in terms of inclusion on the list. How many people contribute to the Combined Federal Campaign?

Ms. HALL. Fifty percent of the Federal employees that are solicited contribute.

Mr. MORAN. So we are talking about over a million people.

Ms. HALL. Yes.

Mr. MORAN. About how many complaints do you get in a year?

Ms. HALL. The complaints are very few. We get less than—less than 20 a year going back the last 3 years.

Mr. MORAN. So that is so few, that is a point zero, zero, zero. That's infinitesimal compared to the number of people who participate. So this is not something that is a major problem, apparently, from the participants.

But we ought to look at it, and I suppose we ought to consider whether there is any real subsidy in terms of taxpayer support subsidy. I can't imagine that the participants have too much problem in terms of the inclusion or exclusion of organizations since you have got so many that run the gamut from the right to the left idealogically and cover just about every conceivable human need that you can imagine. So I don't know why they would be complaining about that.

I guess we need to look at what kind of indirect and direct subsidy might be provided this. But I can't imagine it's very substantial. And I do know that the amount of volunteer work that is financed, the amount of charitable contributions that go to well-deserving organizations is significant.

And, in fact, if we did not have the Combined Federal Campaign I know, for one, this Washington metropolitan area would not be as fine a place to live as it is and that a lot of people would suffer as a result, people who are dependent upon the charity, the com-

passion, the commitment to community that Federal employees have and express through the Combined Federal Campaign.

So, with that, Mr. Chairman, you want to go back to the proceeding of the hearing in the way that you had planned?

[The prepared statement of Hon. James P. Moran follows:]

Statement of Representative James P. Moran
on "Lawyers & Lobbyists v. People in Need"
Hearing before the Subcommittee on Civil Service
June 7, 1995

Mr. Chairman:

I appreciate your having this hearing today. I must admit that I was concerned when I read in the National Journal of an effort to "defund the left" that was allegedly being carried out by the Majority Leader office. I am pleased that this hearing will focus on the pros and cons of the current program rather than on an ideological effort to silence organizations in which we may not believe.

Each year, when I flip through the CFC participating charities list, I see organizations that make me wonder how in the world they got on the list and who would contribute to them. I imagine most federal employees feel the same way when they look over the list and the organizations on the "absurd" list vary from employee to employee. And I imagine that every year thousands of employees in the federal government, indeed hundreds of thousands of employees, make the same decision I do. They choose not to contribute to the organizations in which they do not believe.

But some employees do give to the National Right to Life Committee. Some give to the NAACP Legal Defense Fund. This is their choice. It is ironic, that at a time when the Congress as a whole is pushing for freer markets and less government regulation, some are trying to restrict a federal employee's freedom of choice and regulate the charities to which they can contribute.

The current regulations governing participation in the Combined Federal Campaign are more than effective. They allow only bona fide 501(c)(3) charities to participate. They require that the charities spend less than 25% of their income on Administrative costs. And they require that the charities provide human health and welfare services, benefits, assistance, or program activities.

It has been said that some of the charities in the CFC are counter to the philosophy of some taxpayers and, therefore, should not be included in the CFC. This argument is based on the

assumption that taxpayers fund the CFC.

In truth, taxpayer money is only used to pay the direct cost of the administrative offices within OPM. This is only $750,000 per year. The other "cost" of the program is the indirect costs associated with federal keyworkers volunteering to assist the program by passing out information and collecting pledges. To ask this Congress to assume that this volunteer work costs the federal taxpayer more than $55 million per year is to require us swallow a number of inaccurate assumptions. Most ludicrous of these is the assumption that employees who act as keyworkers do so at the expense of their other work -- that somehow the 8 hours they spend on the CFC per year reduces the work they are doing for the federal taxpayers. This may seem feasible on an accountant's ledger but it does not happen in the real world.

Furthermore, we would not be saving any money if we restricted the CFC. The direct administrative cost would presumably be the same although there may a reduced workload. The indirect costs would also remain. The keyworkers would still have the same responsibilities and demands.

Mr. Chairman, the Combined Federal Campaign works well. It helps federal employees contribute to charities. It helps the federal government limit the charity campaigns in the federal workforce, and it helps the charities. I hope this subcommittee will not endanger this successful program, and open the door to a number of lawsuits, to appease those who are upset because some federal employees are giving to liberal organizations.

Mr. MICA. Well, thank you, and we welcome your comments.

Just in response, we do have the statistics on the number of people who participate. It is down now to 47.9 percent from when it originally began as a charity drive. In 1965, 88.7 percent of the Federal employees participated.

So we are looking at all the aspects of what is going on with the campaign; and, hopefully, we can improve its charitable giving and participation. And it does have many worthy aspects.

Again, we thank you for your opening comments, Mr. Moran.

Do any other members of our panel have any additional questions for our two witnesses? If not, we do have plenty here to chew on so we will thank you for your participation. We may have some additional questions that we would like to submit to OPM, and we look forward to both your voluntary and your forced participation in the process.

Thank you, and you are excused.

And now, I would like to next call our second panel.

In our second panel we have Dr. David O'Steen, executive director of the National Right to Life Committee. We have Mr. Michael R. Howland, president of the Independent Charities of America; Mr. Don Sodo, executive director of the America's Charities; Capt. James W. Hollenbach, Christian Service Organizations of America; and Mr. Charles Stephen Ralston, senior staff attorney at NAACP Legal Defense Fund.

If you gentlemen would come up and assume the positions with your nameplates there, I ask you to please stand. It is the custom of this subcommittee and our full committee because of the nature of our work to swear in our witnesses, so if you would stand and raise your right hand.

[Witnesses sworn.]

Mr. MICA. Thank you. We welcome you to the committee. And let the record reflect that the witnesses answered in the affirmative. We will start immediately.

Mr. O'Steen, as soon as you are seated here, we will call on you, and will work right down the panel. Thank you so much for participating. Dr. O'Steen, go right ahead.

STATEMENT OF DAVID N. O'STEEN, EXECUTIVE DIRECTOR, NATIONAL RIGHT TO LIFE COMMITTEE; MICHAEL R. HOWLAND, PRESIDENT, INDEPENDENT CHARITIES OF AMERICA; DON SODO, EXECUTIVE DIRECTOR, AMERICA'S CHARITIES; JAMES W. HOLLENBACH, CHRISTIAN SERVICE ORGANIZATIONS OF AMERICA; AND CHARLES STEPHEN RALSTON, SENIOR STAFF ATTORNEY, NAACP LEGAL DEFENSE FUND

Mr. O'STEEN. Right. Thank you. I'm David O'Steen, executive director——

Mr. MICA. If you have a lengthy statement, we will be glad to make it part of the record. If you could summarize it, we would appreciate it so much. Thank you.

Mr. O'STEEN. Yes. I'm David O'Steen, executive director of the National Right to Life Educational Trust Fund. And, first, I had like to express my sincere appreciation to the chairman for the ability to speak with you here today and to the committee.

I also have been asked to say that I am representing the views of the Free Speech Coalition, which is an organization that represents a wide number of groups on both the right and the left. And I would qualify that not—of course, not all of my remarks could be attributed to all of the members of the Free Speech Coalition.

I am speaking in opposition to the proposal to remove charities which are considered to be advocacy organizations from the Combined Federal Campaign.

The National Right to Life Educational Trust Fund has experienced great support within the campaign since it was opened up in the 1980's. In the past five completed campaigns, we have received a total of a little more than $2.4 million from Federal employees. This has not only benefited our national efforts but local right to life education as well since we rebate about half of our net proceeds to State right to life educational organizations.

Recent statistics indicate that the abortion rate has fallen significantly. We believe that is good news. We believe as the Nation's largest right to life educational organization that we have played a major role in saving hundreds of thousands of human lives.

We provide scientifically accurate educational literature and materials which discuss the development of the unborn baby, alternatives to abortion, promote adoption, et cetera. Speakers from our affiliated chapters use anatomically correct fetal models to demonstrate fetal development.

In speaking with high school classes in the past, I've often asked students to write me a note anonymously at the end of class telling me what they thought of the presentation. I have received a note back saying, I'm pregnant. Before you came here I was going to have an abortion. Now I'm going to have my baby.

Other speakers of ours have had very similar experiences. What greater health service can be provided a prenatal child than life rather than death? This is the service we provide when we help a woman decide in favor of live childbirth.

Obviously, many Federal employees agree and want to support our services in the campaign. Those who do not are free to support other organizations they deem more important.

Yet the NLR Educational Trust Fund seems certain to be eliminated as an advocacy group under the proposed rule change.

Ironically, our chief ideological adversary, Planned Parenthood, would surely remain in the campaign under the proposed changes. They provide what is currently considered a legal medical service. They are the largest provider of abortions in the Nation.

This example illustrates, I think dramatically, the essentially insurmountable difficulty in the Federal Government trying to decide for the Federal donor what charities are worthy of their support and which are not. Many Federal workers believe Planned Parenthood's services are more valuable and wish to donate to them. Many others believe ours are and wish to donate to us.

If it is their own money, shouldn't they be the ones to decide where it goes?

This also shows the problem with the argument that so-called advocacy organizations should be eliminated because some object to their work. Planned parenthood, we believe, will undoubtedly re-

main in the campaign, and many will object to their work. There are groups that essentially everyone supports such as Mothers Against Drunk Driving that probably will be eliminated.

Now, two reasons have been put forward for eliminating so-called advocacy groups—one, that the Federal Government subsidizes the CFC; and, two, that the Federal Government should not be subsidizing advocacy organizations.

First, I think, as I've indicated, it's very difficult to determine what is and is not advocacy. If a disease organization, say, involved in cancer promotes a certain lifestyle as a means of prevention, is that forbidden advocacy or advocacy that should be restricted?

Our promotion of childbirth and adoption is advocacy to some. To others, it is the most important prenatal health service that could be provided to the child. So advocacy may largely be in the eye of the beholder.

All charities in the CFC are limited by IRS regulations strictly in the amount of lobbying they may undertake, and we believe this is a much more proper and precisely defined restriction than the much more ambiguous concept of advocacy. And, of course, all 501(c)(3)'s are forbidden any partisan political activity.

Second, charities in the CFC are not subsidized in the way one normally thinks of a subsidy. The moneys we receive are directly given by the donors. It is their own funds. The subsidy primarily amounts to the time Federal employees spend conducting the campaign, attending kickoff sessions, et cetera, and we don't believe that's going to be reduced at all by reducing the number of charities. Even if the number is reduced in half, the same amount of taxpayer dollars will be spent.

But we believe the proposed changes, ironically, will increase taxpayer costs because there will be more costs involved on an ongoing basis, and more time spent in determining who is eligible and who is not, on determining whether or not an organization has engaged in an improper amount of advocacy and in dealing with the inevitably large number of appeals from threatened charities.

Currently, there is great emphasis within the public and within Congress on reducing the costs and size of government and reducing the degree of government interference in the economic lives of individuals. In that context, it seems to be going in the wrong direction to increase the cost to the CFC, increase the regulations involved in the CFC, primarily for the purpose of restricting how the Federal employees can give their own money and to what charities and for what purpose.

We believe the Combined Federal Campaign is currently functioning very well, and we respectfully request that you reject this proposed change.

Mr. MICA. We thank you for your testimony.

[The prepared statement of Mr. O'Steen follows:]

I am David O'Steen, Executive Director of the National Right to Life Committee and of the National Right to Life Educational Trust Fund. I appreciate the opportunity to speak to you today. I am speaking in opposition to the proposal under consideration to remove charities which are considered to be "advocacy" organizations from the Combined Federal Campaign.

As you know, the CFC is the annual national effort to solicit tax-deductible charitable contributions from federal military and civilian employees. The tens of millions of dollars that they generously donate each year is an excellent example of individual empowerment at its best. Currently, individual federal workers are free to select from a very wide variety of charities and decide for themselves to what organization and type of service they wish to give their own money through workplace giving.

Federal legislation in the late 1980s opened up CFC eligibility to many more charities by -- among other things -- preventing imposition of any ideological eligibility requirements. Charities currently have to demonstrate that they fulfill objective criteria, such as having 501 (c)(3) tax status, filing a federal tax return and annual report, limiting fundraising costs and so forth. Federal employees have responded to this open approach by choosing to direct millions of dollars in contributions to the agencies let in under the broader rules and by greatly increasing overall giving.

The National Right to Life Educational Trust Fund has experienced great support among federal workers through the CFC. During the past five completed campaigns (1989 - 1993) we have received a total of $ 2,462,962 from the CFC. This has not only benefitted our national educational efforts, but local right to life education as well, since we rebate one-half of our net CFC proceeds to state right to life educational organizations and efforts.

Recent statistics indicate that the abortion rate has fallen significantly. This is good news, and we believe, as the nation's largest right to life educational organization, that our services have helped save hundreds of thousands of human lives. We provide scientifically accurate educational literature and materials which discuss the development of the unborn baby and alternatives to abortion, such as adoption.

Speakers from our affiliated chapters across the country use anatomically accurate fetal models to teach prenatal development. In speaking to high school classes I have often asked students to write me anonymous notes at the end of the presentation simply letting me know what they thought. I have received a note back from a high school student saying "I'm pregnant. Before you came, I was going to have an abortion. Now I'm going to have my baby." Other speakers have had similar experiences. What greater health

service can be provided a prenatal child than life rather than death. This is the service that National Right to Life Educational Trust Fund provides when it helps a woman decide in favor of live childbirth.

Obviously, many federal employees agree and want to support our services through the Combined Federal Campaign. Those who do not are free to support other organizations and services they deem more important. Yet, the National Right to Life Educational Trust Fund seems certain to be eliminated as an "advocacy" group under the proposed rule change. Since donations from the Combined Federal Campaign account for about one-fourth of the National Right to Life Educational Trust Fund budget, elimination from the CFC would have a devastating effect on our services and the number of lives we help save.

Ironically, our chief ideological adversary, Planned Parenthood, would surely remain in the campaign under the proposed changes. They provide what is currently considered a legal medical service. Through their affiliates they perform more abortions than any other entity in the nation.

This example illustrates dramatically the essentially insurmountable difficulty inherent in the federal government seeking to decide for the donor which charities are worthy of their support and the money they give through the campaign and which are not. Some of you, like some federal employees, may agree with and wish to donate to Planned Parenthood. I'm sure others of you, like other federal employees, feel our services are more valuable. If it's your money being donated, shouldn't you be able to give it where you wish in the campaign?

This also shows the problem with the argument that so-called "advocacy" organizations should be eliminated from the CFC because some object to their work.

Many Americans and federal employees object to the work of Planned Parenthood, which seems certain to qualify as a "medical service" provider. In fact, many, if not most of the organizations that do qualify under the proposed changes have some who oppose their work.

Conversely, the proposed changes seem certain to eliminate some organizations that essentially everyone does support, such as Mothers Against Drunk Driving. It will prove to be impossible to eliminate all charities that someone objects to. To eliminate some for this reason would be unfair, both to the charities and those they serve, and to the federal workers who wish to donate their money to them through the CFC.

Another reason that has been put forward for eliminating so-called "advocacy" groups is that 1) the federal government

subsidizes the CFC and 2) the federal government should not be subsidizing "advocacy" organizations. We believe this argument is faulty on two grounds.

First, essentially every charity advocates its cause and services. If a disease organization, say, one involved with cancer, promotes a certain lifestyle, i.e. a high fiber diet, regular checkups, etc., as a means of prevention, does this constitute forbidden or restricted "advocacy"?

The NRL Educational Trust Fund's promotion of childbirth or adoption is "advocacy" to some, but to others it is the most important prenatal health service the child can receive, if the alternative is death by abortion. Thus, "advocacy" may largely be in the eye of the beholder. Under the current system the donor is free to decide for himself, and we believe it should remain that way.

All charities in the CFC are limited by IRS regulations in the percentage of lobbying they may undertake. We believe this is a much more proper and precisely defined restriction, than the much more ambiguous and arbitrary concept of "advocacy."

Since all organizations within the CFC are 501(c)(3) organizations, they are already forbidden to engage in any partisan political activity.

Second, the charities in the CFC are not "subsidized" with taxpayer funds in the way that most people think of when one speaks of a government subsidy. All of the funds received by the NRL Educational Trust Fund through the CFC are given by federal employees from their own funds. We pay out of our proceeds a proportionate share of the costs associated with the campaign for items such as printing.

The "subsidy" cited as a reason for eliminating some organizations from the campaign is the time on the job of those federal employees who volunteer to assist the campaign in ways such as soliciting contributions, and the time employees spend in "kick-off" meetings where participation is encouraged. This time and the associated cost in labor hours will not change at all if the targeted groups are eliminated. There will be <u>no taxpayer savings</u>.

Rather, federal employees would continue to be encouraged to give their money in the campaign. But for many federal workers the charities they wish to donate their own money to will have been eliminated.

In fact the proposed changes are sure to <u>increase the federal government's costs</u> associated with the CFC. Surely, far more federal employee hours will be required, on an ongoing basis, to determine who is eligible and who is not, whether or not an

organization has engaged in an improper amount of "advocacy", and to deal with the inevitably large number of appeals to stay in the campaign from threatened charities.

Currently, there is a great emphasis among the public and within Congress on reducing the cost and size of government and reducing the degree of government interference in the economic lives of individuals.

In this context, it is not logical to increase government's regulation of, and cost associated with, the CFC in order to severely restrict the ability of the individual federal employee to give his or her own contribution, through workplace giving, to the organization he or she wishes, for the purpose he or she feels is most important.

The Combined Federal Campaign is currently functioning very well, and we respectfully request that you to reject the proposed change in criteria for participation.

Mr. MICA. I will call now on Mr. Michael Howland, president of the Independent Charities of America.

Mr. HOWLAND. Mr. Chairman, distinguished subcommittee members, thank you for this opportunity to testify.

The Independent Charities of America is an umbrella organization consisting of 12 participating CFC federations. The Office of Personnel Management has approved a total of 416 of our agencies for participation in the fall 1995, campaign.

Independent Charities of America was founded by Federal employees in 1988 and, in fact, my own experience in chairing the San Francisco Bay Area Combined Federal Campaign and the Federal Executive Board, which oversees the campaign, led me to ICA initially as a volunteer.

My CFC involvement suggests that the campaign should continue to serve the dual purposes it serves so well.

One, offer Federal employees the opportunity to give eligible agencies their funds with a current penultimate freedom of choice, efficiency and effectiveness that have made the Combined Federal Campaign a model for workplace campaigns. This is true not only in the public sector but in the private sector, which Congresswoman Morella asked about, as well. In fact, even the once exclusive United Way campaigns in San Francisco and Washington, DC, have moved to inclusive CFC-style campaigns. Not surprisingly, the expanded choice has yielded stronger campaign results.

Two, provide participating charitable organizations the opportunity to solicit funds for their respective missions in the least obtrusive, least costly means of fundraising possible.

My experience convinces me that the taxpayer subsidy of the Combined Federal Campaign is minimal while the benefits are many. Stronger morale in the Federal workforce, positive perceptions of Federal employees and the Federal Government in general in the eyes of the public, greater awareness of charities that often leads to volunteerism outside of the Federal workplace and developmental experiences for employees at all levels are very important by-products of the Combined Federal Campaign. These are in addition to the obvious benefit of funding a plethora of causes that employees feel are worthy of their contributions of personal after-tax dollars.

I would like to address the issue of manpower costs which I feel are greatly exaggerated. By way of illustration, the San Francisco district Small Business Administration office I led uses two employees to coordinate their campaign for roughly 60 employees. One of the two may attend a half-day kickoff—excuse me, a half-day training. The kickoff lasts 30 to 45 minutes, and some employees donate on the spot. The coordinators may spend 2 hours each collecting from the rest of the employees.

In the last district office campaign I oversaw we contributed an average gift of $258, a tremendous return to society on a modest investment of employee time.

As Chair of the Combined Federal Campaign for the Bay Area I worked probably 20 hours a week when the campaign was at its peak, but I assure that was in addition to—not in lieu of—my responsibilities of running SBA. And that's how I believe all Combined Federal Campaign leaders view their campaign commit-

ments. It is an honor to serve, but Federal missions must be accomplished.

As donors are provided with more choice, more are likely to give, and those who give are likely to give more. I never heard an employee complain that there are too many choices.

Each of the Independent Charities of America member federations annually surveys Combined Federal Campaign donors. Freedom of choice is cited consistently as a reason for giving.

Mr. Chairman, I received last night the results of an independent poll of 800 Federal employees conducted by the firm of Fabrizio, McLaughlin, and Associates. I would like to submit the entire poll and results for the record, but I would like to briefly give you the findings.

[The information referred to follows:]

TO: ALL INTERESTED PARTIES

FROM: FABRIZIO, McLAUGHLIN & ASSOCIATES

RE: EXECUTIVE SUMMARY - COMBINED FEDERAL CAMPAIGN SURVEY OF FEDERAL EMPLOYEES

DATE: JUNE 6, 1995

METHODOLOGY

This survey of federal employees, regarding their attitudes towards the Combined Federal Campaign, was conducted between June 2 and 5, 1995. All interviews were conducted via telephone by professionally trained personnel. Respondent selection was at random among a list of known federal employees. This survey of 800 federal employees has an accuracy of +/- 3.5% at a 95% confidence interval.

KEY FINDINGS AND SIGNIFICANT DATA

- ☑ An amazing 93.0% of federal employees approve of "continuing to allow federal employees the right to voluntarily make charitable contributions through workplace giving to the charities of their choice." Nearly eight of ten respondents "strongly approve" of continuing this practice, which demonstrates a clear intensity of support for this issue.

- ☑ Almost nine of ten respondents "believe that federal employees should be able to choose to support - through the Combined Federal Campaign - charities that speak out on behalf of the people they help."

- ☑ An astonishing 92.8% of respondents claimed to have contributed to the Combined Federal Campaign in the past. Moreover, seven of ten said they expect to contribute to the Combined Federal Campaign during the next year.

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801 North Fairfax Street • Suite 312 • Alexandria, Virginia 22314

- ☑ Overall, 71.5% of the federal employees said they "are satisfied with the way the Combined Federal Campaign is run."

- ☑ A strong majority of the federal employees, 66.3%, do not "feel Congress should limit the types of charities that you can support in the Combined Federal Campaign."

- ☑ A plurality of federal employees, 38.5%, would be less likely to contribute to the Combined Federal Campaign if the types of charities that could receive donations were significantly reduced. In contrast, only 28.9% said they would be more likely to contribute, while 20.8% were "not sure."

CONCLUSIONS

The old saying, "if it isn't broke, then don't fix it" is the perfect axiom for the Combined Federal Campaign. The results of this survey clearly show that the Combined Federal Campaign, it its current form, enjoys a great deal of support among federal employees. In fact, there would be strong levels of resistance to any Congressional actions which limit the types of charities federal employees can choose to support by workplace giving. Any new limitations on federal employees contributory options would, in all likelihood, result in a significant decrease in participation. In conclusion, it is clear the Combined Federal Campaign is an extremely popular program which allows federal employees to contribute to their favorite charities in a comfortable manner.

Fabrizio
McLaughlin
& Associates

FINAL VERSION
FABRIZIO, MCLAUGHLIN & ASSOCIATES
NATIONAL SURVEY OF FEDERAL EMPLOYEES
JUNE 2-5, 1995
n800 = +/- 3.5%

Introduction: Good evening. My name is _____ and I'm calling from Fabrizio, McLaughlin & Associates, a national public opinion firm. This evening we're conducting a very short survey regarding your experiences and perceptions as a federal employee with the Combined Federal Campaign or CFC. We would like to get your opinions. Your responses will be held in the strictest of confidence and your identity will remain anonymous.

1. Are you currently employed by the Federal government?

1.	Yes	100.0	2.	No/All other responses (Terminate)	

2. Have you ever contributed to the Combined Federal Campaign?

1.	Yes	92.8	2.	No	7.0
3.	DK/Refused	0.3			

3. Do you expect to contribute to the Combined Federal Campaign during the next year?

1.	Yes	69.5	2.	No	22.6
3.	DK/Refused	7.9			

4. Overall, would you say you are satisfied with the way the Combined Federal Campaign is run?

1.	Yes, satisfied	71.5	2.	No, not satisfied	17.3
3.	DK/Refused	11.3			

5. Do you feel Congress should limit the types of charities that you can support in the Combined Federal Campaign?

1.	Yes, limit	24.8	2.	No, not limit	66.3
3.	DK/Refused	9.0			

6. If the types of charities that could receive your donations were significantly reduced, would you be more likely or less likely to contribute to the Combined Federal Campaign in the future?

1.	More likely	28.9	2.	Less likely	38.5
3.	Not sure (Volunteered)	20.8	4.	DK/Refused	11.9

7. Do you approve or disapprove of continuing to allow Federal employees the right to voluntarily make charitable contributions through workplace giving to the charities of their choice? (PROBE: Strongly approve/disapprove, Somewhat approve/disapprove)

1.	Strongly approve	78.6	2.	Somewhat approve	14.4
3.	Somewhat disapprove	2.6	4.	Strongly disapprove	2.5
5.	DK/Refused	1.9			
	TOTAL APPROVE	93.0		**TOTAL DISAPPROVE**	5.1

8. Do you believe that federal employees should be able to choose to support - through the Combined Federal Campaign - charities that speak out on behalf of the people they help?

1.	Yes	88.0	2.	No	4.8
3.	DK/Refused	7.3			

9. Gender (By observation)

1.	Male	47.0	2.	Female	53.0

10. Area: (PRE-CODE)

1.	Northeast	19.8	2.	Midwest	12.0
3.	South	48.0	4.	West	20.3

Mr. HOWLAND. An amazing 93 percent of Federal employees approved of continuing to allow Federal employees the right to voluntary make charitable contributions through workplace giving to the charities of their choice. Nearly 8 of 10 respondents strongly approved of continuing this practice, which demonstrates a clear intensity of support for this issue.

And almost 9 of 10 respondents believe that Federal employees should be able to choose to support, through the Combined Federal Campaign, charities that speak out on behalf of the people they help.

I encourage you to retain criteria for admissions in the Combined Federal Campaign as they are crafted today. This is no time to heap an intricate quagmire of regulations and definitions on a marketplace that has served extraordinarily well. Federal employees are extremely capable of choosing charitable organizations to whom they give their hard-earned salaries.

Mr. MICA. I thank you, Mr. Howland.

[The prepared statement of Mr. Howland follows:]

Thank you, Mr. Chairman and distinguished subcommittee members for the opportunity to testify on the Combined Federal Campaign.

While I am here today as the full time President of Independent Charities of America, an umbrella organization consisting of 12 federations representing 416 agencies approved by the U.S. Office of Personnel Management (OPM) for the fall 1995 Combined Federal Campaign, I have also participated in the Combined Federal Campaign in many capacities: donor; Director of U.S. Small Business Administration (SBA) offices that held campaigns; chair of the record breaking 1987 San Francisco Bay Area Combined Federal Campaign; chair of the 1990 San Francisco Bay Area Federal Executive Board that acts as the Local Federal Coordinating Committee (LFCC) for the Combined Federal Campaign and as a member of that Board for 5 years; and as a volunteer leader of the United Way of the Bay Area, the Cystic Fibrosis Foundation and Independent Charities of America, all of which participate in the campaign. I also testified before OPM's Blue Ribbon Task Force on the Combined Federal Campaign in San Francisco.

The Combined Federal Campaign should continue to serve the dual purposes it serves so well: (1) Offer federal employees the opportunity to give to eligible charities with the current penultimate freedom of choice, efficiency and effectiveness that have made the Combined Federal Campaign a model for workplace campaigns not only in the public sector, but the private sector as well. In fact, even the once exclusive United Way campaigns in San Francisco and Washington D.C. have moved to inclusive CFC-style campaigns; not surprisingly, the expanded choice has yielded stronger campaign results; and (2) Provide participating charitable organizations the opportunity to solicit funds for their respective missions in the least obtrusive, least costly means of fundraising possible. This is especially critical for many of our agencies in an era in which the federal government programs that helped to fund many of them are being eliminated or reduced dramatically.

My experience convinces me that the taxpayer subsidy of the Combined Federal Campaign is minimal, while generating stronger morale in the federal work force, positive perceptions of federal employees and the federal government in the eyes of the public, greater awareness of charities that often leads to volunteerism outside of the workplace by federal employees, and developmental experiences for employees at all levels, in addition to the obvious benefit of funding a plethora of causes that employees feel are worthy of their commitments of personal after tax dollars. The indirect benefits of the CFC far exceed the indirect costs of human manpower. My phone rang off the hook when San Francisco columnist Herb Coen mentioned my involvement in the Combined Federal Campaign: every caller to a person applauded the existence of the campaign, the example being set by federal employees and my personal commitment to the effort. Learning about Independent Charities of America and the Cystic Fibrosis Foundation though the campaign led me to use much of my annual leave to volunteer on behalf of those organizations. In fact, federal employees, led by the Internal Revenue Service's San Francisco Deputy District Director James Casimir, founded Independent Charities of America in 1988.

By way of illustration, the San Francisco District SBA office uses two employees to coordinate the campaign for roughly 60 employees. One of the two may attend a half day training session. The kick-off lasts 30-45 minutes. Some employees donate on the spot; coordinators may spend two hours each collecting pledges from others. In the last district office campaign I led, our average gift was $258, a tremendous return to society on a very modest investment of employee time. As Chair of the San Francisco Bay Area Combined Federal Campaign, I worked for 20 hours per week on the campaign at its peek, but I assure you that it was in addition to, not in lieu of, my responsibilities of leading SBA. That is how I believe all the Combined Federal Campaign leaders view their campaign commitments: it is an honor to serve on the Campaign, but federal missions must be accomplished.

Research and trends in the Combined Federal Campaign and other workplace fund drives

demonstrate conclusively that, as donors are provided with more choice, more are likely to give, and those who give are likely to give more. Of our collective 416 ICA members, we estimate that between 100 and 158 could be eliminated if participation were restricted to traditional health and human service agencies. However, the overwhelming majority of our members who would not be affected by restricting participation favor maintaining the current standards for eligibility, recognizing that, much as Combined Federal Campaign donations soared when the campaign was expanded, they will decrease if the campaign is restricted, hurting indirectly those charities that any legislation purportedly may benefit.

I never have heard an employee complain that there are too many choices. Each of ICA's member federations annually surveys Combined Federal Campaign donors. Freedom of choice is cited consistently as a reason for giving. In fact, an amazing 93% of federal employees approve of continuing to allow federal employees the right to voluntarily make charitable contributions through workplace giving to the charities of their choice. Almost nine of ten respondents "believe that federal employees should be able to choose to support - through the Combined Federal Campaign - charities that speak out on behalf of the people they help." These are the findings of an independent study of 800 randomly selected federal employees by the firm of Fabrizio, McLaughlin and Associates. I am submitting the entire survey (attached) as part of my testimony for the record.

Our 12 member federations have adopted stricter admissions standards than those promulgated by OPM. I have attached them for your consideration (along with the 5 year history you have requested) should the sheer size of the campaign be a genuine concern. However, I encourage you to retain criteria for admissions in the Combined Federal Campaign as they are crafted today. This is no time to heap an intricate quagmire of regulations and definitions on a marketplace that is served extraordinarily well by federal employees who are capable of choosing charitable organizations to whom they give their hard earned salaries.

Again, thank you for allowing me this opportunity to address this issue before you today.

Independent Charities of America
Combined Federal Campaign History

1988	ICA	20 Members	$ 7,187,628
1989	ICA	52 Members	$10,356,160
1990	ICA	79 Members	$12,389,820
1991	ICA	132 Members	$17,876,450
1992	ICA	169 Members	$16,547,200
	CCA	44 Members	$ 5,381,000
	WSOA	30 Members	$ 1,500,900
		243 Members	$23,429,100
1993	ICA	178 Members	$11,256,800
	CCA	78 Members	$ 7,050,700
	WSOA	53 Members	$ 1,585,200
	MRAA	31 Members	$ 6,030,300
		340 Members	$25,923,000
1994*	ICA	108 Members	$ 8,859,611
	CCA	92 Members	$12,162,599
	WSOA	44 Members	$ 1,958,982
	MRAA	31 Members	$ 8,828,005
	AFA	17 Members	$ 4,076,335
	WCA	20 Members	$ 656,711
	MVPPSOA	15 Members	$ 2,032,859
	H&CROA	25 Members	$ 1,053,277
	CSOA	29 Members	$ 3,098,837
		381 Members	$42,709,316

* Donations for 1994 Are Unaudited

1995	ICA	32 Members
	CCA	89 Members
	WSOA	39 Members
	MRAA	32 Members
	AFA	18 Members
	WCA	29 Members
	MVPPSOA	20 Members
	H&CROA	33 Members
	CSOA	42 Members
	CPCA	21 Members
	EA!	19 Members
	HCA	42 Members
		416 Members

Mise

ICA	Independent Charities of America
CCA	Children's Charities of America
WSOA	World Serivice Organizations of America
MRAA	Medical Research Agencies of America
AFA	Animal Funds of America
WCA	Women's Charities of America
MVPPSOA	Military Veterans and Patriotic Public Service Organizations of America
H&CROA	Human & Civil Rights Organizations of America
CSOA	Christian Service Organization of America
CPCA	Conservation & Preservations Charities of America
EA!	Educate America!
HCA	Health Charities of America

Independent Charities of America (ICA) and ICA Partner Admissions Standards Compared To Combined Federal Campaign Standards

Independent Charities of America (ICA) agencies must reapply and be re-certified each year. As a minimum starting point, the applicant must meet the eligibility criteria for admission to the Combined Federal Campaign (CFC) for that year (i.e. audit, 990, annual report, activity in 15 states, overhead 25% or less). In addition to meeting CFC criteria, the applicant agency must certify and provide evidence that:

1. Its combined administrative costs plus fund raising costs, as reported on its current IRS Form 990 return, are under 25% of total public support and revenue. An agency that was under 25% last year but between 25% and 30% this year may be granted a one-year exception based on good cause. There are no exceptions for agencies over 30%, or for a second time exception over 25%. (Difference with CFC is that Director of OPM has authority to make exceptions for agencies over 30% .)

2. In addition to meeting the CFC "15 state" test to determine national presence, the applicant must also meet ICA's "substantive program" test. To pass this test the applicant must present evidence that a "reasonable donor" would find that the applicant has a program that is (a) substantial; (b) benefits a national treasure, or national interest, and national constituency.

3. For CFC eligibility, the Form 990 is conclusive. For ICA, in addition, the form 990 numbers must match those presented in the audited financial statement. That means that audits must be completed so that the public can easily see what the auditors say is spent on program and what is spent on overhead.

4. CFC does not differentiate between "in-kind" donations/ "in-kind" program compared to "cash" donations/ "cash" program. ICA does. The reason ICA does is that the value of "in-kind" income/program is subject to dispute. Cash is not. ICA first requires applicants to report their "in-kind" donations/program under the standards promulgated by the Association of Evangelical Relief & Development

Organizations (AERDO). These are the toughest standards currently available. ICA then calculates overhead without including "in-kind" valuations, but only cash contributions/programs. If the cash-only overhead is above 25%, the agency is held to additional scrutiny.

5. Current GAAP rules allow agencies to allocate joint costs of fund raising/public education. (Example: A telethon educates the public about an agency's work and also asks for money). CFC accepts the auditor's allocation. ICA allows no allocation above 50% to public education, regardless of the auditor's finding.

6. For CFC purposes, an agency must print an annual report to the public. For ICA, an agency must also complete a special annual report, which ICA designed. The ICA-report is the one sent to donors.

7. Finally, ICA has a "sniff-test" procedure. An applicant can meet all technical requirements and still be denied if the admissions committee has any reason to believe the eligibility evidence presented is not credible. ICA has an "inclusiveness" eligibility policy, but the burden of proof of meeting eligibility is on the applicant.

Mr. MICA. I now call on Don Sodo, executive director, America's Charities.

Mr. SODO. Congressman Mica and subcommittee members, thank you for this opportunity to testify. In addition to my remarks, I am including additional written testimony.

My name is Don Sodo. I am the executive director of America's Charities. I have worked in the non-profit sector for over 25 years with a variety of organizations serving children, the disabled and the economically disadvantaged in the United States and overseas.

America's Charities is a federation of 80 national charities which participate in the CFC, as well as in over 100 other public and corporate workplace-giving campaigns throughout the United States. Our members include such charities as the Make-A-Wish Foundation of America, Habitat for Humanity International, the National Right to Life Educational Trust Fund, the Multiple Sclerosis Association of America, the NAACP Legal Defense and Education Fund and Give Kids the World.

I am also here to acknowledge the position of Independent Sector. Independent Sector is a coalition of 800 corporate, foundation, and charity members, including the Girl Scouts, the YMCA, American Cancer Society, American Red Cross, Salvation Army and corporations like Aetna Life. Independent Sector is respected nationally for its role in encouraging volunteering and helping all of us to be better people and serve our communities better.

Independent Sector testimony strongly opposes restricting choices in the CFC, noting the irrevocable harm that could be caused to the charitable community.

I would also like to stress several other points:

First, after years of contention, litigation and legislation in the 1970's and 1980's, the CFC has functioned effectively and successfully since the passage of bipartisan CFC reform legislation. Since 1987, giving levels have increased at twice the rate of growth as traditional limited choice campaigns.

Giving to "traditional" charity members of America's Charities has increased by 7 percent between 1988 and 1994, and I believe that the group of all traditional charities in the CFC today is receiving millions of dollars more annually than before choices were expanded in 1987.

Overall giving in the CFC has skyrocketed, increasing from $83 million in 1979 to $197 million in 1993, an increase of 137 percent. Between 1987 and 1991 the average contribution rose from $59 to $89. Federal employees have demonstrated their preference for the added choices in the CFC by their increased support.

And we should note that, due to anti-coercion rules that were put in place in 1979 and 1980, which were the result of a successful contention by Federal employees that they were too highly pressured to give, which I think we all agree is not appropriate, of course participation rates did drop after that.

The CFC today is the most successful workplace-giving campaign in the country and a model for many others.

Second, the free market works in the CFC, just as in the private sector. Like the CFC, numerous corporations today provide hundreds of charity choices to their employees, and more are doing so every year. Corporations are providing these choices because they

want to respond to the diverse charity interests of their employees. As a result, these corporate campaigns are also more successful than previous limited choice campaigns.

Third, no charity is getting a free ride in the CFC. The direct costs are paid by charities in the amount of $15 to $20 million per year. They pay for printed campaign materials, the management of the campaign and the distribution of contributions.

Compared to workplace campaigns run by many corporations, the Federal Government contributes far less in average volunteer time and none of the millions of dollars in direct costs absorbed by companies.

Finally, I believe that the concept of advocacy is being viewed inappropriately in the debate around the CFC. None of the charities participating in the CFC are political advocacy organizations. None support political candidates.

Some do lobbying to the degree allowed by the tight restrictions placed on charities by the IRS. Whether it is advocacy on behalf of the blind, disabled, abused children, veterans, for medical research, against drunk driving or against domestic violence, advocacy activities are part of the tradition of our free society. They each have an ideology, but we support their freedom to do so.

Advocacy and free speech are the cornerstones of our democratic ideal. The charities in the CFC today are no more or less controversial than other institutions of our society. They are merely a reflection of the healthy, vibrant free speech values that keep our country strong.

Employees are really ahead of us in their thinking. They recognize that the issues of the 1990's are far different from the issues of the 1950's and 1960's.

I believe that the central purpose of workplace-giving campaigns nationwide, including the CFC, is to demonstrate the unique American commitment to caring and sharing. This commitment recognizes that our country is stronger when every American institution and employer, public or private, plays a significant role in charity activity.

Charity campaigns should not seek to control or arbitrarily limit the charity choices of employees but simply provide a forum for employees to make a free choice to give or not and then trust the wisdom and judgment of our employees.

In conclusion, I would urge that the committee recognize the benefit of less government intervention and to refrain from legislation that would harm the CFC charity service and be contrary to the interests of the Federal employee taxpayers themselves.

Thank you very much.

Mrs. MORELLA [presiding]. Thank you very much, Mr. Sodo.

[The prepared statement of Mr. Sodo follows:]

Testimony to the Civil Service Subcommittee
U.S. House of Representatives
June 7, 1995

Testimony of Don Sodo
Executive Director, America's Charities

Cong. Mica and Subcommittee Members, thank you for this opportunity to testify. In addition to my remarks, I am including additional written testimony.

My name is Don Sodo. I am the Executive Director of America's Charities. I have worked in the non-profit sector for over 25 years with a variety of organizations serving children, the disabled, and the economically disadvantaged in the U.S. and overseas.

America's Charities is a federation of 80 national charities which participate in the CFC, as well as in over 100 other public and corporate workplace-giving campaigns throughout the United States. Members of America's Charities include the Make-A-Wish Foundation of America, Habitat for Humanity International, the National Right to Life Educational Trust Fund, the Multiple Sclerosis Association of America, the NAACP Legal Defense and Education Fund and Father Flanagan's Boys' Home.

America's Charities received contributions ranging from $9 million to almost $15 million in the CFC from 1990-1994.

I would like to stress several points in this testimony:

First, after years of contention, litigation, and legislation in the 70s and 80s, the CFC has functioned effectively and successfully since 1987.

Our experience leads us to believe that federal employees like the CFC and the variety of charity choices it provides. Since the legislation of 1987, giving levels in the CFC have increased at twice the rate of growth in traditional, limited choice campaigns.

In fact, giving to "traditional" charity members of America's Charities increased by 7% between 1988-1994. There are hundreds of additional "traditional" charities participating in the CFC today compared to the 1980s.

While I do not have data for charities other than our members, I believe that the group of "traditional" charities in the CFC today is receiving millions of dollars more annually than before choices were expanded in 1987.

I believe that giving to "traditional" charities has increased, not decreased, because of the added choices now available.

Overall giving in the CFC has skyrocketed since 1979, increasing from $82.8 million to $196.8 million in 1993, an increase of 137%. Between 1987 and 1991 the average contribution rose from $59.11 to $89.32. I believe that federal employees have demonstrated their preference for the added choices in the CFC by their increased support.

Second, the free market works in the CFC, just as it does in corporate campaigns providing expanded choices. Increased competition among charities is good. Charities are forced to be more efficient, to lower their fundraising costs, and to deliver higher quality programs and services.

Research and campaign experience, especially in the private sector, has consistently shown that employees want more choices, not less. Like the CFC, numerous corporations provide hundreds of charity choices to their employees.

Corporations are providing these choices because the charities listed reflect the diverse interests of their employees

in today's society. They also recognize that the social issues of the 90s are far different from those of the 50s. As a result, these campaigns are more successful than previous, limited choice campaigns.

Third, viewpoint-related restrictions on choice, including turning back to regulations proposed in 1986, would increase the cost of the CFC.

There would be no reduction in the amount of time contributed by federal employee volunteers. It makes no difference whether there are 100 or 1,000 charities in the CFC.

Instead of the relatively smooth and efficient system now in place to determine CFC eligibility, a regulation and paperwork nightmare would occur.

Turning back to the proposed regulations of 1986 would increase the time spent by federal employee committees in some 450 communities. Groups of employees in each location would be required to spend far more time evaluating the applications of some 1,000 national charities, in addition to local charities. Implementing the proposed regulations would unnecessarily and substantially drive up the federal employee time involvement in the campaign.

Even with the variety of choices in the CFC today, it is an employee-friendly, efficient campaign. You can find a charity of interest in any CFC brochure as fast and easy as you can find a plumber in the yellow pages.

Fourth, no charity is getting a free ride in the CFC. The direct costs of the CFC are paid by participating charities in the amount of about $20 million per year. The charities pay for printed campaign materials, the management of the campaign, and to process contributions.

Compared to workplace campaigns run by many corporations, the federal government contributes far less in average volunteer time and none of the direct costs absorbed by companies.

In the CFC, the federal government spends nothing for campaign materials, employee incentives, for processing pledge cards, or in matching gift contributions. In the private sector, companies spend millions of dollars in these areas as part of their workplace giving campaign.

Thousands of corporations and their employees view workplace campaigns as a demonstration of their social responsibility. Their shareholders understand the importance of charities in their communities and support campaigns that solicit 80-100 million employees annually.

Some may view a workplace campaign as a subsidy to charities. For others, the "contribution" or "investment" by employers permitting a workplace campaign is a demonstration of the caring and sharing that makes our country so unique and special.

At a time when we are all concerned about doing things better, smarter and cheaper, workplace campaigns are not only valued by employees, but they are the most economical form of fundraising available to charities.

Finally, I believe that the concept of advocacy is being viewed inappropriately in the debate around the CFC.

None of the charities currently participating in the CFC are political advocacy organizations. None support political candidates. As public charities, some do lobbying to the degree allowed by the tight restrictions placed on charities by the IRS.

The American Foundation for the Blind (AFB) is member of America's Charities. AFB was Helen Keller's organization. AFB's focus is to help the blind and visually impaired achieve equality of access and opportunity. It has distributed millions of Braille books and materials.

In addition, a small part of AFB's work is to monitor federal legislation, regulations and court decisions and to provide information to policymakers on critical issues affecting persons who are blind or visually impaired. These are valued and vital advocacy activities for millions of Americans.

Other charities carry out similar advocacy and lobbying functions regarding child abuse, domestic violence, veterans issues, or regarding medical research, for example. Sometimes these groups also carry out litigation as a means of seeking to correct a wrong or to let our judicial system determine an issue. Just as every citizen, corporation, or the government itself has this right, so do charities.

Advocacy activities are part of the tradition of our free society. Advocacy and free speech are the cornerstones of our democratic ideal, making the United States unique among the nations of the world. The charities in the CFC today are no more or less controversial that other institutions of our society. They are merely a reflection of the healthy, vibrant free speech values that make our country strong.

I do not believe that the CFC should exclude groups on the basis of limited lobbying activities which already conform to IRS requirements. I do not think that a separate, duplicate system, creating more bureaucracy and cost, is needed in the CFC.

I believe that the central purpose of workplace giving campaigns nationwide, including the CFC, is to demonstrate the unique American commitment to caring and sharing. This commitment recognizes that every American institution, public or private, can play a significant role in, and receive compensating benefits from, workplace campaigns that express their support for charity activity, the diverse needs of our society, and the highly varied interests of employees.

Campaign leaders should not seek to control or arbitrarily limit the charity choices of employees, but simply provide a forum for employees to make a free choice to give or not to give.

I hope that the committee will not take a step backwards and send the wrong signal to America. Today, the CFC represents a commitment to caring, a respect for diverse charity programs, a trust that employees can and should make their own giving decisions, and a free market of choice.

Based on the successful record of the CFC, employees' demonstration of their preference for wide and diverse choice, and the alternative consequence of increasing the bureaucracy and cost

of the CFC, I urge the committee to recognize the benefit of less government intervention and to refrain from legislation that would do far more harm than good. The CFC is working, please don't change it.

Thank you for the opportunity to testify.

g:/doc/don/cfc.test

TOTAL CFC PLEDGES TO AMERICA'S CHARITIES
1990-94

Campaign	Total Pledges
1990	$13,234,374
1991	13,892,427
1992	12,682,705
1993	14,602,953
1994	9,000,000 (est.)

Note: The pledge amount received varies depending on the number of members in America's Charities, the number of charities participating in the overall CFC, total giving in the CFC, and federation listing in the campaign materials.

Mrs. MORELLA. And we will now hear from Capt. James Hollenbach, president of the Christian Service Organizations of America.

Captain HOLLENBACH. Thank you, ma'am.

I would like to take advantage of the committee's kind offer and submit my written statement for the record. And I have three major points I'd like to make.

Before I begin I'd like to make it clear that I am testifying not in any official capacity but rather as an individual service member who's been very much involved with the CFC throughout my 25-year career. That involvement has had four facets:

One is as a donor.

The second is as a manager of CFC operations inside the individual commands in which I have served.

The third is as a recipient of the benefits of CFC-funded charities.

And the fourth is as an unpaid volunteer involved in the governance of two Combined Federal Campaign federations—first, as a director of Independent Charities of America, and now as president of CSOA, as you indicated.

The first point I would like to make is in regard to costs. I'm afraid that we're only looking at part of the equation. And the part we're looking at has some misinformation associated with it.

From my standpoint as division officer or department head or commanding officer of a military unit involved in a CFC, I saw very little negative impact on my workforce for its involvement. The time demands are not high. The functions are in addition to, not in place of normally assigned duties. It's an opportunity for individuals to be able to come together for a common cause.

And that brings me to the benefits side of this, and that's the piece that I think we've missed. As a squadron commanding officer, I looked forward to the Combined Federal Campaign. It gave me a chance to give a senior enlisted man or a junior officer an opportunity to show his leadership, to put together a creative, perhaps innovative, campaign and coordinate an effort across the squadron to bring people together.

It provided a sense of unity for the squadron. We were working as a team to achieve good. We were able to draw together and compete with other units in trying to do the most good. This had a positive impact on morale in the squadron. We reinforced the moral obligation of each individual military member to serve his neighbor and out of that came a more effective organization. I think we've reaped more benefit from our participation in the Combined Federal Campaign than any price we paid.

The second point I'd like to discuss is the matter of the slippery slope of defining advocacy. I chose to get involved in a governance of Combined Federal Campaign federations for two reasons.

The first one was to be able to look those sailors in the eye and assure them that their dollars were being well spent, that in fact those were legitimate enterprises that they were contributing to and they were accomplishing the purpose for which they intended their contributions.

But the second one was to try to do the greatest amount of good. And I have strongly felt opinions, just like I'm sure every member

of the panel does, regarding the particular worthiness of individual charities on the list. And many of the charities that participate in the CFC I don't think are worth a dime—compared to the ones I like. But the problem is, who's to say? And is my list very different than yours? I believe that's the case.

As one very personal example, my son is a Korean orphan that is graduating from high school in Alexandria next week. We adopted him through Holt International Children's Services, which is a Combined Federal Campaign funded organization. In the course of their good work, they testified to the motivation provided by their belief in Jesus Christ. It's a Christian organization. Does the fact that they do that turn them into an advocacy organization?

And if the answer to that is, no, that's not what we meant, what's going to happen next year? Who is going to decide then? How do we try to define something as fuzzy as advocacy?

In fact, I don't think any of us can separate our actions from our motivations. They are intricately entwined. And, in fact, I think the donor wants to know what motivates an organization. So when I became involved in the governance I had to raise the question of, am I going to serve those organizations that I might disagree with as well as those that I support? And my answer was yes.

Because I believe that we have to take the same course that the Founding Fathers did, and that is trust the people. The people are going to make choices that reflect what we as a society believe, and we have to believe that we as a society are going to find the right course and pick the right charities to support.

The third point I wish to make is the one of the ramifications of this change that's being considered. The history of the CFC is rich with very strong efforts on the part of the civil servants, on the part of the military personnel, to be able to give to who they wish. And the CFC has changed as a result, as has been noted here. And we've also noted the increase in contributions and the general success of that course of action.

The average military member, the average civil servant is very well informed, as you've noted earlier. We are very much pleased with the way things are now. I've been through lots of iterations of this campaign, and it's better now than I've ever seen it before. I think if there is an effort to take away from the Federal employee the right to choose that there will be a very adverse reaction.

As has been noted, this is voluntary. We give because we choose to. Most of us are fairly independent and don't like being told who we can give to. My concern is that if the committee, if the Congress follows this course and attempts to establish some criteria of worthiness for who participates that the reaction from the giving populous, the donors inside the Federal workplace, will be to walk away from the CFC.

If we do that, the dollars are, of course, going to drop. The amount of good that is going to be accomplished is going to suffer. And at a time when our Nation is expecting more and more out of charitable organizations, to pick up and care for our fellow man, we're going to see damage to this Nation that I don't want to see at all.

And so, in summary, I would just say I think things are good. I think we are on the right course in executing the campaign as

it exists today. And if we are to go the other way we are going to incur a great deal of risk of doing dramatic damage to our society and alienating the Federal workforce as well. I urge you not to take that course but to stay along the path we have established today.

Thank you.

Mrs. MORELLA. Thank you for your testimony, Captain Hollenbach.

[The prepared statement of Captain Hollenbach follows:]

Mr. Chairman and distinguished members of the committee, I thank you for the opportunity to share my observations regarding the Combined Federal Campaign, a subject of significant importance to members of the federal work force and to the people of our nation as a whole.

I have served on active duty in the United States Navy for the past 25 years and am currently assigned to the office of the Secretary of Defense. However, I am testifying not in any official capacity, but rather as an individual member of the Armed Services who has been intimately involved in CFC operations throughout my career. That involvement falls into four categories:

1. As an individual donor
2. As a manager of CFC operations within my commands
3. As a recipient of benefits from CFC-funded charities
4. As an unpaid volunteer involved in the governance of CFC federations.

In this last category I have served as a member of the Board of Directors of Independent Charities of America, and I now serve as President of one of the newer CFC federations, Christian Service Organizations of America (which made $3.1 million from the CFC in 1995).

The history of the CFC is rich with evidence of federal workers, the donors, fighting for inclusion of an ever greater choice of charities to which they might contribute. That drive by the donors has succeeded and has been reflected by the success of the CFC as a whole. I have been through several iterations of the CFC in my naval career, and I can tell you that the current arrangements, regulations, and practices are the best I've seen. We can choose from among a very broad range of national and international charities and, while each of us will find in the CFC campaign brochure many charities we disagree with or flat out dislike, we are also assured of finding all the ones we do care about. We have a very broad right to choose; each individual can decide which agencies are deserving of their gifts.

Although one can find occasional grousing about the difficulty of making a choice among the

large number of listed organizations, the vast majority of DOD personnel are pleased to have the right to make such a choice. The average soldier, sailor, airman, Marine, or DOD civilian employee is intelligent and well informed. Turning back the clock is not a viable option; he or she will notice any significant change to CFC operations and will be resentful if their choices become more restricted than is the case today. We must remember that giving is voluntary; we don't have to do it. It is my opinion that if the government tries to limit the range of charities to whom federal workers can contribute, then a great number of these donors will simply walk away from the CFC, refusing to donate at all. This would clearly have an adverse affect on the health and human welfare of our nation, particularly during a time when the government will be relying on charitable organizations to assume a greater burden for caring for our citizens.

I have served in several capacities administering the Combined Federal Campaign in the various squadrons, ships, and shore commands to which I have been assigned. Some people have suggested that the federal government spends too much of the taxpayer's money supporting the CFC. I don't know where such charges come from, but my experience as a Navy officer would support exactly the opposite conclusion. CFC administration is almost always a collateral duty, and one that doesn't take a lot of time. People do it in addition to, not in place of, their regular jobs. Meanwhile the real dollar costs are borne by the charities themselves, just as fundraising costs are usually financed.

I, my family, my shipmates, and many friends around the globe have all benefitted from services made possible by CFC donations. My family's list includes medical services, spiritual counseling, adoption services, and assistance while traveling oversees. My son, a Korean orphan who graduates from High School this month, came to us via Holt International Children's Services. My military career was probably saved when my life was turned around as a result of coming to understand the good news of Jesus Christ through participation in the Officer's Christian Fellowship and Navigators activities while I was stationed oversees.

All three of these agencies I mentioned currently participate in the CFC, but because in the course of their operations they also follow the command of Holy Scripture to witness to the truth of the Gospel, might they be branded as advocacy groups? Hence, under the proposed revisions to CFC regulations, will you make them ineligible to participate? And if the answer this year is no, we didn't mean them, what will different people decide next year? How can you separate an agency's motivations from their actions? Our donors understand the two are inextricably linked, and in fact they tell us this is one of the principal reasons they support us. Would you ask our agencies to deny their faith to have access to the CFC? Would you deny our donors with the information they need to give in accordance with the dictates of their conscience?

It seems to me we will be treading on a very slippery slope should the government decide to impose such a "no advocacy" test to determine CFC eligibility. No matter what one's point of view, it all adds up to politicizing the CFC, which can only result in donors walking away and people being hurt.

I came to participate in the governance of Independent Charities of America and Christian Service Organizations of America for two reasons. The first reason is that these federations were primarily formed for the benefit of the donors, not the agencies. They fight to keep overhead costs low and to provide donors with the widest possible choice of organizations from which to select, yet they protect donors by ensuring that only legitimate, well governed charities wear the federation's label. It was important to me, as a leader, to be able to assure my sailors, who often gave not out of their excess, but out of their sustenance, that these organizations were being good stewards of their money and that their dollars would accomplish the purpose they intended.

The second reason I chose to participate in Independent Charities of America and Christian Service Organizations of America governance was to help their charitable agencies do the greatest amount of good. I think that most of the charities in the CFC are very worthy of

support, but I'll share with you that I don't think some of them deserve a dime, or even deserve to be listed along side those I consider worthy. The problem is that each of us has different CFC agencies on each list. Who is to say which of us are more correct in their judgements? I am persuaded that we must do what the founding fathers did when they established this nation: trust the people! That means trusting the donors to make wise choices. Their choices will ultimately reflect the values of society as a whole and we must trust that our American society will find the right course. And so I work to ensure that the CFC has good governance but is inclusive, trusting that the informed choices of the individual donors comprise a reliable guarantee that more good is being done by this course than any of the alternatives.

In summary, allow me to state again that current CFC arrangements, regulations and practices are the best I've seen. Choice is broad. Costs are low. Donors are happy. Many people are being helped. Please don't try to fix something that isn't broken.

Mrs. MORELLA. I would like to now turn to Charles Stephen Ralston, representing the NAACP Legal Defense and Educational Fund, and simply suggest, as you all know, that your total testimony will be included in the record and, of course, any synopses you could offer would be appreciated. Thank you.

Mr. RALSTON. Thank you. I would like to thank the committee for inviting the Legal Defense Fund to present its views. I would also like to say, in the immortal words of the immortal Yogi Berra, it seems like deja vu all over again.

The Legal Defense Fund has been involved in the whole Combined Federal Campaign matter since 1980, and in my prepared statement I have outlined our attempts to get in, the litigation we brought that got us in, how we almost got kicked out, and then, finally, how we got in for good. We have been in for 15 years.

In reading the letters and the materials that have now been published or issued on this issue, I have not seen anything that we didn't hear 15 years ago throughout the period when attempts were made to exclude us and other organizations. It is simply nothing new under the sun. And I, for one, would hate to see this all reopened and we go back to the contentiousness and litigation that we went through in the 1980's, which was finally resolved when Congress took hold of the matter and ensured that the Combined Federal Campaign would be an open campaign to which a variety of organizations can belong and so that Federal employees are given a free choice to give their money to whomever they felt was worthy of it.

There's been talk about "truly charitable" and "real charities" and "bona fide charities," and that somehow, organizations that are called "advocacy groups" aren't any of those things. Well, we are. I've given examples in our statement, which I won't repeat, of exactly what we do, the NAACP Legal Defense Fund. I'm using us as an example not to the exclusion of other organizations, but because I know what we do and I wanted to give the committee the facts about what we do and the kind of benefits we provide in the areas of human welfare, health, education, income maintenance, and a variety of other ways to people in need.

In the 15 years that we've been in the Combined Federal Campaign—and this is leaving aside the 40 years of our history before we got into the Combined Federal Campaign—our work has benefited poor and needy people to the tune of something over half a billion dollars, and this is on a budget over that same time period which is around $100 million for the 15 years.

In other words, the kind of work we do provides benefits far in excess of our budget, and this work has been helped immeasurably by our participation in the Combined Federal Campaign.

Over the same time period, we have received approximately $7.5 million in donations by Federal employees who look at our program and decide that we deserve their support. I say we do and I believe that any organization which is eligible and gets in and gets the support from Federal employees deserves that support because it is, after all, their money.

I would like to just say something about some of the questions that have come up so far during the hearing because I think there is some misunderstanding on a couple of issues. One is the notion

that there are 498,000 501(c)(3) charities out there that can somehow overwhelm the system.

The way the CFC works is that there are two different categories of organizations. There are national organizations, such as the Legal Defense Fund, which establish national eligibility and then participate in CFC's across the country. But each local CFC can then decide to let in local or regional organizations, and the vast majority of the 498,000 501(c)(3) organizations are such small local charitable organizations, that get in at the local level. They will not be in some vast national telephone book-sized list. As a matter of fact, many of those organizations come in under local umbrella organizations such as the United Way.

So in the Washington, DC, or New York or San Francisco area, you may have a large number of organizations on the list. You get out to South Dakota, and you will have national organizations and the relatively few local charitable organizations that qualify.

And, as the testimony has indicated, no Federal employee seems to be bothered by having to go through a list and deciding to whom they will give their money. The cost of printing that list, whether it be 1 page or 300 pages, is borne by the charities that participate in the local Combined Federal Campaign. It is not paid for by the government.

The other thing I would just like to mention is this issue of level of participation. It's true that back in the 1960's there was a higher level of participation. It's also true that at that time you did not have in place regulations or controls on coercion of employees and military personnel.

I come with a slightly different viewpoint than Captain Hollenbach. I was an enlisted man back in the early 1960's, and our First Sergeant made it very clear that he would be an unhappy First Sergeant if 100 percent of his men did not contribute. He didn't care how much. It could be $1. But as Privates we knew that unhappy First Sergeants made for unhappy Privates. We all put in, and there was 100 percent participation at about $1 a shot.

What has happened with the new regulations, that, hopefully, control coercion, is that you have a smaller percentage of people contributing, but they are all people who want to contribute. They contribute larger amounts, and they now can give to whomever they want to. And we suggest that is the way it should be, and we hope that it will remain that way.

Thank you.

[The prepared statement of Mr. Ralston follows:]

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STATEMENT OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
BY CHARLES STEPHEN RALSTON, SENIOR STAFF ATTORNEY
BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE OF THE
HOUSE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

HEARING ON THE COMBINED FEDERAL CAMPAIGN
JUNE 7, 1995

Chairman Mica, members of the Subcommittee, first, the NAACP Legal Defense and Educational Fund, Inc. (NAACP LDF) wishes to thank you for the opportunity to present its views concerning proposals that eligibility for participation in the Combined Federal Campaign (CFC) be restricted so as to exclude organizations that have been called "advocacy groups" that, it is claimed, do not directly benefit human and welfare. Second, the NAACP LDF, which is one of the organizations that has been categorized by some as such an "advocacy group" wishes to make clear from the outset its absolute and unwavering opposition to any such limitations on eligibility.

Briefly stated, the assumptions upon which such proposals are based are in error, both factually and legally. The Legal Defense Fund and similar organizations are not "advocacy groups," however that term may be defined. The Legal Defense Fund is a bona fide, legitimate 501(c)(3) charity that in fact provides direct benefits to human beings in the areas of health, education, income support, housing, and a variety of other areas of human welfare. Moreover, it does its work so efficiently that the benefits it provides far exceed its own income and expenses. Finally, it does not seek nor does it receive either funding or subsidies from the federal government.

Before elaborating on the above, I would first like to briefly describe the Legal Defense Fund and the history of its involvement with the Combined Federal Campaign.

I.
THE NAACP LEGAL DEFENSE FUND AND THE COMBINED FEDERAL CAMPAIGN

The NAACP Legal Defense and Educational Fund, Inc., is an entirely separate organization from the National Association for the Advancement of Colored People. The Legal Defense Fund was originally established by the NAACP as a separate corporation that could obtain tax-exempt status for NAACP activities that so qualified. The Legal Defense Fund was chartered under New York state law as a legal aid society and received tax-exempt status in 1940 from the federal government under the predecessor statutes to section 501(c)(3) of the Internal Revenue Code. The Legal Defense Fund's first Director-

Contributions are deductible for U.S. income tax purposes.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) is not part of the National Association for the Advancement of Colored People (NAACP) although LDF was founded by the NAACP and shares its commitment to equal rights. LDF has had for over 30 years a separate Board, program, staff, office and budget.

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Counsel was the late Thurgood Marshall.

In 1957, after investigations by the IRS that were instigated by members of Congress opposed to the Legal Defense Fund's work that led to *Brown v. Board of Education*, the Fund became completely separate from the NAACP, and since that time the Fund has had a separate board of directors, staff, funding, and program. The Fund has continued to work cooperatively with the NAACP, NAACP local branches, and many other civil rights organizations on matters of mutual interest. Our current Director-Counsel is Elaine R. Jones.

The Legal Defense Fund's charter recites that its central purpose is to provide legal assistance to indigent African Americans who are unable to afford legal assistance themselves because of their poverty, and who are suffering a denial of their constitutional and civil rights. The charter also provides that the Fund provide educational services and benefits to African Americans and the American public as a whole. Tax-exempt status was granted based on the principle that the provision of legal services to specific groups who suffer oppression because of their minority status is a bona fide charitable purpose, long recognized in the law. The Legal Defense Fund has maintained its tax-exempt status as a charitable, not-for-profit organization continuously since 1940, making it the oldest organization of its type in the country.[1]

The Legal Defense Fund first applied to the CFC in 1980 but was turned down because of the then-existing "direct services" rule, which provided that only legal organizations that provide "direct services" to represent individuals "without regard to how that individual's case can influence public policy" could participate in the CFC. The Legal Defense Fund and the Puerto Rican Legal Defense and Education Fund (PRLDEF) brought suit challenging the "direct services" rule as unconstitutionally vague. The United States District Court for the District of Columbia held that the rule violated the First Amendment because of its vagueness. In its decision the Court noted:

> Plaintiffs argue at length that they do provide "direct services" in a variety of ways. The record is replete with the results of plaintiffs' work, indicating that law suits by plaintiffs have provided millions of dollars in back pay and benefits, and invaluable other "services" such as increased training opportunities, additional promotions, improved school programs, and better

[1]In the early 1960's, the Internal Revenue Code was amended to permit organizations, such as the NAACP and the American Civil Liberties Union, that did not qualify themselves for tax-exempt status, to establish subsidiaries to carry out tax-exempt activities. As a result, the NAACP established the NAACP Special Contribution Fund and the ACLU established the ACLU Foundation, both of which qualify for tax-exempt status. Since that time, many "legal defense funds" have been established, using the NAACP Legal Defense and Educational Fund, Inc., as their model.

hospital facilities. Apart from their litigation activities, each plaintiff also provides "direct services" through scholarship programs and education efforts.[2]

The government did not appeal this decision, and, indeed, enacted new regulations that opened up the CFC to legal defense funds and other organizations. However, early in 1983, a new executive order and regulations were promulgated that excluded organizations that sought to influence the "determination of public policy" through "political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves." This provision was interpreted to bar organizations such as the NAACP Legal Defense Fund from further participation.

We brought new litigation, this time joined by a number of other organizations. Once again, the District Court held the regulations unconstitutional, and its decision was affirmed by the Court of Appeals for the District of Columbia Circuit.[3] The government obtained review by the Supreme Court, however, and, in a 4-3 decision, the Supreme Court reversed.[4] This was not the end of the litigation, however. The Court's decision was, basically, that on the record before it the regulations were not unconstitutional on their face. The case was remanded for further proceedings to give the plaintiffs the opportunity to demonstrate that the actual reason for their exclusion was opposition to the viewpoints of their programs. On remand, the district court issued a preliminary injunction that would keep the plaintiffs in the CFC while there was a full trial on the merits. The government appealed, but the appeal was mooted out because of Congressional action that prohibited the enforcement of the regulations at issue. The regulations were subsequently modified, and the Legal Defense Fund has participated in the CFC continuously since 1981.

II.
THE NAACP LEGAL DEFENSE FUND PROVIDES DIRECT BENEFITS IN THE AREA OF HUMAN WELFARE TO PEOPLE IN NEED.

As noted above, the basis for the Legal Defense Fund's originally exclusion was that

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[2]*NAACP Legal Defense and Educational Fund, Inc. v. Campbell*, 504 F. Supp. 1365, 1368 (D.D.C. 1981).

[3]*NAACP Legal Defense and Educational Fund, Inc. v. Devine*, 567 F. Supp. 401 (D.D.C. 1983), *aff'd*, 727 F.2d 1247 (D.C. Cir. 1984).

[4]*Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788 (1985). Justice Marshall recused himself because of his prior directorship of the Legal Defense Fund. Justice Powell was ill, and so did not participate. The participation of either or both justices could have changed the result of the decision. *See Perry Ed. Assn. v. Perry Local Ed. Assn.*, 460 U.S. 37 (1983), in which Justices Marshall and Powell dissented.

it did not provide "direct benefits" to persons in need. This basis is as ill-founded today as it was then. The Legal Defense Fund's central purpose is to provide direct and tangible benefits to its clients, and its success is measured in *hundreds of millions* of dollars. Thus, just in the period 1989-95 while the Legal Defense Fund has participated in the CFC the following benefits in the areas of health, education, and income maintenance have been received by our clients — **and this is just a partial list**:

- Every year since 1990, 120,000 poor children of all races have been tested by the State of California for the level of lead in their blood as a result of the consent decree in *Matthew v. Coye*;

- Hundreds of millions of extra dollars have been invested in inner-city and previously segregated school districts to upgrade and improve the education provided to low-income school children of all races as a result of LDF-supported litigation in cases across the country;

- In one case involving the Shoney's restaurant chain nationwide, lower-income minority workers have received over **$100,000,000** in back pay, as well as receiving jobs in this all-important service industry. Other cases have provided monetary benefits in the form of back pay in excess of $50,000,000, as well as jobs and promotions to thousands of persons denied them in violation of the laws of the United States. Federal employees have received back pay in excess of $10,000,000 in cases involving the Air Force, Army, Postal Service, and the Department of Commerce, among others, as well as promotions and jobs worth much more over the span of the careers of the beneficiaries of the litigation;

- In a case involving the public housing authority of the City of Newark, New Jersey, the city was planning to destroy existing public housing without replacing any of it, thus driving thousands of additional poor persons into the ranks of the homeless. LDF joined with legal services organizations and successfully blocked demolition; a consent decree requires the city to carry out its legal and contractual obligations with HUD to replace public housing units one-for-one as they are demolished. The result is that approximately $100,000,000 will be spent that directly benefits the poor by the construction of new, affordable housing;

- In a case in Boston, Massachusetts, LDF-supported litigation resulted in banks agreeing to provide $11,000,000 in low-interest home improvement loans to low-income home owners who had been victimized by shady construction companies.

The efficiency of the Legal Defense Fund's work is demonstrated by the fact that our budget in 1994 was $8,000,000, and has never been more than $10,000,000.

Nevertheless, the total benefits obtained for its clients over the fifteen years in which LDF has participated in the CFC have been in excess of $500,000,000 — **more than half a billion dollars.** During the same time, LDF's total budget has been approximately $100,000. In other words, LDF's program has provided more than 5 times in direct benefits than it has expended to carry out that program. We challenge any so-called "traditional" charity to match this record.

But these numbers do not begin to measure the actual value of the benefits our clients receive. In addition to measurable amounts in back pay, and expenditures for improved schools, housing, and health care, our clients have received jobs and promotions that will give them income that will lift them out of poverty and into the ranks of tax payers, as well as immeasurable benefits in improved education, decent housing, and better health.

Finally, the Legal Defense Fund administers scholarship programs for undergraduate and law students. In recent years we have provided between $400,000 and $500,000 per year in scholarship aid to deserving students.

II.
THE NAACP LEGAL DEFENSE FUND IS NOT A "LOBBYIST" ORGANIZATION

As 501(c)(3) organizations, the NAACP Legal Defense Fund and similar organizations are subject to strict controls on legislative activities. The Legal Defense Fund adheres to these limitations scrupulously, and has never exceeded them. We do some lobbying in that we support or oppose legislation that we believe will either further or hinder our basic purpose of achieving equal civil rights for all Americans. So-called "traditional" charities also conduct limited lobbying activities consistent with the Internal Revenue Code.

The term "advocacy groups" is vague and, we suggest, not particularly helpful. Charities of all sorts act as "advocates" for their clientele and for causes that will benefit their clientele. Federal employees or taxpayers may disagree with the goals of one or more charity; in fact, there is substantial disagreement with the goals and purposes of even the most "traditional" charities. However, there is no evidence that we are aware of that such disagreement has resulted in a decline in contributions or any degree of controversy in the CFC.

III.
THE NAACP LEGAL DEFENSE FUND DOES NOT SEEK OR RECEIVE ANY GOVERNMENT SUBSIDIES.

The Legal Defense Fund has deliberately, throughout its history, declined

government funding or subsidies. Simply put, with money comes strings, and the Legal Defense Fund needs to remain free to pursue litigation against any entity that is guilty of violating the civil rights of Americans, including agencies of the federal government. The actual out-of-pocket costs of the CFC are taken from receipts. Thus, each participating organization is charged for expenses in an amount proportional to the contributions it receives. This is appropriate and as it should be.

With regard to indirect costs, mainly the salaries and benefits of federal employees who run the CFC at both the national and local levels, these costs have never been charged to the participating charities. Federal employees do not, and they should not, solicit contributions on behalf of any particular charity. Indeed, inappropriate pressure to contribute through the CFC is discouraged by the regulations. The activities of federal employees are designed to encourage charitable giving to whatever charity each employee freely decides should receive that employee's own money.

If it is now believed that it is inappropriate that taxpayer money go to support the CFC, the solution would be to reimburse the government for indirect costs from CFC receipts. Just as in the case of direct costs, each organization would contribute proportionally to its receipts. The Legal Defense Fund does not advocate that such a measure be adopted. Our point is that if the problem is the expense to the government of employees' salaries, then that problem should be addressed squarely and equitably by requiring all participating charities to reimburse the government. It is not equitable that this problem be addressed by expelling some but not all charities; indeed, that "solution" is no solution at all, since the government would still be "subsidizing" the CFC.

IV.
THE PURPOSE OF THE CFC IS TO FACILITATE CHARITABLE GIVING BY INDIVIDUAL FEDERAL EMPLOYEES.

We have all heard the story of the person who is solicited at home by a charity and declines because "I gave at the office." Workplace solicitation is an unusually efficient and effective means to encourage charitable giving. Through automatic payroll deductions, contributions are spread out and are, therefore, virtually painless. No reminders or follow-ups are necessary so that fund-raising costs are minimized.

The minimization of fund-raising costs is central and important. The less a charity has to spend to raise money, the more money it has to spend on its charitable activities and the more benefits its clientele will receive. Thus, it is simply no answer to say that charities that are excluded from the CFC can raise the same funds in another way. They cannot. Excluded charities do not have access to lists of the names and addresses of federal employees and even if they did, they would run right up against the "I-gave-at-the-office" answer.

But even more important than the benefit to particular charities of participation in the CFC is the benefit to federal employees. It must be kept squarely in mind that what is being discussed is the right of a federal employee to choose freely to whom and to what cause he or she will donate his or her money! The Legal Defense Fund has received over the years an average of over $500,000 per year from the Combined Federal Campaign. This substantial amount of support, which last year was 6% of our budget, has been contributed by thousands of federal employees.[5] No one has made anyone donate to us; individuals have given us their money because they believe that our program deserves their support. With all due respect, no one, including the Congress of the United States, needs to or should dictate to federal employees which charities are "better" than others or which are undeserving of their support.

To sum up, the NAACP Legal Defense and Educational Fund, Inc., and similar organizations are just as bona fide charities as any others. We provide direct services valued in the hundreds of millions of dollars to hundreds of thousands of persons in need. Our work provides direct and tangible benefits in the areas of health, education, and human welfare. We have received the support of thousands of federal employees who have freely chosen to donate over $7,500,000 in their money to us in the fifteen years we have participated in the CFC. There is no reason why we should not continue to participate in the CFC, and we will take every step necessary to ensure that we do.

Thank you for your time and your attention.

Charles Stephen Ralston
Senior Staff Attorney

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[5]The figures for the years 1990-94 are as follows:

1990	$561,651
1991	$571,434
1992	$493,660
1993	$423,263
1994	$485,495

Mr. MICA [presiding]. I thank each and every one of you for your testimony before us today. We will proceed with a couple of questions.

First of all, Mr. O'Steen, you spoke about the Planned Parenthood organization, and you are in opposition to their position. Do you think that taxpayers should fund the activities of the Planned Parenthood organization?

Mr. O'STEEN. I will make a distinction. If we are speaking of a direct Federal grant to Planned Parenthood, no. If we're speaking of Planned Parenthood's ability to be in the CFC, yes. I think there is a distinction.

As I indicated in my testimony, the cost to the taxpayer of the CFC we really don't believe is going to change no matter who is in or who's out.

Mr. MICA. Of the direct money, which is three quarters of a million dollars, they are benefiting by that. And then if you use the figure of $22.1 million total, expenditures are 11 percent, taxpayer resources and funds being used to promote the position of the group with which you are in direct conflict. And you still support that?

Mr. O'STEEN. Let me clarify. I was including the three quarter million figure in what I don't consider a direct subsidy. The first was a check made out to Federal funds out——

Mr. MICA. You testified that the Deputy Director said that is a direct appropriated fund from general treasury.

Mr. O'STEEN. For the administration of the entire campaign. And that figure, again, is not going to change. That money does not directly go to Planned Parenthood or to us. That figure is not going to change regardless of whether they are in or out of the campaign.

Mr. MICA. So you will deny the headline that says, O'Steen supports Federal funds for Planned Parenthood subsidization of activities?

Mr. O'STEEN. Sure. I may see such a headline, but there really is a distinction, I believe, whether in America an individual Federal worker has the ability, through workplace giving, to say, hey, I agree with Planned Parenthood. I want to put my $20 there. Or I agree with NRL Educational Trust Fund.

Mr. MICA. What about a compromise? If some of these folks are going to participate, it is obvious that whether the charities are advocacy or nonhuman welfare groups, there is some cost to the taxpayers. Would you support changes in applying some of the costs to these groups to absorb this administrative overhead?

Mr. O'STEEN. I'd like to get back with the definitive answer. I'm not speaking in opposition to that. That's a new question to me. I would give you that back in writing.

I would suggest, though, that if there is administrative cost borne it should be borne equally and proportionately by all charities in the campaign.

Mr. MICA. So you could support some changes in that regard. Then you wouldn't have to see that headline.

Mr. O'STEEN. With the—I'd like to come back before I give you a definitive yes since I have a board of directors of 54 persons. But I'm not speaking in opposition to that, and I don't believe NRLC would oppose that.

Mr. MICA. We welcome this as we continue this process.

Mr. O'STEEN. I can give you an answer back in writing to that, sir.

Mr. MICA. We appreciate your comments.

And, Mr. Howland, you did a questionnaire. I noticed the wording in your questionnaire was related to support of charities. Is that correct?

Did you do any additional questions to determine whether the respondent would give if they knew their taxpayer dollars were supporting some of these noncharitable advocacy groups or nonhuman health and welfare groups? I mean, if someone came to me and asked, do you support charitable giving, hopefully, I would answer in the affirmative. So it's all the way you ask the question. Was there any additional questioning?

Mr. HOWLAND. There was some additional questioning, and I will submit it for the record.

Again, we just received the results of this poll last evening, but this was a——

Mr. MICA. Is there anything that further defines the issue? Because we are not here today to impose any restrictions on giving to traditional charities. That is not the purpose of this hearing. And your question is sort of skewed to elicit a very positive response. Are there any other questions that were asked?

Mr. HOWLAND. Yes, there were a number of questions. One that I think is most important—and, again, this was a poll of 800 Federal employees, and this was not—so this was not in the public at large—but 66.3 percent do not feel that Congress should limit the types of charities that can be supported in the Combined Federal Campaign.

Mr. MICA. But 36 percent did.

And, again, you used the definition of charities. Was there any other definition of the term charity?

Mr. HOWLAND. Actually 24.8 percent said, yes, that it would be OK to limit charities in the Combined Federal Campaign.

Mr. MICA. Again, that term charities. Was there any other use of any other definition? What we have to zero in on here, is the role of advocacy groups or nontraditional charities or those that deal with nonhuman health and welfare assistance.

Mr. HOWLAND. The only other way that was used to distinguish between traditional charities and others was the question that said, do you believe that Federal employees should be able to choose to support through the Combined Federal Campaign charities that speak out on behalf of the people they help? And the answer to that question was a resounding 88 percent yes.

Mr. MICA. You and Mr. Sodo both represent organizations of charities. In the realm of charitable giving and the history of charitable giving, maybe in the United Way, do you see the same trends as you see in the public sector? Now we have reduced from 80.7 percent participation down to 47 percent participation and giving. Is that following a private sector trend?

Mr. HOWLAND. We're seeing in the private sector that giving participation is going up as choices are expanded. Giving went up—giving participation went up, for example, in the United Way in San Francisco.

Mr. MICA. So you're actually having more people participate in giving as the choices expanded.

Mr. HOWLAND. Yes.

Mr. MICA. And if we did a chart and we looked at the Federal activities, we would actually see a decrease in the participation but an increase in some of the amounts. You have fewer people participating, but giving slightly larger amounts. But this is not the trend in the private sector? In fact, you're saying it's exactly the opposite?

Mr. SODO. It really varies, Congressman, employer by employer.

I have a column here from the Washington Post recently that points out some of the ways in which Federal employees have reviewed how they react to the CFC. Sometimes with respect to Federal pay issues or retirement issues or any issue in which a Federal employee may have some contention with the government, to quote this letter, "my next step is to cancel my payroll deduction for the Combined Federal Campaign." The sense of the letter was that they did not want—they were opposed to certain things that had happened to them in the context of their service as a Federal employee. So sometimes what we have seen, apart from less pressure, less coercion, which is very appropriate, folks taking out their frustrations in some way in the only means that's available to them, and that happens to be the CFC.

Mr. MICA. So you subscribe to the Charles Ralston theory that each year there is less pressure from the Federal Government, employees feel less pressure to give so they are not participating, starting with very high pressure in 1965 to now?

Mr. SODO. A host of issues affect any employee giving campaign. In the aftermath of the United Way scandal of the last few years we have seen some drop-off there as well. There are really a host of issues that need to be examined more carefully.

Mr. MICA. The two of you deal with this charitable giving on a professional basis. Is there any way we can better define—are there any industry standards to narrow the scope beyond the parameters of the 501(c)(3) and what we have now, that might help us better define participation?

Mr. SODO. Well, the IRS does have various categories within the 501(c)(3) classification. There is no conceivable way that trade associations, professional associations which are already 501(c)(3) should be admitted to the CFC. So something around perhaps a look at those might be appropriate.

But I would just suggest that I think what we really should be following is what employees are interested in. They are leaders in terms of forming opinion about social issues today and where their interests truly lie, and they are ahead of us. They are ahead of curve in terms of defining what the current issues are of the 1990's compared to what perhaps we think they are or looking back perhaps at the 1950's or 1960's.

Mr. MICA. Mr. Sodo or Mr. Howland, do you think that these private groups, charitable groups, should be paying a larger share of the costs incurred by the Federal Government and the taxpayers?

Mr. SODO. One thing that we find, Congressman, and I would certainly—David O'Steen suggested to take a closer look at that—but the one thing that we find in some cases what employees are

also interested in seeing is that as much as possible of their charity contribution dollars get to the charity.

And so we're driven, and—frankly, by competitive forces within the CFC. Charities are being driven to keep their administrative costs down, their fundraising costs down. So the sense that the charities—less is going to go directly to the charity could have an inhibition—could inhibit giving in some respects. So, again, it needs to be something that is looked at a little bit more carefully.

Mr. MICA. Well, do you support less taxpayer subsidization of the process?

Mr. SODO. What we find is that employers—whether it is taxpayers or whether it is shareholders or whether it is other employers, you have 100 million people who are solicited for workplace-giving contributions across the country. Many employers like the Federal Government are saying we want to demonstrate our corporate citizenship by doing something to help this process.

So, absolutely, we need to find more cost-effective ways always to run the campaign, but there is a principle there about leadership and, if you will, corporate citizenship, even with respect to the Federal Government that we might want to look at to be sure that we're not shooting the campaign in the foot.

Mr. MICA. Well, one of the problems is that through the courts and through legislative action, a lot of these nontraditional charities have logged onto the process. Again Mr. Howland, do you feel that the taxpayer should continue to subsidize this process or should these folks be paying a larger share of the administrative costs?

Mr. HOWLAND. Well, again, I think the taxpayer subsidy is pretty minimal for the benefits.

Mr. MICA. Eleven percent.

Mr. HOWLAND. I think that the benefits——

Mr. MICA. That was the testimony we had today of $22.1 million. The direct cash outlay from the Treasury is less, but, in fact, we're subsidizing the rest of the process through various appropriations.

Mr. HOWLAND. I am not prepared today to suggest that——

Mr. MICA. You don't want to get your member organizations' shorts all bunched up, I guess is what you're trying to say.

Mr. HOWLAND. It's something certainly that we would consider, but that we would like to discuss at greater length.

Mr. MICA. I see three potential candidates for public office here today.

Well, I appreciate your position, but I did want to ask the question.

I will yield at this time to the gentleman from Pennsylvania, Mr. Mascara.

Mr. MASCARA. Thank you, Mr. Chairman.

I commend the panelists for their remarks. Your candor, certainly, Captain, your remarks.

Captain HOLLENBACH. Thank you, sir.

Mr. MASCARA. There is a dichotomy here of the issues. One is the cost factor. And my colleagues have a proclivity and tendency to wrap these issues in very clever words—"reform of the Combined Federal Campaign." Now who's against reform? We're all certainly for reform.

And the other is, and it was pointed out by Dr. O'Steen, the issue of free speech. That's the other side of it. Do we limit the Federal employees their rights, or infringe upon their rights to give to organizations that I don't agree with—many of the philosophies? I'm not an ethicist, not a philosopher. I'm just somebody from southwestern Pennsylvania who has some common sense.

I think—I'm offended and every Federal employee should be offended by this government infringing upon their rights. And the more I sit here, the more disturbed I get. I think all Federal employees have a right to designate to whom they wish their money to go to. I think we're setting a poor—a poor example for the private sector.

And I participated in every fund-raising event you can think of over the past 40 or 50 years. Corporate America gives big time in the way of their employees contributing and working in fundraising, and I think now they can point to this government and say that this government doesn't want to participate and fund directly, or indirectly, in raising money to help those who are less fortunate.

I feel that we should, as Ronald Reagan said—if I might go back to Ronald Reagan, who said that people should look less and less to government and more and more to volunteerism and all of us should be more charitable and look less to Government. And now here we have the government saying we want to interfere, and maybe you will get less.

I think you are right, Captain. I think if we send a message that this government doesn't want to participate as it is currently that somehow the private sector will get the message. "If the government doesn't want to participate, why should we participate?" I think we are setting a serious course, the wrong course in the wrong direction as it relates to giving, and I think this government should serve as a model.

If it is that those who do not agree with those charities that are getting that money, then that reeks of something even more serious. If you want to shut off debate—and I've seen that around the world, and I've seen it in history, and that concerns me, that somehow if we don't agree with the people who are getting the money then we should shut them out. And that concerns me, and I don't think we want that reputation either.

So I say to you work very hard to try to maintain—I'm not going to say the status quo because everything can be fixed or done in a more efficient manner. And I don't know about perhaps charging the charities some kind of a fee because then, again, the private sector says, "what do we get? How are we reimbursed?"

So I have some deep concerns and I certainly want to participate in the future in the debate as the debate goes on, but I hope that we do not shut off free speech by those people who want to be generous with groups that I agree or disagree with.

Thank you very much, Mr. Chairman.

Mr. MICA. If any of the panelists wanted to respond to Mr. Mascara's comments?

Well, I again thank the gentleman from Pennsylvania.

As we conclude this panel I have a couple of questions. Does anyone have an objection to a rule or a law that requires that we publish the amounts of money that each of these groups are receiving?

Mr. RALSTON. No. We publish it in our annual report every year.

Mr. O'STEEN. No.

Mr. HOWLAND. Not at all.

Mr. MICA. We've had trouble getting the information at this subcommittee. I don't mean that any of the groups testifying today have been part of that problem.

Mr. RALSTON. The problem, again, I think comes from this—comes from local CFC's, and so it is very difficult——

Mr. MICA. To compute the total?

Mr. RALSTON [continuing]. To compute the total.

Mr. MICA. The other thing is, we have had testimony this morning that makes me think OPM views this as something they wish would go away—any controversy about changing eligibility. By the same token, it appears that we could have in the neighborhood of hundreds of thousands more organizations join the ranks that are already swelled.

In this volume, there are 489,000-some-odd number of 501(c)(3)'s, and a large portion of those would currently be eligible. Is there any way or need to limit these or change the criteria you might use in limiting future participation? Any of the panelists? Mr. Sodo.

Mr. SODO. I think the first place I would like to suggest looking, Congressman, is to what the potential universe is. Since 1987——

Mr. MICA. 489,000. In fact, sitting in that same chair was the Deputy Director who said that we might be, in fact, publishing a catalog the size of the Washington telephone directory before she is through.

Mr. SODO. If I could, I'd suggest that, if in fact there was that real possibility, those folks would already be in. This campaign has published these regulations and has had them on the record since late 1987.

I think if you look at rate of growth in terms of charities in the CFC, it has dropped significantly in the last few years. So I think what it's told me—I've had that same question myself. Where are we capping this? And I think we're near that point, honestly.

Mr. O'STEEN. If I might comment, sir, as a charity that had to work to show that we do provide a human health and welfare service it's not particularly easy to get into CFC. You really have to demonstrate this. It's more than just being a 501(c)(3). I think the marketplace begins to play a role.

For a charity that's not likely to receive significant contributions, the effort is simply not worth it. There are a lot of people out there that want to support the NRL Educational Trust Fund. We do about a half million a year. But I think for a high number of 501(c)(3)'s which may be strictly local or have a more narrow mission, many of them wouldn't experience that kind of support, and it really wouldn't be worth their effort to meet the eligibility requirements and go through the process of applying which isn't easy.

So I agree with Mr. Sodo. You probably are coming near this being capped, really.

Mr. MICA. OK. So we have no objections from the panel participants to publish amounts or make that information available. No one is really decided on whether or not there should be any additional contribution from the participants, and we don't have any

agreement on finding ways to limit the definition of who is eligible. Is that pretty much the consensus of the panel?

Captain HOLLENBACH. Mr. Mica, I would like to make an exception to that.

Mr. MICA. Go ahead.

Captain HOLLENBACH. On the cost matter, what I tried to communicate in my comments were I think the benefits that accrue to the organizations that participate outweigh the costs. If you are going to add up indirect costs, I think you have to add up indirect benefits.

My personal feeling as a commanding officer was that I got more benefit out of my organization participating in a CFC than any costs I incurred, and so I would argue that that is probably the case across a wide portion of at least the Department of Defense.

Mr. MICA. Well, we thank you for your comments, your insight and perspective.

As members of this panel deeply involved in this process, are there any other ways that you see that the Federal Government could increase participation, barring Mr. Ralston's comments regarding the past use of pressure and brute force?

Mr. RALSTON. I think to the extent that people feel they have a free choice and there are organizations they want to give to, they will make that choice to give.

Mr. MICA. But we actually see a decline in participation. I think we have a responsibility as an employer to try to involve the workforce in these types of charitable activities. Do you see something that they are doing wrong or something we can improve that doesn't necessarily have to be by legislative fiat, but in the process?

Mr. HOWLAND. I would encourage agency heads to take a more active role in the campaign. I think that the participation of an agency reflects directly the leadership that's provided in terms of the Combined Federal Campaign by that agency head, be it in Washington or another city like San Francisco.

Just in the Combined Federal Campaign in San Francisco, there was a direct correlation between participation and giving in agencies where the head of that office really made a pitch for the CFC and encouraged in a very positive, unobtrusive way his or her employees to get involved, and then took a leadership by making a first pledge. It really does make a big difference.

Mr. SODO. I would just suggest, Congressman, to echo what Mike said about leadership, there are recognition programs for Federal employees that we can perhaps do a little better at. If there is a culture within the Federal Government that we do want to encourage volunteerism, we do want to encourage giving, we do want the private sector to play more of a role in solving human problems, then the way to demonstrate that is through support of the leadership, the commitment of the Federal Government to the CFC. And I think, again, there are ways to explore that.

There is no question there is room for improvement. I don't think if we're at an 80 percent level, frankly, it's realistic. You probably have coercion if you're at an 80 percent level.

Mr. MICA. I want to thank each of the panelists for participating today, and we may submit some additional questions to you for the

record. And, if you have full statements that you want made a part of the record, they will appear without objection.

Also, I want to note that, although unable to personally appear at this hearing, Mr. Robert Dowlut, secretary of the Firearms Civil Rights Legal Defense Fund—which currently participates in the CFC, has submitted testimony in opposition to reforming the CFC. If there is no objection, I will also accept his testimony and make that part of the record. So ordered.

[The prepared statement of Mr. Dowlut follows:]

ROBERT DOWLUT
SECRETARY

FIREARMS CIVIL RIGHTS LEGAL DEFENSE FUND

The Firearms Civil Rights Legal Defense Fund was established by the National Rifle Association of America in 1978 It is recognized by the Internal Revenue Service as a charity under § 501(c)(3) of the Internal Revenue Code.

The answers to the Subcommittee's three questions presented in its letter of May 30, 1995, are as follows:

(1) The CFC should serve as a facilitator between federal employees and charities. Federal employees should have a right to choose where their charitable money goes

(2) The decision to have federal employees involved in the Combined Federal Campaign in various ways, from administration to being a donor, is a policy issue. However, it would be unfair to exclude a charity from participating in the CFC because some people view the charity as being controversial. Controversy is in the eye of the beholder. For example, many federal employees support the Firearms Civil Rights Legal Defense Fund because it helps people that other civil rights legal defense funds refuse to help simply because of institutional bigotry or because they consider the constitutional right to keep and bear arms as being too controversial.

(3) 11-1-89 to 10-31-90 $364,939.01
11-1-90 to 10-31-91 $455,840.12
11-1-91 to 10-31-92 $444,590.33
11-1-92 to 10-31-93 $467,605.22
11-1-93 to 10-31-94 $465,870.00
11-1-94 to 5-31-95 $248,160.91 (last figure not audited)

The Office of Personnel Management on May 11, 1995, found the fund eligible to participate in the 1995 Combined Federal Campaign as a national organization. This was the result of a successful appeal by the fund.

Initially, OPM advised in a letter of March 17, 1995, that the fund was denied for the following reason: "The organization failed to enumerate adequately the human health and welfare benefits, services, or assistance provided or the activities conducted by the organization, as required by 5 CFR 950.203(b)(6)." In its appeal, the fund pointed out to OPM that Attachment F for 1995 contained a brief description of cases the fund has supported, and other fund activities, throughout the nation. The same format and information was provided in Attachment F in the fund's CFC applications in 1990, 1991, 1992, 1993, and 1994, and all were approved by OPM. OPM was advised that the cases supported by the fund and the activities of

the fund are no different from those submitted by other organizations that were approved for CFC participation. Therefore, the denial was appealed as beings erroneous and showing disparate treatment.

The Firearms Civil Rights Legal Defense Fund would like to point out to the Subcommittee, just as it did to OPM, that the fund provides services, benefits, or assistance, and conducts activities affecting human health and welfare by providing legal aid and conducting educational activities in defense of the human and civil right to keep and bear arms, as secured by the constitution and by law. FCRLDF donates or renders all of these services gratuitously. This benefits a substantial and indefinite class of persons throughout the nation who are legitimate subjects of charity. A sampling of the cases described in the fund's February 2, 1995, Attachment F submission to OPM reveals that FCRLDF provides traditional human health and welfare benefits, services, or assistance by supporting persons who have been deprived of the right to keep and bear arms on account of discrimination based on race (black), gender (female), age (senior citizen), and low income. In addition, FCRLDF has provided assistance to persons who have been penalized in their public employment because the content of their speech supported the right to keep and bear arms. FCRLDF has also been instrumental in having the courts recognize a civil rights cause of action under 42 U.S. Code § 1983 where licenses to carry a gun were issued in a discriminatory manner so as to deny equal protection of the law.

Lastly, a person has to be alive to enjoy any right.[1] That is why the right to self-defense is considered "fundamental."[2] This benefits the primary social interests of safety, security, and order. Many people too poor to afford legal services have been benefited by FCRLDF. Providing legal services, protecting rights, and supporting the defense of life itself are traditional welfare benefits.

Examples of cases presented in the February 2, 1995, Attachment F submission to OPM supporting the above claims are as follows:

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[1] "A predominant reason to protect a right to self-defense and personal security is that such an interest may be a prerequisite to exercising and enjoying those rights that are explicitly enumerated. The dead probably have very little use for the First, Fourth and Fifth Amendments. Writings that have contributed to our political and constitutional tradition confirm the idea that individual security and self-defense are basic and natural human concerns." Nicholas J. Johnson, ***Beyond the Second Amendment: An Individual Right to Arms Viewed Through the Ninth Amendment***, 24 Rutgers L. J. 1, 38 (1992).

[2] ***United States v. Panter***, 688 F.2d 268, 271 (5th Cir. 1982). "[T]he right to keep and bear arms" is included in the catalog of individual liberties. ***Planned Parenthood v. Casey***, 120 L.Ed 2d 674, 696 (1992).

Racial and Gender Discrimination

Massachusetts; *Muriel Kendrix.* Ms. Kendrix felt that she was denied a license to carry a pistol on account of her gender (female) and race (black). Subsequent to the filing of a lawsuit, the Chief of Police capitulated and granted her a license.

New Jersey; *Theodore Merriweather.* This was an appeal from a denial of an application to obtain a permit to carry a pistol. Mr. Merriweather claimed his application was denied on the basis of his race (black). New Jersey's constitutional right to self-defense was raised. The filing of all briefs was completed on December 18, 1992. The Superior Court, Appellate Division, denied relief in a per curiam unpublished opinion on August 11, 1993. An appeal to the New Jersey Supreme Court was not taken on account of a procedural problem: key issues were not raised in the trial court, but were raised for the first time on appeal.

Discrimination Against The Elderly

New Jersey; *John Pilate.* Mr. Pilate was turned down for applications to purchase firearms after almost a 10-month wait because he is too old (79), his fingerprints will not be processed because of his age, and because he wants the firearm for protection. The appeal to the Superior Court raised the constitutional right to self-defense, an age discrimination statute, and the statutory requirement to act within 30 days on a firearm purchase application. Judge Jonathan N. Harris found denial of the permit to purchase arbitrary, capricious, and unreasonable. The judge found that personal protection is a legitimate and traditional reason for possessing a firearm in the home, and that the state waives its right to utilize fingerprints on applicants for a purchase permit after 75 years of age by its decision to quit processing fingerprints of senior citizens.

Low-Income Persons Should Not Suffer Discrimination in Enjoyment of Rights

Maine, *Doe v. Portland Housing Authority.* The Portland Housing Authority has a lease provision forbidding tenants to possess any firearm. Since the housing authority was created pursuant to Main Revised Statutes title 30A, § 4721, there is state action constituting governmental infringement. Article I, § 1 and § 16 of the Maine Constitution guarantee a right to keep and bear arms for defensive purposes. Article I, § 6A guarantees due process, equal protection, and nondiscrimination. A lawsuit was filed in Superior Court seeking invalidation of the lease provisions, damages, and costs for plaintiffs. On December 30, 1993, the lease provision was held a reasonable exercise of the police power. An appeal was taken by Doe to the Maine Supreme Court, and oral argument occurred on September 21, 1994. The fund also filed an *amicus curiae* brief at no cost. On April 4, 1995, the Maine Supreme Court voided the lease provision forbidding tenants to possess firearms. This decision allows poor people to enjoy the civil right to keep a gun in the home for defense and security without fear of losing the public benefit of public housing.

Freedom of Speech on Right to Keep and Bear Arms

Minnesota; *David Gross v. Minneapolis*. This case involves the taking of an adverse personal action against an employee (attorney) of a local unit of government on account of his constitutionally protected expressions in support of the right to keep and bear arms. The case went to arbitration, and Gross was ordered reinstated. He is now contemplating filing a civil rights action for violation of constitutional rights. The case is being analyzed by a national jury project to determine the probability of success.

Ohio; *Thomas v. Whalen, et al* This is a civil rights action under 42 U S C.A. § 1983 in U.S. District Court. The case involves disciplinary action taken against Police Lieutenant Harry Thomas for speaking on behalf of gun rights and the NRA. Disciplinary proceedings instituted against Lt. Thomas were an attempt to stop the exercise of his First Amendment rights. Upon deposing of Lt. Col. Ammann, it was discovered that the Cincinnati police administration seeks to reduce Lt. Thomas' credibility when speaking on matters of gun control by preventing him from identifying himself as a Cincinnati police officer. The court disallowed a claim of qualified immunity by the defendants, and they filed a notice of appeal on October 13, 1993, to the U.S. Court of Appeals. The appeal will delay a jury trial

Civil Rights Cause of Action Based on Equal Protection

Colorado; *Thomas C. Miller & R.W. Peterson v. Denver*. The plaintiffs are private investigators. Denver has a policy of refusing to even process applications for a permit to carry a pistol concealed. The issue is whether the city may be compelled to process applications as required by statute and ordinance even if it ultimately decides to deny a permit. The fund filed an amicus curiae brief in May 1993. It was prepared by counsel volunteered to the fund from the NRA's General Counsel's Office at no cost to the fund. The Colorado Court of Appeals on June 16, 1994, held that the complaint stated a cause of action and reversed the trial court's decision dismissing the complaint. The case is reported at **878 P.2d 141**. The court held a cause of action was stated under 42 U.S. Code § 1983, based on a claim that the defendants handled private investigators' applications for concealed pistol permits differently than applications submitted by current or retired law enforcement officers and that no rational basis existed for this disparate treatment. The police, in effect, were attempting to protect the outside employment of current law enforcement and retired law enforcement officers to conduct a private business at the expense of the appellants. The appellants' right to work was stifled by an attempt by the organs of the state to have a monopoly in the field of armed private investigation and protection

Right to Self-Defense

District of Columbia; *George Cowan*. Mr. Cowan discharged his pistol and struck a burglar discovered in his home in the night The burglar subsequently expired. Mr Cowan has not been charged with any offense or summoned to appear before the grand jury thus far. He has consulted

with attorneys from the NRA General Counsel's Office, whose services are volunteered to the fund.

North Carolina; *Roger D. Woods*. Woods is an employee of the City of Wilmington. While off duty, he was attacked by a man in a parking lot. Woods shot and wounded the man. Woods was charged with assault with a deadly weapon. During the trial, on May 14, 1992, the Superior Court granted a defense motion to dismiss based on a plea of self-defense. The city fired Woods even though he acted in self-defense. Woods is asking for reinstatement. The issue is whether the firing is contrary to public policy. The established law or public policy of North Carolina supports the right to bear arms and to defend one's life. A lawsuit was filed in July, 1994, in the Superior Court of New Hanover County.

Oregon; *James Poston*. This is an appeal to the Oregon Court of Appeals. The issue is whether a minor may arm himself to protect his mother. All briefs have been filed. Oral arguments took place on November 13, 1992. The Court of Appeals held on April 20, 1994, that it is proper for a minor to arm himself to protect his mother based on a reasonable appearance of danger.

Texas; *Jolie Blackburn*. Ms. Blackburn is a college student. She slew a man who was under the influence of narcotics and who was attempting a burglary. She is claiming self-defense and justifiable homicide against a misdemeanor charge of negligent homicide and against a civil lawsuit.

Virginia; *Rayna Ross*. Marine Lance Corporal Ross shot and killed a man armed with a bayonet who broke into her home at night. Civilian authorities found no reason to prosecute her. However, the Marine Corps proceeded against her with an Article 32 investigation. She was represented by an attorney from NRA's Office of General Counsel, volunteered to the fund, and who is a retired Marine Corps Colonel. After the hearing, the commanding general concluded on March 14, 1994, that no charges should be placed against Cpl. Ross.

Wisconsin; *State v. Pezze*. Ronald G. Pezze was informed by his cleaning lady on July 27, 1991, at 4:30 a.m., that burglars had broken into his place of business. Pezze armed himself with a pistol and confronted two burglars armed with a knife. They turned toward him. Pezze fired and hit both burglars, killing one and wounding one. He was charged with negligent operation of a firearm resulting in death and negligent operation of a firearm resulting in an injury. On March 5, 1992, a jury found Pezze not guilty of all charges. The jurors felt that a victim of a nighttime burglary, confronted by two burglars armed with a knife, is justified in fearing for his life and firing his pistol.

FCRLDF also distributes books and law review articles for educational purposes, and conducts a student writing contest. The publications include the book TO KEEP AND BEAR ARMS, by Joyce Lee Malcolm, a historian, published by Harvard University Press in 1994. Providing educators and libraries educational material at no cost is a public benefit.

These activities are in keeping with Article III of the Firearms Civil Rights Legal Defense Fund's constitution, which established its purposes as follows:

A. Voluntarily to assist in the preservation and defense of the human, civil, and/or constitutional rights of the individual to keep and bear arms in a free society;

B. To give financial aid gratuitously and to supply legal counsel, which counsel may or may not be directly employed by this Fund, to such persons who may appear worthy thereof, who are suffering or are threatened legal injustice or infringement in their said human, civil, and constitutional rights, and who are unable to obtain such counsel or redress such injustice without assistance,

C. To conduct inquiry and research, acquire, collate, compile, and publish information, facts, statistics, and scholarly works on the origins, development and current status of said human, civil, and constitutional rights, and the extent and adequacy of the protection of such rights;

D. To encourage, sponsor, and facilitate the cultivation and understanding of the aforesaid human, civil, and constitutional rights which are protected by the constitution, statutes, and laws of the United States of America or the various states and territories thereof, or which are established by the common law, through the giving of lectures and the publication of addresses, essays, treatises, reports, and other literary and research works in the field of said human, civil, and constitutional rights,

E. To make donations to organizations which qualify as exempt organizations under Section 501 (c)(3) of the Internal Revenue Code of the United States or the corresponding provision of any future Internal Revenue Law of the United States.

In conclusion, the aforementioned examples of FCRLDF activities affecting human health and welfare indicate FCRLDF has complied with 5 CFR 950.203(b). It should continue to be eligible for participation in the CFC as a national organization.

Respectfully submitted,

Robert Dowlut

Robert Dowlut
Secretary
Firearms Civil Rights Legal Defense Fund

Mr. MICA. Well, again, we thank you for your participation and involvement in this hearing; and, hopefully, we can improve the process with your assistance.

I would like to call our third and last panel—we always save the best for last.

We have Dr. Donald J. Devine, who is former Director of the Office of Personnel Management. We have Mr. Jeremiah J. Barrett, former Director of CFC Operations; Mr. Joseph A. Morris, former General Counsel, Office of Personnel Management; and Mr. Ronald C. Burrus, executive director of the NVHA San Diego County Committee. Each of these individuals has excellent familiarity and experience with CFC.

I would ask at this time if you could rise and be sworn in, as is customary with the panel.

[Witnesses sworn.]

Mr. MICA. The record will reflect a positive response from the panelists.

Again, each of you has a great deal of expertise, and we appreciate your coming forward.

I thought we would begin with the least controversial member of the panel—Dr. Devine. We look forward to his testimony. Dr. Devine.

STATEMENTS OF DONALD J. DEVINE, FORMER DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT; JEREMIAH J. BARRETT, FORMER DIRECTOR OF CFC OPERATIONS; JOSEPH A. MORRIS, FORMER GENERAL COUNSEL, OFFICE OF PERSONNEL MANAGEMENT; AND RONALD C. BURRUS, EXECUTIVE DIRECTOR, NVHA SAN DIEGO COUNTY COMMITTEE

Mr. DEVINE. Thank you very much. And I notice you're rapidly approaching my status, and I congratulate you on your courage in having this hearing. I do think this is an important subject.

I have a little booklet I've written on this subject that I would like to put in the record.

[The information referred to can be found in the subcommittee files.]

Mr. DEVINE. You asked what the purpose of the Combined Federal Campaign should be. I think the Executive order of President Kennedy stated it quite well.

And you asked: do you think it's proper for the taxpayers to subsidize this charity drive? I believe it is, as long as the cost to the government in both direct and indirect management costs are relatively small, and that the causes supported by the charity drive help the management of the government and do not offend the employees or hurt the productivity of the institution.

That's why the original Executive order from John F. Kennedy to every President through Ronald Reagan limited the drive to universally accepted human health and welfare charities, setting the criterion for which charities could be supported.

The Supreme Court of the United States reviewed this matter, in a case I took to it—against the advice of all the lawyers in the government, by the way, except Mr. Morris who was working for me at the time—and only on the demand of President Reagan himself were we able to make the appeal. The Supreme Court of the

United States said it was "proper for the government to conclude that a dollar spent in providing food and shelter is more beneficial than a dollar spent on litigation."

Mr. King of the Office of Personnel Management wrote to the committee that he doesn't want a return to the "acrimony and turmoil of the 1980's," but it's important to remember what caused that turmoil and what was the result of that turmoil. Because it was the government which was forced by the advocacy groups to accept "lobbying, litigation, and advocacy of the needy as just as charitable as health and welfare," quoting the main architect of that change. The government was forced into its current position.

And I'd like at this point to correct the OPM Deputy Director's testimony. None of this is in law. It's all by administrative action. No reform would need a change in the law, except the appropriate ban that was put in. The only action Congress has ever taken on this was the negative one of refusing to allow us to spend funds on the purposes of the original Executive order. It's all through executive branch administrative action.

Now, I know that it's difficult to stand up to the pressure groups and represent the taxpayers' and the employees' right to decide—to do the right thing in an area as obscure as this program, one that doesn't even exist as far as the law is concerned except as an administrative action. But we should not allow as public policy, political bullies to force bad policy on the Government of the United States. That's why I did fight for this when I was the head of OPM during the Reagan administration.

Everybody who's testified today has pointed to the benefits of the choices that exist in this campaign. Well, there would be no choice in this campaign if I didn't take on the vested interests that ran the campaign before I came along.

You know what the amount of money that was chosen to be directed was before I made the changes in the Combined Federal Campaign? Zero. Absolutely zero. It was set by the government what the administrative disbursal of the funds would be. I took on the vested interests in the campaign and set up the current system where now, 93 percent of the contributions are made voluntarily to specific organizations.

Why did I take that step that now is universally accepted as the right one? Because it was the right thing to do. It was the wrong thing for the government to dictate through administrative—not even through law but through administrative decision—what groups, favored groups, would get what particular amount.

The very choice that's in the program was taken because we decided in the Reagan administration that we would take on those special interests. We would reform the campaign to allow employees to decide who got what amount of their funds.

But we also decided that we were going to stick to the traditional health and welfare definition set from the time of President Kennedy.

Now, Mr. Moran says we don't have any complaints. But we have enormous complaints in this system. It is a market in the Combined Federal Campaign, and the Federal employees are walking away from this campaign.

Mr. Ralston mentioned the coercion that was removed from the campaign, which was a positive reform. But why did the campaign drop by a half a million dollars in 1980, the year after the political advocacy groups went in the campaign? And why has it never recovered from that and, in fact, gone down $200,000 or $300,000 more since then?

The Federal employees have said very clearly that they do not like it. It can't be attributed to the coercion problem, which changes were made before 1980. Why did it drop all of a sudden in 1980 when the political advocacy groups were admitted to the CFC? It did because, specific groups objected to Planned Parenthood, the unions objected to the Right to Work Committee, and on and on for the different groups that were admitted.

The Federal employees have told us there were complaints. As previous testimony related, in the private sector results have gone up in participation when choice is greater. Why have results gone down in the Federal Government? I think it's because we are involved in many, many, many more political advocacy groups than in the private sector, where that's much less likely to happen.

Congresswoman Morella says the campaign is not broken. The fact of the matter is, it is broken. There are some 700 or 800,000 fewer Federal employees participating in this campaign because it is broken.

The fact of the matter is, there is no such thing as a criteria-free campaign. Enormous numbers of hours are spent in this campaign to decide who gets in. We have heard testimony on how difficult it is.

Congresswoman Morella mentioned an educational group. Well, actually educational groups are not supposed to be in this campaign. That's why it was so difficult for them to get in. And the fact of the matter is, most educational groups are not in the campaign.

If you really want to open this up to everybody, let's open it up to everybody and allow everybody. I, frankly, think the Republican party is one of the most effective advocacy groups in the country. And if we want to let advocacy groups in, let's let the Republican party in.

One of the witnesses mentioned trade associations. Well, there are thousands of 501(c)(3)'s. Let them all in.

How about every college and university in the United States in? They attract very well. Let's let them in, too.

How about candidates? I think that would be nice, too. Why can't we support candidates through the Combined Federal Campaign?

What about churches? Right now, churches get about 70 percent of the charitable free choices that people make in the private sector. Let's let churches in.

None of these are in now. The fact of the matter is, we're letting a privileged group in the campaign right now.

As the Supreme Court said, it's legitimate for the government to decide what groups get in and what groups don't. There is no reason why we cannot go back to the original purpose of this campaign. Every President from John Kennedy to Ronald Reagan said it should be restricted to health and welfare organizations.

There is no reason that we can't exclude groups that primarily lobby or litigate or advocate causes or, I would add, that are affili-

ated with groups that do. There's no reason why we can't do it, and I urge Congress to return to the policies of those former Presidents and restrict membership in the Combined Federal Campaign to health and welfare organizations. And I commend you for bringing this difficult problem to public attention.

Thank you.

Mr. MICA. I thank you, Dr. Devine. We never have any problem knowing exactly where you stand on these issues, and I appreciate your candor. You should have been in the other panel.

Mr. Jeremiah Barrett, former Director of CFC Operations. We recognize you.

Mr. BARRETT. Thank you.

I was the Director of the Office of Combined Federal Campaign Operations from August 1988, through December 1991. Previously, I was a Special Assistant to the General Counsel for CFC.

Mr. MICA. Can you pull the mike a little bit closer? Thank you.

Mr. BARRETT. Previously to that, I was the General Counsel for—Special Assistant to the General Counsel for CFC matters. I was also agency expert on CFC and had direct responsibility for the development and implementation of the CFC policy in response to the 1986 legislation.

The increase in the number and types of charitable organizations, which was the objective of the legislation, raised concerns within the Federal population. Donors objected both to the increase in numbers and the objectives of some of these organizations.

Many employees felt that some of the organizations did not, in their point of view, provide direct human health and welfare services to individuals who were not traditional charities. Many felt that the inclusion of some specific voluntary agencies was objectionable because of their goals and objectives.

There were enough objections by Federal employees in speeches, training sessions and in correspondence. I tried to address these concerns by emphasizing an employee's designation and assured that their gift went to the organization they supported and no others.

There was enough concern on a trip sponsored by the Department of Defense overseas they asked me to specifically talk about the issue of a rise in advocacy groups and others in the campaign because of the concerns of the military.

The change in the CFC had an impact on campaign operations then and I imagine it still does today. But the impacts, besides having a negative impact, led to employees overwhelmingly designating their gifts.

I would like to address the purpose of the hearing about whether the CFC should return to its original purpose. I don't believe it can.

The charitable organizations that you might support as providing human health and welfare services I see as advocacy groups whose goals and objectives I find repugnant. Planned Parenthood World Population has participated in the CFC for over three decades. National Rifle Association and National Right to Work have been in the campaign for two decades and National Right to Life for over a decade.

Obviously, no one can support all of these groups, their goals. You would have to object to one or the other being in. But they have all been there, and the impact has not been that adverse.

I would like to recall one particular thing about coercion. You were talking about there when they had 80 percent participation. Back in the 1960's, at Randolph Air Force base in San Antonio, the then commanding general would line up and start the campaign, all the flags of all the commanders under him on the right side of the drive. And as they made their goal they moved to the left side of the drive so every morning as he drove in he could see what was happening. That was the end of coercion where we had 80 percent participation.

Once we passed regulations—once the regulations were changed to try and avoid coercion, the participation rate did drop.

In addition to the participation of groups that I might find objectionable, Directors of the Office of Personnel Management and local campaign officials have, through their own eligibility decisions, redefined human health and welfare organizations as far as the CFC is concerned.

An amazing variety of organizations providing numerous and varied services have been found eligible. The introduction of these different voluntary agencies has caused the campaign to grow, but based on receipts has not caused an adverse effect on CFC. Except in the 1 year that Dr. Devine mentioned, all years after that the campaign did grow in total receipts. Participation did go down. It was individual gifts that were rising.

The CFC regulations and IRS regulations allow ineligible organizations to create fronts that are eligible for charitable donations which in turn they funnel to their parent groups. This happened a few years ago. One particular national organization lost its IRS 501(c)(3) status because it had participated in a partisan campaign.

There were 2 years of funds still to be distributed to the group. The Department of Justice advised OPM to arrange for the funds to be distributed to a charity that was providing similar services. The ineligible group formed a legal defense and education fund to receive the outstanding funds and these were given to the parent group. This new group still participates in the CFC today.

As you requested, I would like to share my view of what is the central purpose of the CFC. The CFC is the vehicle that gives Federal employees the opportunity to make donations to charitable organizations of their choice. It is not to keep a specific charity alive or to have the government decide what are appropriate organizations for employees to give their gifts.

This leads me to conclude that the CFC as presently established should be abolished. First, the CFC is very costly. A few years ago when we calculated—this was the one of $50 million—we made certain assumptions that came up with that figure. This was to raise $200 million. That sort of percentage of administrative fundraising expenses would bar most charities from participation in CFC.

Second, the CFC is a very small, insignificant part of charitable support in the United States. As a Nation, Americans are incredibly generous in their charitable giving. The $200 million that is raised in CFC is not even 1 percent of the total charitable dollars raised annually.

Third, the Director of OPM and local Federal officials are very limited in the amount of information that they receive from applicant agencies when they make their eligibility decisions. This permits many questionable and fraudulent organizations to enter the CFC.

Fourth, deciding eligibility of organizations by the government gives the false impression that they are approved by the government. This is not the case, but the government still can be held up to ridicule for permitting a suspect organization to participate.

I recommend that the Congress encourage the Government to permit employees to establish a charitable allotment during the specific period of time each year without the CFC operational details. The allotment would be the same as the one used to pay off a car loan or other recurring payment that employees have.

This would remove the Government from the costly eligibility and appeal process and the possibility of potential legal claims. It would allow the donors to continue to support an organization as long as he or she wished.

An allotment such as this would require an employee to cancel it or change it for it to stop. It would encourage the recipient charities to develop and maintain their relationships with their Federal donors. It would treat employees as responsible adults who can make these decisions without the approval of a paternalistic bureaucratic overseer. It would inhibit if not stop cases where employees have used their designations to pay tuitions to private schools or to day care centers.

The charity would receive with each check, I would assume, a statement to the effect that it is a tax deductible gift for which the donor should receive no benefit.

I appreciate the opportunity to present my views.

[The prepared statement of Mr. Barrett follows:]

TESTIMONY
OF
JEREMIAH J. BARRETT

I was the Director of the Office of Combined Federal Campaign (CFC) Operations from August 1988 through December 1991. Previously, I was the Special Assistant to the General Counsel for CFC. In these positions, I was the agency expert on the CFC and had direct responsibility for the development and implementation of CFC policy and the oversight and evaluation of its operation.

I developed and issued the CFC regulations in response to the CFC legislation. As the Congress had directed, these regulations opened the campaign to a larger number and wider variety of charities.

This increase in numbers and types of charitable organizations raised concerns within the Federal population. Many donors objected to both the increase in organizations and the objectives of some of them. Many employees felt that some of these organizations, did not in their point of view, provide direct human health and welfare services to individuals. Many felt that the inclusion of specific voluntary agencies was objectionable because of the groups goals and objectives. There were enough objections by Federal employees that in speeches, training sessions, and in correspondence, I tried to address these concerns by emphasizing that an employee's designation insured that his gift would go to the specified charity. In fact, the Department of Defense was so concerned about this issue that when I was going to Asia on behalf of the campaign they asked me to address this issue with the military.

This change in the CFC had an impact on campaign operations and, I would imagine, still does today. But, that impact has not been only negative because donors now in overwhelming numbers designate their gifts.

Next, I would like to address the purpose of these hearings. Can the CFC be returned to its original purpose to remove ideological advocacy groups and other organizations that do not provide or support human health and welfare services?

Based on my experience with the CFC, I doubt it.

The charitable organization that you support as providing human health and welfare services; I see as an advocacy group whose objectives and goals I find repugnant. Planned Parenthood World Population has participated in the CFC for three décades; the National Rifle Association almost two decades; and National Right to Life for over a decade.

In addition, Directors of the Office of Personnel Management and local campaign officials have through their eligibility decisions re-defined human health and welfare. An amazing variety of

organizations providing numerous and varied services have been found eligible. The introduction of these different voluntary agencies has caused the campaign to grow but based on receipts has not caused an adverse effect on the CFC.

For example, there is an organization that provides services in a only in limited number of western states but it sends applications throughout the country. When one of my staff members contacted them, an official with the group said that they paper the country with applications to most of the campaigns on the assumption that they will be accepted, even though they provide no services in each campaign area.

The CFC regulations and the IRS regulations allow ineligible organizations to create fronts that are eligible for charitable donations which in turn they funnel to the parent group. this happened a few years ago.

A national organization lost it IRS 501(c)(3) status because it had participated in a partisan campaign. There were two years of funds designated to the group to still be distributed. The U.S. Treasury advised OPM to arrange for the funds to be distributed to a charity that was providing similar services. The ineligible group formed a legal defense and education fund to receive the outstanding funds and these were then given to the parent group. This new group participates in the CFC today.

As you requested, I would like to share my view of what is the central purpose of the CFC. The CFC is the vehicle that gives Federal employees the opportunity to make donations to charitable organizations of the their choice. It is not to keep a specific charity alive or to have the Government decide what are appropriate organizations for employees to give their gifts. This leads me to the conclusion that the CFC as presently established should be abolished.

First, the CFC is very costly. A few years ago we calculated what the cost to the government was to operate the CFC. We made certain assumptions and came up with a figure of $50 million to raise $200 million. We would bar a charity that had this high a percent of its funds being charged to administrative and fund raising expenses.

Second, the CFC is a very small and insignificant part of any charities' support. As a nation Americans are incredibly generous in their charitable giving. The $200 million that is raised in the CFC is not even 1% of the total charitable dollars raised annually in the U.S.A.

Third, the Director of OPM and the local Federal officials are very limited in the amount of information that they receive from applicants with which to make their eligibility decisions. this permits many questionable and possibly fraudulent organizations to enter the CFC.

Fourth, deciding eligibility of organizations by the Government gives the false impression that they are approved by the Government. this is not the case but the Government still can be held up to ridicule for permitting a suspect organization to participate.

I recommend that the Congress encourage the Government to permit employees to establish a charitable allotment during a specific period of time each year without the CFC operational details. The allotment would be the same as the one used to pay off a car loan or other recurring payment that employees have.

This would remove the Government from the costly eligibility and appeal process and the possibility of potential legal claims.

It would allow the donor to continue support for an organization as long as he or she wished. An allotment such as this would require the employee to change or cancel it.

It would encourage the recipient charities to develop and maintain their relationships with their Federal donors.

It would treat employees as responsible adults who can make these decision without the approval of a paternalistic bureaucratic overseer.

It would inhibit, if not stop, cases where employees have used their designation to pay tuition to private schools or to day care centers. The charity would receive with each check, a statement to the effect that this is a tax deductible gift for which the donor should receive no benefit.

I appreciate the opportunity to present my views and I am available to answer any questions.

Mr. MICA. Thank you, Mr. Barrett. We will now call on our next witness, Mr. Joseph A. Morris, former General Counsel of the Office of Personnel Management.

Welcome, and you are recognized.

Mr. MORRIS. Thank you, Mr. Chairman. I also would like to commend you and the subcommittee for taking up this issue. It is an important one as the contentiousness that surrounds it may suggest.

If I might take a peculiar moment of personal privilege here, there is a gentleman sitting behind us here, a civil servant, James S. Green. Mr. Green was Principal Assistant to the General Counsel of OPM under President Carter. He was Principal Assistant to the General Counsel under President Reagan. He was Principal Assistant to the General Counsel of OPM under President Bush. He was Principal Assistant to the General Counsel of OPM now under President Clinton.

I have no idea what Mr. Green's personal views are regarding the Combined Federal Campaign or questions of eligibility in it, but I do know, however, that for two decades Jim Green has been giving solid legal advice to a succession of General Counsels in administrations that have had significantly differing points of view about what the Combined Federal Campaign ought to be and how it ought to be run.

As a lawyer, professional to professional, I would like to take this public opportunity to commend Jim Green on behalf of my predecessor, my successors and myself for that good work he has done for us.

The fact, Mr. Chairman, that lawyers have their hands so deeply in the business of the Combined Federal Campaign is one of the most telling things about it. It is a peculiar thing that here is a charity drive and here sitting to my right is the fellow who was the principal operations officer of a charity drive who ran a governmentwide charity drive out of a law office for years because of the contentiousness that has surrounded the Combined Federal Campaign, because this is no charity drive, Mr. Chairman.

What this has become is a mechanism, a machinery, a funnel for channeling money in the least extensive, most efficient way possible to political, legal and other advocacy organizations. That is what this fight is about. That is what it has been about for two decades.

You have before you this morning a witness representing the organization that more than any other is responsible for this fundamental change in the character of the CFC. For good or for ill, it is the NAACP Legal Defense and Educational Fund which made it its project in the late 1970's, early 1980's, under President Carter, and resisted by the Carter administration, to punch a hole in the wall that President Eisenhower, President Kennedy, President Carter and President Reagan attempted to draw that limited participation in the CFC to genuine traditional human health and welfare services that delivered services directly to needy people.

For good or for ill, the NAACP Legal Defense and Education Fund has gotten its way over the course of the last decade-and-a-half to the point that the hole it punched in 1980 in a decision that was handed down the night before Ronald Reagan was sworn in as

President and appointed Donald Devine as Director of OPM, January 19, 1991, was the first major decision of a court that ordered the LDF and in its wake a host of other legal and advocacy organizations into the Combined Federal Campaign.

Mr. Chairman, I know that our full statements are going to be added to the record. I would like to note that there is an Annex 3 to my full statement that is an index of 35 documentary exhibits. I have tendered to the committee, as well, a compendium of those 35 exhibits that take the subcommittee through the history of the Combined Federal Campaign from the earliest Executive orders to all of the various rules and regulations that have been promulgated, the court decision correspondence, including in the early 1980's very interesting correspondence to Director Devine from Abner J. Mikva, sitting judge of the U.S. Court of Appeals for the District of Columbia circuit, who weighed in what Director Devine thought in those days was an instance of bizarre judicial lobbying of the executive branch trying to open up the Combined Federal Campaign to advocacy organizations.

Director Devine was so nonplussed—it is rare to find him nonplussed, but he was so nonplussed by this lobbying by Judge Mikva who apparently continues his letter writing habits to this day, that Director Devine referred Judge Mikva's letter to me for reply and my reply to Judge Mikva will also be found in this compendium. So I ask that the compendium of exhibits also be inserted in the record along with my statement.

Mr. MICA. Without objection, we will submit for the record at least a summary of what is in the compendium and refer to that. It looks like a lengthy document. I am so cost conscious, we may refer to that.

Please proceed.

Mr. MORRIS. Thank you, Mr. Chairman. I think that it is important at the outset of your work in considering the Combined Federal Campaign to come back to a fundamental question about the role of charity in workplaces in America at large, a question Mr. Mascara put to one of the witnesses, and I don't think he got a satisfactory answer.

The question is, are there restrictions put on charitable solicitation in the workplace in the private sector and the answer is, you bet there is. I rather suspect most private workplaces in America don't allow charitable solicitation in the workplace at all.

And most private sector places of employment that do, including particularly the large corporate organizations where solicitation on behalf of charities of their employees are routine, tend to limit solicitation to, in the typical instance in a large metropolitan area, the United Way or the Crusade of Mercy or Community Chest, but some organization, usually umbrella or a federation that selects its own members. Private sector employers are entitled to decide whether or not there will be any invasion of their workplaces by charitable solicitors at all, and if they decide in the affirmative to allow invasion of the workplaces by charitable solicitors, they are entitled to decide whom they will admit.

Here we are dealing with an employer. To be sure, it is a somewhat different employer because it is a governmental employer. And because it is a governmental employer, there are just a few

crucial changes in the ground rules that apply to its decisions whether or not to admit charitable solicitation.

But one ground rule doesn't change, and that is that the government is under no obligation to allow any charitable solicitation in the workplace at all, and it is only by Executive orders of successive Presidents expressly allowing it in part to close off myriad kinds of little ad hoc solicitations that disrupt the workplace, only by those express affirmative decisions is charitable solicitation allowed at all.

The question is, once you open the door to any charitable solicitation, must you open the door, in effect, as the LDF has argued for a decade-and-a-half, to all charitable solicitations? And this is the heart of the matter.

Mr. Chairman, I submit that it is constitutionally and legally possible for the government as an employer to decide that it is going to limit the opportunity—that it is going to open its doors to solicitation but limit that solicitation to charitable organizations that the government selects on the basis of neutral and objective criteria.

I submit, Mr. Chairman, that an excellent effort at elaborating neutral and objective criteria was made by President Reagan in his 1983 Executive order and that the meaning of Mr. Reagan's 1983 Executive order was successfully elaborated by Director Devine's 1983 implementing regulations.

And what those objective and neutral criteria do is exactly what Director Devine has already told you; Justice O'Connor said in the decision of the U.S. Supreme Court in *Cornelius* v. *the NAACP Legal Defense and Education Fund* in 1985, that it is a permissible decision for the government to make that a charitable dollar spent on direct human health and welfare services is more valuable as far as the government is concerned than a charitable dollar spent on legal, political or other advocacy decisions and therefore the government decides that it will subsidize the collection in the Federal workplace of the former as opposed to the latter, a legitimate, a responsible, a constitutional distinction, and a constitutional distinction that the Supreme Court said in that case can be made on grounds that on their face are neutral and objective and therefore perfectly constitutional despite the peculiar first amendment rules that apply only to government workplaces and to no private workplaces.

Against that background comes a simple question, is this system currently broken?

The answer is, you bet it is broken when this wonderful opportunity that successive Presidents have given and that generations of Federal employees have followed up on—to provide generous support to human health and welfare philanthropies, when that spirit, that impetus, that subsidy and those moneys are being diverted to other causes. Those other causes may well be legitimate.

I support some of them. I am, in fact, President and CEO on a volunteer pro bono basis of a 501(c)(3) legal defense organization that refuses to participate. My board has directed that we not participate in the CFC precisely because my board wants to avoid any avoidable governmental subsidies of any kind and it is certainly

the case that the CFC involves a governmental subsidy of the collection of money.

Yes, there is a harm when the government is forced to use taxpayer money to subsidize the collection of funds for charities whose work, whatever it is, whether I approve or disapprove of it, or you approve of it or disapprove of it, goes to support something other than the lessening of the burdens of government, and that is one perfectly valid objective distinction that can be made.

For what human health and welfare agencies that deliver direct services to poor and needy and sick people do is they lessen the burdens of government. What organizations like the NAACP Legal Defense and Education Fund or the Lincoln Legal Foundation, of which I am the pro bono president, do, in many instances, is to litigate trying to get government to spend money to take action, not lessen the burdens of government, but impose burdens on government.

That is a legitimate kind of distinction to be drawn and successive Presidents have drawn that distinction.

Mr. Chairman, let me conclude with just a couple of quick comments about some issues that have come up in testimony through the course of the day today to which perhaps the further scrutiny of the subcommittee may in due course be directed. Reform of the Combined Federal Campaign does not at all necessarily mean denial of choice, because, remember, most charitable solicitation giving takes place out of the workplace altogether and there is nothing about any of the reforms that are being considered today, nothing about any of the reforms in President Reagan's 1983 Executive order that in any way impose any limitations upon what people do with their own money on their own time in their own way outside the workplace.

Second, Mr. Chairman, I think that careful attention should be given to that chart that the Deputy Director of OPM displayed today. On careful review, I don't believe that chart shows that there has been a steady increase in constant dollars in average gifts.

In fact, I think it shows that in the time period displayed on the chart from 1965 through 1993 the per capita held constant in constant dollars, went from about $11.50 down to $10. That was a more or less constant squiggly line across the chart. The black line that held steady for many years and shot up from 10 to nearly a thousand in the space of under 10 years was the total number of organizations participating in the CFC.

It was held steady at $10 until the LDF punched a hole and then the number of national—not local but national—organizations participating in CFC shot up from 10 to nearly 1,000 in the 1993 campaign, and that does not count the additional hundreds and thousands of 501(c)(3) organizations that participate in the Combined Federal Campaign at local levels.

Absolute dollar giving is falling off. It peaked a few years ago and has been coming down according to OPM's figures in each of the last three or four campaign years. Absolute numbers of people participating is falling off. That may be in part due to changes in the size and composition of the Federal workforce. The undeniable

fact is, and has already been a subject of discussion this morning, that participation rates are falling off.

I do not think, Mr. Chairman, that the participation rates are falling off simply because of the change in the coercion rules. The big change there occurred in regulations imposed by Director Devine in 1982.

In 1982, in his first set of regulations and the very interesting 1982 experiment, were put in place the rules that currently prevail with regard to coercion in the workplace. In the most controversial year of the Reagan experiment 1982/1983, the participation rate was well over 60 percent, 62, 63 percent.

There is a footnote in my testimony that has the precise number. It has fallen now below the 50 percent level. The only change from then until now has not been a change in the noncoercion rules.

The change has been this explosion in participation of political advocacy groups in the campaign which has genuinely undermined, along with externalities such as the United Way scandal, the confidence of donors in the integrity and the purposes of the CFC.

Mr. Chairman, let me conclude with a quick summary description of that 1982 experiment which really deserves the attention and study by this subcommittee and the Congress as a whole. In 1982, in the wake of the LDF's success in court and in the wake of the experience in the 1981 iteration of the Combined Federal Campaign where the walls began tumbling down, President Reagan and Director Devine decided to try an experiment that was as open as it could possibly be in the time available.

The 1982 Executive order and the implementing regulations promulgated by Director Devine under President Reagan's 1982 Executive order effectively produced an experiment in microcosm with the CFC under the kind of ground rules we have now where legal defense funds and other legal advocacy organizations across the spectrum right and left were allowed to participate. The 1982 experiment provoked the great crisis of the CFC because it was in that year that it was brought home to Federal employees all across America what these changes would mean.

In the 1982 campaign, wide open ground rules were applied. Director Devine required that all Federal employees be given the option of specific designation of gifts, and that was the first time that that requirement had been imposed. Hitherto, as he pointed out this morning, undesignated gifts were allocated by committees of government employees and he began the policy of allowing, indeed requiring that government employees be permitted to direct, to designate where their gifts specifically would go, to specific charities if they saw fit, or to federations and umbrella groups if they preferred. That experiment also began in the 1982 campaign, and has proved a success.

But what we learned in 1982 when the hue and cry that was raised across America—and in the appendix to my testimony you will find examples, letters from presidents of labor unions, letters from ordinary citizens and Federal employees across America expressing horror and frustration that this charitable solicitation drive about which they had such a proprietary feeling because they make it work in Federal workplaces all across America—was being taken away from them and turned into a fundraising drive, a kettle

to collect for the likes of the LDF, the National Right to Work Legal Defense Fund the Conservative Legal Defense Fund, Planned Parenthood, the Right to Life Committee and so on.

It was that experiment that then brought us to the point of President Reagan's 1983 Executive order which really changed the course of the debate. Ironically, the Reagan 1983 Executive order is still the underlying law that governs the CFC.

Those are the rules that govern the Combined Federal Campaign today except for, of course, the Hoyer amendment and the 1988 Urgent Supplemental Appropriation Act, section 618 of that act, which gutted the eligibility standards and in effect opened up the CFC to participation under, in effect, the term, made permanent the terms of the 1982 experiment.

Mr. Chairman, you have asked me to advise on what I think are the best ground rules for the campaign. I think they are embodied in Reagan's 1983 Executive order, and in the 1983 eligibility standards that gave voice to that order.

I would urge the Congress to repeal section 618 of that Fiscal Year 1988 Urgent Supplemental Appropriations Act and, instead, enact the substantive eligibility standards of President Reagan's 1983 Executive order and Director Devine's 1983 regulations. If Congress did that, Mr. Chairman, it would restore integrity to the CFC and would make the Combined Federal Campaign something worthy of taxpayer subsidy and worthy of intrusion into the Federal workplace because it would focus affirmatively the Combined Federal Campaign on raising money for health and welfare organizations that deliver services directly to poor, needy and sick human beings, and that is what this kind of charity should be about.

[Note.—The annex and appendix of Mr. Morris' prepared statement can be found in subcommittee files.]

[The prepared statement of Mr. Morris follows:]

MORRIS, RATHNAU & DE LA ROSA

STATEMENT
of
JOSEPH A. MORRIS[1]
Before the
Subcommittee on Civil Service
of the
Committee on Government Reform and Oversight
of the
United States House of Representatives
on
REFORM OF THE COMBINED FEDERAL CAMPAIGN

June 7, 1995

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Introduction

The Combined Federal Campaign is probably the single most important source of donor support for the private, voluntary health and welfare charities that serve the people of this nation. It is also supplies a major channel of expression of the charitable impulse that runs deeply in Federal workers, including civil servants, members of the armed and uniformed services, judges, congressmen, and their staffs.

Five things about the Combined Federal Campaign (the "CFC") have long made it a magnet for controversy:

[1] A copy of my biographical sketch is attached to this statement as Annex A.

(1) It raises large amounts of money and is therefore too tempting for fundraisers and charitable groups, particularly those not already benefiting from its largesse, to ignore.[2]

(2) Large amounts of the money that it raises are, or appear to be, given by donors who fail to specify who shall receive them, leaving it to others to allocate the funds.[3]

(3) Whether or not a participating organization succeeds in raising money through the CFC, the process of solicitation accords it a means of broadcasting a message to the Federal workforce, a large and influential population, and to do so with the apparent imprimatur of the United States Government.

(4) Administration of the CFC, involving the assignment of numerous loaned executives, the staging of myriad promotional events, the production and distribution of campaign materials, the devotion of hundreds of thousands of

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[2] In 1991 the CFC produced a total of $204,384,007 in charitable contributions; in 1992 the total was $198,831,189; and in 1993, the most recent year for which data were available to me, the total was $196,826,303. A downward trendline will be noted, with 4,692,797 employees solicited in 1991 and 2,484,655 contributing; 4,458,117 solicited in 1992 and 2,190,150 contributing; and 4,193,355 solicited in 1993 and 2,009,753 contributing. A merely shrinking Federal workforce (civilian and military) will not account for this trend, for, perhaps more significantly, participation rates are steadily declining, too: It was 52.94% in 1991, 49.12% in 1992, and 47.92% in 1993. *Source of data:* OPM, March 31, 1995. None of this can be blamed on Ronald Reagan, by the way: In the peak year of the "Reagan controversy", 1982, the CFC participation rate was 63.2%.

[3] Of all the CFC funds raised in 1991, $19,138,314 were undesignated; in 1992 the undesignated total was 14,959,599; and in 1993 it was 13,337,298. A message is getting through. *Source of data:* OPM, March 31, 1995.

worker hours to its annual execution at the local level, and the processing of payroll-deduction pledges and contributions through the pay system, imposes costs on the taxpayers.[4]

(5) Operation of the CFC for the benefit of political, legal advocacy, and religious organizations aggravates the suspicion of donors and the sense of taxpayers that their money is being used, without their consent, for the support of causes that they oppose.

I have been a student of the CFC and its travails for a decade and a half. Indeed, as the General Counsel of the United States Office of Personnel Management for nearly five years, from early 1981 until the end of 1985, I was the seniormost official of the Federal Government charged with day-to-day responsibility for the governmentwide management of the CFC. It may seem peculiar that a law department would have operational responsibility for any major program, let alone a workplace charity drive -- and it is. But the CFC has always been so prone to litigation and controversy, and the legal issues surrounding it have been seemingly so constitutionally sensitive, that it became difficult for a time for anyone but lawyers to make the hard decisions necessary for the program to go forward. Go forward it has, but always in a cloud of anger, mistrust, suspicion, greed, and lawsuits.

Yet, so powerful is the philanthropic inclination of the Federal workforce that, despite

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[4] OPM admits to costs of $13,673,663 for the 1991 campaign; $14,597,951 for the 1992 campaign; and $14,918,102 for the 1993 campaign. *Source of data:* OPM, March 31, 1995. I do not know how these numbers were determined. It is worth noting that costs are increasing while dollars raised, numbers of solicitations, numbers of participants, and participation rates are all declining; and in 1993 costs of administration exceeded undesignated contributions.

what must have seemed to its beneficiaries to be amazing odds, the CFC has nonetheless managed each year to produce wonderful levels of financial support for worthy charities. But this has come mainly despite, not because of, the groundrules that have evolved for the CFC, including, most conspicuously, the rules imposed by Congress in 1988 that prevail to this day.

Congress has the power to restore the CFC to what it was originally intended to be, and what hundreds of thousands of its contributing supporters innocently believe that it is: *An efficient means of giving voluntary support to honest programs that meet real needs of human health and welfare, thereby lessening the burdens of government.* For that reason I am grateful to you, Mr. Chairman, and to this Subcommittee for being interested in the campaign, for convening this hearing, and for asking me to appear before you.[5]

You have asked me to testify as to my experience with the CFC while General Counsel of the Office of Personnel Management and, in so doing, to discuss the Reagan Administration's attempt to restrict the CFC to human health and welfare organizations and the attendant litigation and then to answer three broad questions regarding the purposes, operation, and legal foundation of the campaign. I am happy to do so.

To assist in this undertaking I have prepared, and submit with this Statement, an Appendix of Exhibits that sets out the documentary history necessary to understand the CFC and how it came to its current pass.[6]

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[5] A copy of the letter of May 30, 1995, of John L. Mica, Chairman of the Subcommittee on Civil Service of the Committee on Government Reform and Oversight of the United States House of Representatives, to me inviting me to appear at this hearing is attached to this Statement as Annex B.

[6] The Table of Contents of the Appendix of Exhibits is attached to this Statement as Annex C.

Background

The origins of charitable solicitation within the Federal workforce are undocumented. They probably go back to the very earliest days of a Federal service in the infant Republic.[7] By the end of World War II one routinely found charities conducting appeals in Federal installations around the world. Some solicitations were coordinated with Federal managers; others were undertaken on an *ad hoc* basis, often with no greater sophistication than the passing around of an empty coffee can. The heads of some Federal facilities permitted no solicitations whatsoever; at other Federal worksites, no restrictions were imposed, and it was not uncommon for a collection to be taken up each week on behalf of one charity or another. In some instances the solicitors were rank-and-file employees; in other instances, with obviously greater risk of

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[7] One early observer of America, Alexis de Tocqueville, remarked on how "in the United States...salaries seem to diminish as the power of the recipients increases." DEMOCRACY IN AMERICA 213 (12th ed. 1848) (Anchor ed. 1969). By contrast, he argued, "under aristocratic rule high functionaries receive very large emoluments, whereas inferior ones often have hardly enough to live on." *Ibid.* Thus "In America officials of secondary rank are better paid than elsewhere, but high officials are much less well paid." *Id.* at 212. As to the spirit of the early American civil service, Tocqueville found that "American public officials blend with the mass of citizens.... This external simplicity of persons in authority is not due to some peculiar twist in the American character but derives from the fundamental principles of their society." *Id.* at 203. Thus Tocqueville could praise American civil servants with words that may seem a bit florid in light of the intrusiveness of the modern bureaucratic state, but which nonetheless even now capture something vital about the relationship between American public servants and the society of which they are a part: "I can imagine no one more straightforward in his manners, accessible to all, attentive to requests, and civil in his answers than an American public official. I like this natural demeanor of democratic government and the inner authority which goes more with the office than with the official, and more with the man than with external symbols of power, for there is something admirably virile therein." *Ibid.* It is easy to imagine such civil servants taking the lead, as volunteers, in lending succor to the afflicted when misery or disaster struck their respective local communities.

intimidation and coercion, the solicitors were supervisory personnel; and in still other instances the solicitors were outsiders invited in, or otherwise present, in Federal workplaces.

These were not happy arrangements. Feelings were often bruised, and ill will resulted. Charitable agencies could not understand why they were allowed to solicit in some Federal establishments and not in others, nor did they appreciate the fact that some charities seemed to have the support of Federal management while others were allowed, at most, to collect passively by the placement of an unattended contribution jar in an obscure corner of a lunchroom. Meanwhile, Federal employees were often made unhappy by repetitive solicitations that seemed to abuse their philanthropy.

Informal, unregulated, and proliferating, such fundraising efforts finally received Presidential attention during the Second Eisenhower Administration, when the President attempted to impose order by issuing Executive Order No. 10728 (September 6, 1957) which established the President's Committee on Fund-Raising Within the Federal Service. President Eisenhower sought to continue the practice of allowing charitable solicitations in the Federal workplace, but to minimize disruption of business and to impose uniform standards of accessibility to the forum. His order called for a "uniform fundraising program"[8] in which "national voluntary health and welfare organizations"[9] would be allowed to participate in no more than three annual solicitations[10] held during time periods that would be specified by

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[8] Executive Order No. 10728, § 1(a) (September 6, 1957).

[9] *Id.* § 3(d).

[10] *Id.* § 1(b).

Federal management.[11] In the end, though, President Eisenhower's measures did not do enough to gain control of the situation. Less than four years later his successor revisited the matter.

The Combined Federal Campaign came into being with President Kennedy's promulgation of Executive Order No. 10927 (March 18, 1961). *See* Appendix, Exhibit 1. President Kennedy retained the possibility of as many as three annual solicitations at specified times[12] but expressly required that the campaign "permit true voluntary giving and reserve to the individual the option of disclosing his gift or keeping it confidential."[13] The President's Committee on Fund-Raising Within the Federal Service was abolished. Instead, the Kennedy order established the CFC and gave responsibility for its oversight to a single agency with governmentwide management responsibilities: the Civil Service Commission. The Chairman of the Civil Service Commission (which would eventually be succeeded, of course, by the Office of Personnel Management as the agency responsible for management of the civil service and, with it, the CFC) was instructed to make arrangements for workplace solicitations by "national voluntary health and welfare agencies and such other agencies as may be appropriate."[14]

For nearly 20 years the Kennedy criterion of admissibility to the CFC proved to be of little controversy. Everyone seemed to understand that the CFC was intended to support traditional kinds of charities that undertake research into the causes and cures of dread diseases

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[11] *Id.* § 1(c).

[12] Executive Order No. 10927, § 2(b) (March 18, 1961).

[13] *Ibid.*

[14] *Id.* § 2(a).

or that render health and welfare services directly to needy people. The term "national" as used in the Kennedy order was generally perceived as requiring beneficiary agencies to render service on a nationwide scale or to address a problem, such as a major disease, whose incidence was pervasive across the country. Early on a conspicuous exception to the principle of "national" scope was read into the Kennedy criterion's second clause, "such other agencies as may be appropriate": CFC participation was granted to charities that, although purely local, directly benefitted the Federal community, such as health and welfare funds on overseas military bases and support funds for the widows and orphans of Federal law enforcement officers killed in the line of duty. And from the beginning, local human health and welfare charities, including the local branches or affiliates of national agencies such as the American Red Cross, the American Heart Association, and the American Cancer Society took part, typically organized through the local United Way, Community Chest, Crusade of Mercy, or similar umbrella entity.[15]

By the late 1970s, however, the human health and welfare agencies had been joined in the world of mass-market charitable solicitation by an ever-growing number of not-for-profit organizations whose activities were quite dissimilar. Some of these other philanthropies are of an "elite" nature, such as private schools and universities, art museums, opera companies, and sports associations. Other agencies, typically of a newer vintage, are the "advocacy" groups, such as legal defense funds, public policy research organizations, and groups that seek to address human and social needs not by direct remedial action, but by stimulating governmental

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[15] Planned Parenthood in its various manifestations also became an entrenched participant in the CFC during the Carter years, taking part at the national level as an "International Service Agency" and often "double-dipping" by holding an additional position in many local CFCs, typically as an affiliate or beneficiary of the local United Way or its equivalent.

assumption of increasing responsibility for problems.

Now, none of this is to say that the alternative philanthropies, such as the "elite" institutions or the "advocacy" groups, are in any sense illegitimate, unworthy of support, or not deserving of tax-exempt status. It is simply to note the obvious fact, that these alternative philanthropies are not charities that supply health and welfare services directly to human beings who are ill, infirm, poor, or distressed, thereby lessening the burdens of government and local communities in meeting basic needs of such people.

As late as 1980 the Civil Service Commission and the Office of Personnel Management limited participation in the CFC to human health and welfare charities.[16] The last full set of CFC groundrules adopted by the Civil Service Commission was issued during President Carter's Administration. Its MANUAL ON FUND-RAISING WITHIN THE FEDERAL SERVICE FOR VOLUNTARY HEALTH AND WELFARE AGENCIES (April 1977)[17] (the "Manual") included, at Section 5.21, a refinement of President Kennedy's eligibility criteria:

> Only nonprofit, tax-exempt charitable organizations, supported by voluntary contributions from the general public and providing direct services to persons in the fields of health and welfare services are eligible for approval.

In 1980 President Carter's newly-established Office of Personnel Management proposed a revision of the Manual[18] that added a new umbrella grouping of "national agencies having

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[16] Litigation over access to the campaign was rare in that era, and, when challenged, the constitutional validity of the Kennedy Executive Order was initially upheld. *See United Black Fund, Inc. v. Hampton*, 352 F.Supp. 898 (D.D.C. 1972). The full text of the court's decision is reproduced at the Appendix, Exhibit 2.

[17] A copy of the manual is reproduced at the Appendix, Exhibit 3.

[18] *See* 45 FEDERAL REGISTER 9418 (February 12, 1980), set forth at the Appendix, Exhibit 4.

a domestic welfare service function",[19] made arrangements permitting "employees to designate a contribution to approved local health or welfare agencies that are not members of the local federated group",[20] and required each participating charity to "carry out affirmative action programs to assure equal employment opportunity. This policy applies to persons served by the agency[,] to the staff of the agency[,] and to membership on its governing board and committees."[21]

Those changes did not go far enough to satisfy groups such as the NAACP Legal Defense and Educational Fund, Inc., (the "LDF") whose Director-Counsel wrote in response.[22] The LDF candidly acknowledged its interest:

> Theoretically, of course, there is no bar to federal employees contributing independently to any organization they may choose. The practicalities of charitable giving, however, are that once employees have contributed through an organized appeal at their place of employment, it is not likely that they will also contribute outside of that effort. Further, the Combined Federal Campaign allows the most painless type of giving through a checkoff of wages, so that in each pay period a small amount may be donated. The advantages of this system are obvious.[23]

The LDF then summarized its chief objection to the eligibility criteria then prevailing:

> The present system excludes organizations oriented towards benefiting minorities and other disadvantaged groups. Many organizations that are recognized under the federal internal revenue laws and regulations as valid, non-profit, tax-exempt charitable

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[19] *Id.* § 3.1.

[20] *Id.* § 4.2A.

[21] *Id.* § 4.21A(c).

[22] *See* Letter of March 3, 1980, from Jack Greenberg, Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc., to Joseph Patti, Assistant to the Director of OPM. A copy of the letter is set forth at the Appendix, Exhibit 5.

[23] *Id.* at 1.

> organizations are therefore excluded.[24]

It proposed, instead, a simple, straightforward standard:

> We urge that all organizations so recognized [as valid, non-profit, tax-exempt, and charitable] by the Internal Revenue Service be able to be included in the CFC, and that federal employees be able to designate any such organization to receive their contributions.[25]

That standard was rejected by the Office of Personnel Management, apparently on the ground of impossibility of administration. The total number of organizations that are recognized by the Internal Revenue Service as tax-exempt charities is huge. It would be impossible to list them all in a single campaign brochure or pledge card. It would cause monumental headaches in payroll offices throughout the Government to allow employees to write-in the name of any tax-exempt charity in America (a local church? a Boy Scout troop? one's old elementary school, a thousand miles away in one's old hometown?) on a payroll deduction form and then make sure that the beneficiary's name was correct, track down its address, and figure out how to forward the money. The Government's costs of processing a contribution could easily exceed its value. The LDF did not get the macroscopic change it favored and it was excluded from the 1980 fundraising drive.

So the LDF sued. Joined by the Puerto Rican Legal Defense and Education Fund, Inc., it challenged as unconstitutionally vague the "direct services" requirement of the Carter Administration's Manual. On January 19, 1981, the eve of President Reagan's first inauguration, Judge Gerhard Gesell of the United States District Court for the District of

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[24] *Id.* at 2.

[25] *Ibid.*

Columbia held that the CFC was a channel of First Amendment expression and that the Carter Administration's "'direct services' requirement does not meet First Amendment standards. It is nowhere defined and the term, standing alone, is too vague to comport with the strict standards of specificity required when limits are placed on First Amendment activity." *NAACP Legal Defense and Educational Fund, Inc. v. Campbell*, 504 F.Supp. 1365, 1367 (D.D.C. 1981).[26] Although Judge Gesell declined to award the LDF a share of the already-completed 1980 campaign ("there already are vested interests by other groups in the receipts"), OPM was ordered not to reject any pending or future application by the legal defense funds on the "direct services" ground. *NAACP Legal Defense and Educational Fund, Inc., supra*, 504 F.Supp. at 1369. Judge Gesell closed his opinion with an exhortation to "the government officials responsible for the program to re-examine the basic premises on which the program was established so that more acceptable standards can be developed which will assure continuation of the government's significant and useful support for worthy charitable solicitation." *Ibid.* It was a plea that the government officials who became responsible for the CFC on the very next day -- President Reagan and his first OPM Director, Donald J. Devine -- would take up in earnest.

The Reagan Attempts at Reform

The first CFC drive held during the Reagan years, in the fall of 1981, was carried out under the Carter rules as modified by Judge Gesell's decision. It was a jury-rigged affair, with all previously eligible participants included and no one who sued or threatened to sue excluded.

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[26] A copy of the full text of the court's decision is set forth at the Appendix, Exhibit 6.

New philanthropies were admitted to the CFC at a very rapid rate in 1981 and 1982. Many of them were legal advocacy organizations, such as the LDF, the Puerto Rican Legal Defense Fund, the National Organization for Women Legal Defense Fund, the Center for Auto Safety, and, in due course, the Conservative Legal Defense and Education Fund and the National Right to Work Legal Defense Fund.

In the spring of 1982 the Reagan Administration decided to attempt a bold experiment. The foundation was laid with President Reagan's issuance, on March 23, 1982, of Executive Order No. 12353.[27] That order revoked President Kennedy's old order,[28] instructed the Director of OPM to "make arrangements for such national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate to solicit contributions from Federal employees and members of the uniformed services at their places of employment or duty"[29] in a single annual campaign,[30] and delegated to the OPM Director the authority to "establish criteria for determining the eligibility of voluntary agencies that may participate in each of the annual Combined Federal Campaigns."[31]

On May 11, 1992, OPM gave notice[32] that it was proposing new rules in implementation of Executive Order No. 12353. Comments were received and evaluated and,

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[27] A copy of the full text of Executive Order No. 12353 (March 23, 1982) is set forth at the Appendix, Exhibit 7.

[28] *Id.* § 9.

[29] *Id.* § 1.

[30] *Ibid.*

[31] *Id.* § 2.

[32] 47 FEDERAL REGISTER 20268 (May 11, 1982).

on July 6, 1982, final rules were promulgated.[33] In spirit these rules represented a major effort at accommodating the aspiration expressed in 1980 by the LDF's Director-Counsel, opening participation in the CFC as widely as practicable. The term "national voluntary health and welfare agencies and such other national voluntary agencies as may be appropriate" was fleshed out,[34] essentially tracking the criteria for tax-exempt status consistent with Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). "Delivery of legal services to the poor and indigent, *and defense of human and civil rights secured by law*" was expressly included.[35] Charities would be invited to apply each year to participate in the CFC, either on a nationwide basis, if their activities so warranted, or locale by locale;[36] their applications would be tested against OPM's liberal eligibility standards by a National Eligibility Committee[37] or the Local Federal Coordinating Committee for each local campaign, respectively.[38] The Local Federal Coordinating Committee, consisting of leaders of the Federal agencies in a local campaign area (typically a Federal Executive Board or a Federal Regional Council) designated for the purpose by the Director of OPM,[39] was to manage the local CFC[40] and to identify a Principal

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[33] 47 FEDERAL REGISTER 29496 (July 6, 1992). A copy of the full text of the 1992 regulations is set forth at the Appendix, Exhibit 8.

[34] 5 CFR § 950.101(a) (1982).

[35] 5 CFR § 950.101(a)(3)(vii) (1982) (*emphasis added*).

[36] 5 CFR § 950.201(b) (1982).

[37] 5 CFR § 950.407(d) (1982).

[38] 5 CFR § 950.503(b) (1982).

[39] 5 CFR § 950.211 (1982).

[40] 5 CFR §§ 950.505, 950.509 (1982).

Combined Fund Organization to execute the campaign in the local area.[41] Designated contributions were to be allowed and encouraged, but any gifts not designated to specific individual charities or federated charitable groups were to be deemed designated to the Principal Combined Fund Organization[42] (which in most, but decidedly not all, CFC areas turned out to be the local United Way affiliate).

The hole punched in the CFC's wall in January 1981 by the LDF and the Puerto Rican Legal Defense and Education Fund, Inc., became in 1982 and 1983 an open doorway, and through it poured not only the legal advocacy groups already mentioned but numerous other organizations, all participating or applying for berths in the national and local CFC, including:

ACLU Bill of Rights Fund Campaign
AFL-CIO Department of Community Services
Animal Welfare Institute
Center for Law in the Public Interest
Citizens for God and Country
Environmental Defense Fund
Federation of Fly Fishers
Foundation for Handgun Education
Freedom Church of Revelation
Guardian Angels
International Association of Machinists, AFL-CIO
Museum Consultants International
National Association for the Advancement of White People
National Conservative Fund
National Education Association
PUSH Foundation
Religion in American Life
Sierra Club Legal Defense Fund.

As the LDF got its wish, a firestorm of controversy erupted across the nation. I have included

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[41] 5 CFR § 950.509 (1982).

[42] 5 CFR § 950.509(g) (1982).

in the Appendix a representative sampling of the attention that the 1982-1983 CFC received in the news media.[43] The well-publicized threat of the National Association of Letter Carriers to boycott the CFC[44] was only one such instance; another, the announcement by the Hawaii Federal Employees Metal Trades Council that it, too, would boycott the CFC led Hawaii's entire congressional delegation to write to the president of the union to urge reconsideration.[45]

At the height of the controversy Director Devine received a curious letter from Abner J. Mikva, then sitting as a judge of the United States Court of Appeals for the District of Columbia Circuit, who seemed to believe that OPM was *excluding* organizations from the CFC.[46] Uncertain of how to reply to what he regarded as an instance of judicial lobbying of the executive, Director Devine referred Judge Mikva's letter to me for reply. I wrote back to Judge Mikva at length, explaining what we were trying to accomplish and why.[47]

The controversy was real. As the news clippings make clear, Federal employees across the country were awakening to the prospect that their charity contributions might end up in the coffers of organizations that they found objectionable. Anger surfaced on the left and the right. Director Devine's response was a clear, consistent educational campaign intended to emphasize that donor designations would be strictly honored.[48] All that a CFC contributor had to do to

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[43] *See* Appendix, Exhibits 9, 10, 11, 12, and 13.

[44] *See* Appendix, Exhibit 13.

[45] *See* Appendix, Exhibit 14.

[46] *See* Appendix, Exhibit 15.

[47] *See* Appendix, Exhibit 16.

[48] *See, e.g.*, Appendix, Exhibit 17.

ensure that his or her gift did not go to an undesired recipient was to earmark the contribution for a desired beneficiary.

Nonetheless, the results of the experiment were mixed. In some parts of the nation the politicization of the CFC caused palpable declines in overall charitable giving. Heavily unionized Bremerton, Washington, where distaste for the CFC's admission of the National Right to Work Legal Defense and Education Fund bubbled over, was a case in point.[49] In the end, total contributions in the 1982 CFC amounted to about $99,000,000, a 3.8% increase over 1981. That was a decline, however, from 1981's 9.6% rate of growth over 1980. Although total dollars increased, albeit at a slowing rate, total participation fell off: In 1981 64.7% of all Federal employees took part in the CFC; in 1982 only 63.2% did so. One aspect of the CFC that increased dramatically was designations: In 1981 only 49.5%, fewer than half, of all CFC gifts were earmarked for a particular recipient charity; in 1982 62.7% of all contributions were designated.[50]

In the wake of the 1982 campaign it became clear that each successive solicitation drive would involve ever greater numbers of participating tax-exempt entities. Inquiries from organizations all over the country to OPM's offices increased exponentially. Numbers of entities participating in local campaigns would clearly double or triple annually in each foreseeable year. Congresswoman Pat Schroeder sensed that the Administration might reconsider the CFC's groundrules and wrote to Director Devine urging that there be no curtailment of eligibility.[51]

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[49] *See* Appendix, Exhibit 18.

[50] Source: Memorandum for OPM General Counsel Joseph A. Morris from OPM Office of Regional Operations (June 28, 1983).

[51] *See* Appendix, Exhibit 19.

Meanwhile, mail from Federal workers and Federal employee unions and organizations was overwhelmingly in favor of a reversal of course. The CFC was, in their view, turning into a spectacle that mocked the meaning of charity and ran the risk of making institutional greed so visible that the attitude of donors would be soured toward all philanthropies. That sentiment was captured in mid-January 1983 by one particularly memorable cartoon in *The Washington Times*.[52]

We in the Reagan Administration did, indeed, spend the fall of 1982 and the winter of 1983 in rethinking the CFC, a process of discussion and consultation that culminated in a Cabinet meeting at the White House presided over by President Reagan on February 2, 1983. On that day, after a lengthy and particularly lively debate, the President directed OPM to change the CFC in its fundamentals. President Reagan decided to refocus the CFC narrowly on alleviating the burdens of government in combatting threats to human health and welfare. Eight days later, on February 10, 1983, President Reagan issued Executive Order No. 12404.[53]

The 1983 Executive Order entirely changed the nature of the CFC, guiding the establishment of CFC eligibility criteria by "the following principles and policies":[54]

> (1) The objectives of the Combined Federal Campaign are to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to provide a convenient channel through which Federal public servants may contribute to these efforts; to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail; and to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly

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[52] *See* Appendix, Exhibit 20.

[53] A copy of the full text of Executive Order No. 12404, 48 FEDERAL REGISTER 6685 (February 10, 1983), is set forth at the Appendix, Exhibit 21.

[54] Executive Order No. 12404, § 1(b).

serve needs of human health and welfare.

(2) To meet these objectives, eligibility for participation in the Combined Federal Campaign shall be limited to voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals or their families. Such direct health and welfare services must be available to Federal employees in the local campaign solicitation area, unless they are rendered to needy persons overseas. Such services must directly benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. Such services must consist of care, research or education in the fields of human health or social adjustment and rehabilitation; relief of victims of natural disasters and other emergencies; or assistance to those who are impoverished and therefore in need of food, shelter, clothing, education, and basic human welfare services.

(3) Agencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves shall not be deemed charitable health and welfare agencies and shall not be eligible to participate in the Combined Federal Campaign.

Announcement of the Executive Order's issuance was promptly met, as reported in *The New York Times* on February 17, 1983, with threats of litigation from a coalition of legal advocacy organizations.[55] But it was greeted, as well, by strong expressions of support. *The Washington Post* editorialized on Sunday, February 20, 1983, that President Reagan's exclusion of political and advocacy groups from the CFC was "Fair enough. The government, through the CFC, should not be a collection agent for clearly political groups."[56] The *Minneapolis Star and Tribune* weighed in on March 4, 1983, opining that President Reagan's "wise action removes an unfortunate pall from national charity drives" and declaring:

"...Reagan ordered that the combined campaign exclude agencies 'that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying or litigation on behalf of parties other than themselves.' Good for

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[55] *See* Appendix, Exhibit 22.

[56] *See* Appendix, Exhibit 23.

the president. Political advocacy groups should get their money elsewhere."[57] It was reported that even Bremerton, Washington, welcomed the news of the Executive Order and the Presidential emissary who brought it.[58]

On June 24, 1983, OPM proposed regulations to implement Executive Order No. 12404.[59] Lawsuits followed the issuance of the President's order and trial-level decisions were reached during the comment period that followed OPM's proposal of its implementing rules. In the commentary accompanying final publication of the 1983 rules, OPM assayed the litigation in the following terms:[60]

> Near the end of the comment period, on July 15, 1983, the United States District Court for the District of Columbia entered an order in *NAACP Legal Defense and Educational Fund, Inc.* v. *Devine*, Civil Action No. 83-928 (*NAACP Defense Fund*). That lawsuit generally questioned the constitutional validity of Executive Order No. 12404. The court order, however, more narrowly enjoined OPM from excluding seven plaintiff legal defense funds from the CFC if such exclusions were based on certain eligibility criteria set forth in Executive Order No. 12404. (See Executive Order No. 123523, sections 2(b)(1)-2(b)(3), as amended by Executive Order No. 12404, section 1(b)). The court order has been applied subsequently to other organizations seeking to obtain eligibility in the CFC through litigation. See *Planned Parenthood Federation of America* v. *Devine*, U.S.D.C., D.C., Civil Action No. 83-2118 (order entered July 26, 1983)(*Planned Parenthood*).
>
> The Government is appealing from the district court's order in *NAACP Defense Fund* and will vigorously defend Executive Order No. 12404 in all other pending litigation. Unless and until the court's order in *NAACP Defense Fund* is modified or reversed, OPM will, of course, obey it. OPM will also treat organizations similarly situated to the *NAACP Defense Fund* plaintiffs (*i.e.*, similarly organized, non-profit

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[57] *See* Appendix, Exhibit 24.

[58] *See* Appendix, Exhibit 25.

[59] The full text of OPM's proposed 1983 rule, as published at 48 FEDERAL REGISTER 29458 (June 24, 1983), is set forth at the Appendix, Exhibit 26.

[60] 48 FEDERAL REGISTER, 34910 34913-34914 (August 1, 1983). The full text of OPM's 1983 rule is set forth at the Appendix, Exhibit 27.

corporations undertaking comparable activities) as if the injunction applied to them as well. Nonetheless, there are sound reasons for proceeding with this rulemaking notwithstanding pending litigation and the issuance of the District Court's order in *NAACP Defense Fund*.

First, this rulemaking is plainly required by, and effectuative of, an order of the President of the United States. The setting aside or deviating from an Executive Order is not something to be done lightly, and, if [at] all by officers of one of the other coequal Branches of Government, it should abide the maturely considered action and unambiguous command of that other Branch.

Second, aside from the specific commands of the District Court's orders in *NAACP Defense Fund* and *Planned Parenthood* regarding particular plaintiffs, there remain profound ambiguities in its decision concerning how the Executive Order must be construed. OPM believes that it is prudent policy, while awaiting further guidance from the Judicial Branch, not to speculate more than is necessary as to the ramifications of the District Court's opinion. Plainly, however, the District Court's opinion and order leave intact the facial validity of the Executive Order, and thus rulemaking pursuant thereto is appropriate.

Third, this rulemaking is made under Executive Order No. 12404. OPM believes that its administrative construction of the Order should be spread of record so as to assist all interested parties, including the Judicial Branch, in understanding the meaning and effects of the Order.

Fourth, in the event that the Government prevails in pending litigation and if the District court's decision in *NAACP Defense Fund* should be reversed or modified so as to permit full effectuation of the purposes and eligibility criteria established by the President, then a regulatory framework should be immediately ready to implement them. On the other hand, once in place, this regulatory structure can be modified to accommodate adjustments, if any, that may be required by further judicial action.

Finally, it appears that the issuance of the District Court's decision in *NAACP Defense Fund* during the comment period has not inhibited the flow of public discussion on this rulemaking. A significant number of comments were received after the court's decision was rendered, and several commenters in fact addressed the possible implications of the decision with respect to substantive aspects of administration of the CFC.

OPM's predictions were partially fulfilled and partially frustrated. In the end, the decision of the United States District Court for the District of Columbia in *NAACP Legal Defense and Educational Fund, Inc. v. Devine*, although affirmed by a divided panel of the

United States Court of Appeals for the District of Columbia Circuit, 727 F.2d 1247 (D.C. Cir. 1984), was overturned in the United States Supreme Court *sub nomine Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788 (1985).[61] The Supreme Court vindicated the constitutionality of President Reagan's order. It held that, although charitable solicitation is protected speech, the CFC is a nonpublic forum and the President's reasons for excluding legal defense and political advocacy groups from the CFC appear on their face to meet the applicable standard of reasonableness.[62] In particular, the opinion for the Court observed:

> Here the President could reasonably conclude that a dollar directly spent on providing food or shelter to the needy is more beneficial than a dollar spent on litigation that might or might not result in aid to the needy. Moreover, avoiding the appearance of political favoritism is a valid justification for limiting speech in a nonpublic forum. **** In furthering this interest, the Government is not bound by decisions of other executive agencies made in other contexts. Thus, respondent's tax status, while perhaps relevant, does not determine the reasonableness of the Government's conclusion that participation by such agencies in the CFC will create the appearance of favoritism.[63]

The victory in the Supreme Court was hard-won and decisive.

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[61] The full texts of the Supreme Court's decision in *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788 (1985), including separate opinions of dissenting justices, will be found at the Appendix, Exhibit 28. The case was thoroughly briefed, having attracted several weighty offerings from influential *amici*. A listing of the briefs of counsel was published at 87 L.Ed.2d 815-816, which will also be found reproduced at the Appendix, Exhibit 29.

[62] *Cornelius, supra*, 473 U.S. at 797.

[63] *Cornelius, supra*, 473 U.S. at 809.

The Reagan Reforms Repulsed

Yet, before President Reagan's Executive Order could be fully implemented and the 1983 OPM regulations effectuated, they were gutted by acts of Congress. In the first full CFC cycle following the Supreme Court's decision in *Cornelius*, Congress passed the "Hoyer Amendment", Section 204 of the Urgent Supplemental Appropriations Act of 1986, Pub.L. 99-349, which prohibited the use of any appropriated funds for the implementation of new CFC regulations "unless such regulations provide that any charitable organization which participated in any prior campaign shall be allowed to participate in the 1986 campaign." The Hoyer Amendment was upheld and judicially enforced in *Planned Parenthood of Metropolitan Washington, D.C. v. Horner,* 694 F.Supp. 970 (D.D.C. 1986).[64]

Then, on December 22, 1987, the Continuing Appropriations Act for Fiscal Year 1988, Pub.L. 100-202, was enacted, including a lengthy provision at Section 618 in which Congress, regulating the use of "the funds appropriate by this Act, or any other Act in this or any fiscal year hereafter",[65] adopted CFC eligibility standards that effectively reversed President Reagan's 1983 Executive Order. Congress simply ruled out any prohibition against litigation, public policy advocacy, or attempts to influence legislation that are more stringent than the requirements established in connection with tax-exempt status under Sections 501(c)(3) and

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[64] The complete text of the District Court's opinion in *Planned Parenthood of Metropolitan Washington, D.C. v. Horner*, 694 F.Supp. 970 (D.D.C. 1986) is set forth at the Appendix, Exhibit 30.

[65] Fiscal Year 1988 Continuing Appropriations Act, § 618(a), Pub.L. 100-202, § 618(a), 101 Stat. 1329-423.

501(h) of the Internal Revenue Code.[66] It also apportioned the distribution of undesignated gifts.[67]

By May 1988, when OPM promulgated new rules[68] conforming to the mandates of FY 1988 Continuing Appropriations Act, the agency was exhausted:

> In the near decade of controversy that has beset the CFC there have remained principled voices of reason that have repeatedly pointed out that controversies, however satisfying, were achieved at a real cost to those least able to bear it: the poor and the sick. With the promulgation of these rules, it is OPM's hope that an era of cooperative endeavor will being that allows the full beneficent force of the Federal workforce to address itself to the alleviation of their needs.[69]

Anticipating still further litigation over the few limiting standards of eligibility that remained, OPM pleaded "that courts confronting such challenges will recognize from the outset of litigation that this set of rules was developed in close cooperation with Congress, and that it is anticipated that the rules will operate to provide fair but not universal access to the campaign."[70] Further litigation, at least of dramatic proportions, has in fact *not* materialized, and for a simple reason: The major political advocacy and legal defense organizations have won the day. OPM completed its 1988 capitulation with an apology for its defense of President Reagan's 1983

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[66] *Id.* § 618(b)(1)(A).

[67] *Id.* § 618(b)(6)(B). The allocation formula mandated for every local campaign in the United States includes a fixed 82% share for the United Way, a 7% share for the International Services Agencies, a 7% share for the National Voluntary Health Agencies, and a 4% share to be distributed, within broad limits, by the Local Federal Coordinating Committee. OPM was given authority to modify these allocations in light of future campaign experience.

[68] 53 FEDERAL REGISTER 19146 (May 26, 1988). The full text of the 1988 rule is set forth at the Appendix, Exhibit 32.

[69] 53 FEDERAL REGISTER at 19146.

[70] *Ibid.*

Executive Order and its efforts in following years to administer the CFC in faithful adherence to that Order despite successive, adverse, but ultimately reversed court orders and the "Hoyer Amendment": "The campaign arrangements used from 1984 through 1987 were fundamentally unsound and raised administrative costs excessively. They proved to be controversial and disruptive of the Federal workplace."[71]

Controversy is inescapable, even with the most liberal of eligibility rules. In 1989 as venerable an institution as B'nai B'rith became embroiled in a CFC dispute with OPM over paperwork requirements and the interpretation of the 25% cap on administrative expense.[72]

In 1991 OPM revised the CFC regulations yet again,[73] in part to take into account the fact that "since the more encompassing legislation was passed in December 1987, many additional charitable organizations have joined the CFC."[74] Perhaps most significantly, the 1991 regulations adopt an entirely new formula for the distribution of undesignated contributions: "Undesignated funds will be distributed...to all of the agencies in the brochure in the same proportion that the agencies and federations received designations in the CFC."[75]

For the convenience of the Subcommittee, the CFC rules as they now stand, codified at 5 CFR Part 950 (1995), are set forth in full in the Appendix.[76]

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[71] *Id.* at 19147.

[72] *See* Appendix, Exhibit 33.

[73] 56 FEDERAL REGISTER 42677 (August 29, 1991). The full text of the 1991 rule is set forth at the Appendix, Exhibit 34.

[74] *Ibid.*

[75] *Id.* at 42682, 5 CFR § 950.502 (1992).

[76] *See* Appendix, Exhibit 35.

The Purpose of the CFC

Against this background, let me turn to the three questions expressly presented to me by Chairman Mica's letter of invitation for succinct replies.

The first asks, "What in your view, should be the central purpose of the CFC?"

I could not state the purpose of the CFC any better than did President Reagan in Executive Order No. 12404:

> The objectives of the Combined Federal Campaign are to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to provide a convenient channel through which Federal public servants may contribute to these efforts; to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail; and to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly serve needs of human health and welfare.[77]

Taxpayer Subsidization

Chairman Mica's second question comes in several parts, as follows:

> The CFC is subsidized by the taxpayers in many ways. They pay the salaries and benefits of federal employees who run the campaign as "loaned executives" or key workers, who actively solicit contributions from their fellow employees at the workplace. They pay for the time federal employees spend attending "kickoff" meetings at which other federal employees, including agency heads, encourage donations and employee participation. Is it proper to have taxpayers subsidize in these ways fund raising drives for charities? For ideological advocates, many of which are quite controversial and with which many taxpayers vigorously disagree? For groups that proselytize in order to increase the number of adherents to their particular beliefs, whatever they may be?

A key to the Supreme Court's decision in *Cornelius* was its finding that "[t]he historical background indicates that the Campaign was designed to minimize the disruption to the workplace that had resulted from unlimited ad hoc solicitation by *lessening* the amount of

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[77] Executive Order No. 12404, § 1(b)(1).

expressive activity occurring on federal property." 473 U.S. at 805. It would be perverse, therefore, to mount a workplace charity drive in the name of minimizing *ad hoc* disruption only to replace it with disruption that, albeit orderly, is pervasive, systematic, and therefore ever so much more expensive to the taxpayers.

Disruption is avoidable, and with side-benefits. The same lowering of the volume in campaign solicitation that diminishes the work-a-day diversion of Federal resources also reduces the kind and number of opportunities for donor intimidation or coercion. What is more, campaign solicitation events that are government-orchestrated or sponsored necessarily involve favoritism. When employees are herded into a departmental auditorium to watch a CFC film, for example, there is a necessary editing process that awaits them. It is not possible for them to see 60 seconds of programming about every one of the 300, 600, 900, or 1,200 agencies that are listed in their local CFC brochures. One, two, five, or ten particular charities will be singled out and favored -- and probably on a recurring basis. This is actually subversive of OPM's strict regulation of CFC brochures, in which words are numbered and position placement carefully determined in efforts to ensure equality of access to the forum.

It is legitimate for the Government to assist charities in soliciting and receiving contributions for the purposes laid out by President Reagan in Executive Order No. 12404. Some charities are more valuable than others to the Government precisely because they lessen the Government's burdens. But within the framework of those purposes it behooves the Government to maintain a posture of neutrality and evenhandedness. This is fair not only to the participating charities but to donors and taxpayers as well, who rightly wish to insulate themselves, in the context of voluntary philanthropy, from the support of programs to which

they may, in all good faith, object for any reason.

Fundamental Legal Considerations

Chairman Mica's third question asks, "What legal considerations bear upon this Subcommittee's deliberations with regard to restricting participation in the CFC?"

A great victory for common sense was won in *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.* Congress would do well to bear in mind the following propositions that may reasonably be extracted from the Supreme Court's decision in that case:

First, charitable solicitation is indeed a form of speech and associational activity, fully protected by the First Amendment.

But, second, neither the Federal workplace nor the CFC is a public forum, open to any speech by anyone at anytime.

Thus, third, the proper question is not, "To whom and for what reasons shall the CFC, a nonpublic forum, be closed?" Rather, the proper question is, "To whom and for what reasons shall the CFC, a nonpublic forum, be opened?"

Accordingly, fourth, the CFC should be legislatively re-established for specific reasons: To lessen the burdens of government by fostering support for specific kinds of programs that help meet governmental goals of meeting needs of human health and welfare; to avoid disruption of the Federal workplace; and to minimize any appearance of favoritism or of subsidization of political or religious activism -- not because politics or religion is bad, but because each is so important to our liberty that we as a people demand that government keep its hands off of them and be neutral with respect to them.

Finally, it must be remembered that contributions are the private property of the donors until properly remitted to the intended recipient. Pools of putatively undesignated funds are opportunities for mischief, both in their potential for misleading donors as to what use will be made of such money and in the occasions they create for abuse of power in disposing of it. Sound administration of the CFC will leave no doubt at any time as to who is entitled to every contribution made.

I will be pleased to answer any questions that the Subcommittee may have.

Mr. MICA. Thank you for your comprehensive testimony and remarks.

Now I will turn to Mr. Ronald Burrus, executive director of the NVHA, San Diego County Committee.

Mr. BURRUS. I am Ron Burrus and for the last 10 years I have been employed as the executive director of the San Diego County Committee of National Voluntary Health Agencies.

On behalf of the San Diego Committee, I would like to express our appreciation to Congressman Mica for his initiative in exploring the issue of agency eligibility for participation in the Combined Federal Campaign. It is a real honor for me to be here this morning among these brilliant lawyers.

The San Diego Committee has been in existence since the early seventies and has a 501(c)(3) Federal tax exemption and a State of California Charter as a Public Benefit Corporation. The organization is a consortium of approximately 30 agencies in San Diego whose national organizations are members of the National Voluntary Health Agency's National Federation.

The San Diego Committee has a contractual agreement with the National Voluntary Health Agencies of California, and these two groups work in concert to raise funds through the annual Combined Federal Campaign for our member agencies. I would like to emphasize that I am here representing the San Diego Committee and my remarks should not be taken to represent the views of NVHA of California or the NVHA National Committee.

The San Diego Committee is a local, independent body that works with the CFC in San Diego County as an advocate for NVHA member agencies and I have submitted a list of these agencies in the attachment. The San Diego Combined Federal Campaign is the third largest campaign in the country in terms of dollars raised and during 1994 raised $5,773,000. Of this total, Federal donors designated a little over $1 million to San Diego and national NVHA member agencies, which represents about 20 percent of the market.

The San Diego Committee is a group of local traditional charities that directly benefit human health and welfare. We are concerned with the numerous political advocacy groups and other organizations that might not directly benefit human health and welfare.

The San Diego Committee supports Congressman Mica's efforts to restrict the CFC to charities that can demonstrate that they directly benefit human health and welfare. We believe the central purpose of the CFC is to provide an opportunity for all Federal employees to donate to charities of choice in the workplace utilizing the convenience of payroll deduction.

In examining the current trends in CFC, the mere explosion of new agencies and federations is causing enormous logistical problems and expenses for CFC's. An example would be printing sufficient numbers of agency brochures for all participant donors in the campaign, and in San Diego this amounts to about 150,000.

Back in the early 1980's the San Diego CFC agency brochure consisted of a single sheet fold-out pamphlet. The 1994 San Diego brochure totaled 52 pages—this is the 1983 San Diego brochure, and this is the 1994 resource guide that consists of 52 pages and about 1,200 agencies listed.

During the past several campaigns where we have been in attendance during solicitation meetings with donors, there have been a number of complaints regarding the size and volume of the brochure. Some fed donors seem overwhelmed. With each new campaign there are many new agencies added and there doesn't seem to be any end in sight. Speaking with CFC friends in San Diego, they suggest that any action to restrict the number of agencies participating in CFC would be a positive move.

One of the most important components for participation in the CFC campaign is a requirement that the organization is a human health and welfare organization which provides services, benefits or assistance to or conducts activities affecting human health and welfare and enumeration of these benefits should be documented. That is out of the rules and regulations May 26, 1988, 950.203(6), which is under the public accountability standard section in the regulations.

Prior to the 1988 rules and regulations, agencies applying to participate in the annual CFC campaign were required to provide more definitive information on the services they provided and how these services benefited the community. Although such a task requires more effort to produce during application time, it might be well to again consider such a standard in the future.

The wording of 950.203(6) needs to be revised to better define the conditions an applicant agency must meet to qualify as a human health and welfare organization. The current approach tends to allow many 501(c)(3) nonprofit organizations without regard to the intent of 950.203.

We support the continuation of Federal employees running the CFC campaigns by serving as loan executives, key workers and group coordinators and maintaining the current policy that only Federal employees can solicit other Federal employees. This helps to separate the Combined Federal Campaign from other annual charitable drives, and we believe this is very important.

San Diego CFC dollars have decreased each year beginning with the 1992 campaign. These decreases can be directly attributed to loss of potential donors due to downsizing and base closures. Decreases in San Diego NVHA designations during this 5-year period from 1990 to 1994 also has been impacted by the downsizing. However, it is also apparent that the inordinate increases in organizations that have been deemed eligible to participate have also impacted on the donations to these traditional charities.

We applaud Congressman's Mica's notion of restoring the CFC to its proper status as vehicle for solicitation by traditional charities providing direct benefits to human health and welfare and we again commend you for your interest and I thank you for being able to be here this morning.

[The prepared statement of Mr. Burrus follows:]

Testimony Presented to the
Congress of the United States
House of Representatives
Committee on Government Reforms and Oversight
Sub-Committee on Civil Service
June 7, 1995

San Diego County of National Voluntary Health Agencies, Inc.
Ronald C. Burrus Executive Director

Good Morning ... My name is Ron Burrus and for the last ten years I have been employed as the Executive Director of the San Diego County Committee of National Voluntary Health Agencies, Inc.

On behalf of the San Diego Committee, I would like to express our appreciation to Congressman Mica for his initiative in exploring the issue of agency eligibility for participation in the combined federal campaign. It is an honor for me to be here this morning.

The SDCC has been in existence since the early 1970s and has a 501 (c) (3) Federal Tax Exemption and a State of California Charter as a Public Benefit Corporation. The organization is a consortium of approximately thirty health agencies in San Diego whose national organizations are members of the National Voluntary Health Agencies National Federation. The SDCC has a contractual agreement with the National Voluntary Health Agencies of California, Inc. and these two groups work in concert to raise funds through the annual combined federal campaign for our member agencies.

I would like to emphasize that I am here representing the San Diego Committee and my remarks should not be taken to represent the views of NVHA of California or the NVHA National Committee.

The SDCC is a local independent body that works with the CFC in San Diego County as an advocate for NVHA member agencies (*see attachment A for a listing of San Diego NVHA agencies).* **The San Diego Combined Federal Campaign is the third largest in the country in terms of dollars raised and during the fall 1994 campaign raised $5,771,690. Of this total, federal donors designated $ 1,047,375 to NVHA agencies, which represents about twenty percent of the total dollars designated.**

The San Diego County Committee/NVHA is a group of local *traditional charities* that directly benefit human health and welfare. We are concerned with the numerous political advocacy groups and other organizations that do not directly benefit human health and welfare. The SDCC supports Congressman Mica's efforts to restrict the Combined Federal campaign to charities that can demonstrate that they directly benefit human health and welfare.

We believe the central purpose of the CFC is to provide an opportunity for all federal employees to donate to the charities of choice in the workplace utilizing the convenience of payroll deduction.

In examining the current trends in the CFC, the mere explosion of new agencies and federations is causing enormous logistic problems and expenses for CFCs, i.e. ➢ printing sufficient numbers of agency brochures for all participant donors in the campaign area, and in San Diego the number would be approximately one hundred fifty thousand. Back in the early 1980s the San Diego CFC agency brochure consisted of a single sheet fold-out pamphlet. The 1994 San Diego brochure totaled fifty two pages.

During the past several campaigns where we have been in attendance during solicitation meetings with donors, there have been a number of complaints regarding the size and volume of the brochures. Some federal donors seem overwhelmed. With each new campaign there are many new agencies added and there does not seem to be any end in sight. Any action to restrict the numbers of agencies participating in the CFC would be a positive move.

One of the most important components for participation in the CFC campaign is the requirement that **"The organization is a human health and welfare organization which provides services, benefits, or assistance to, or conducts activities affecting human health and welfare"** and an enumeration of these benefits should be documented. (Rules and Regulations, May 26, 1988 / 950.203 (6)). Prior to the 1988 Rules and Regulations, agencies applying to participate in the annual CFC campaign were required to provide more definitive information on the services they provided and how these services benefited the community. Although such a task required more effort to produce, it might be well to again consider such a standard in the future. The wording of 950.203 (6) needs to be revised to better define the conditions an applicant agency must meet to qualify as a human health and welfare organization. The current approach tends to allow many 501 (c) (3) nonprofit organizations without regard to 950.203 (6).

We support the continuation of federal employees running the CFC campaigns by serving as loaned executives, key workers and group coordinators and maintaining the current policy that only federal employees can solicit other federal employees for charitable purposes. This helps to separate the combined federal campaign from other annual charitable drives.

SAN DIEGO CFC DOLLARS RAISED 1990 - 1994		
YEAR	NVHA	TOTAL CAMPAIGN
1994	$ 1,047,375	$ 5,773,736
1993	$ 1,203,482	$ 6,019,266
1992	$ 1,365,500	$ 7,032,489
1991	$ 1,526,450	$ 7,075,460
1990	$ 1,686,531	$ 6,679,017

San Diego CFC dollars have decreased each year beginning with the 1992 campaign. This decrease can be directly attributed to the loss of potential donors due to downsizing and base closures. Decreases in San Diego NVHA designations during 1990 - 1994 are also due, in part, to the loss of potential federal donors in the area. However, it is also apparent that the inordinate increases in organizations that have been deemed eligible to participate have also impacted on donations to these traditional charities.

We applaud Congressman Mica's notion of "restoring the CFC's pre - 1980s status as a vehicle for solicitations by traditional charities providing direct benefits to human health and welfare."

Again, we would like to commend your interest and hope that the sea of charities certified to participate in the CFC can be restored to its rightful intent.

SAN DIEGO COUNTY
Aril 28, 1995

NVHA AGENCIES LISTING LOCALLY
Attachment A

ALS ASSOCIATION (LOU GEHRIG'S DISEASE) ORANGE COUNTY CHAPTER
ALZHEIMER'S ASSOCIATION OF SAN DIEGO
AMC CANCER RESEARCH CENTER
AMERICAN DIABETES ASSOCIATION CALIFORNIA AFFILIATE,
SAN DIEGO CHAPTER
AMERICAN LUNG ASSOCIATION OF SAN DIEGO & IMPERIAL COUNTIES
AMERICAN PARKINSON DISEASE ASSOCIATION
ARTHRITIS FOUNDATION SAN DIEGO AREA CHAPTER
CYSTIC FIBROSIS FOUNDATION -SAN DIEGO
AND IMPERIAL COUNTIES CHAPTER
EASTER SEAL SOCIETY OF SAN DIEGO COUNTY
EPILEPSY SOCIETY OF SAN DIEGO COUNTY
HEMOPHILIA ASSOCIATION OF SAN DIEGO COUNTY
HUNTINGTON'S DISEASE SOCIETY OF AMERICA, SAN DIEGO COUNTY CHAPTER
JUVENILE DIABETES FOUNDATION INTERNATIONAL,
ORANGE COUNTY CHAPTER
LEUKEMIA SOCIETY OF AMERICA, INC.
LUPUS FOUNDATION OF AMERICA, SOUTHERN CALIFORNIA CHAPTER
MARCH OF DIMES BIRTH DEFECTS FOUNDATION
MENTAL HEALTH ASSOCIATION, SAN DIEGO COUNTY
MULTIPLE SCLEROSIS SOCIETY, NATIONAL / SAN DIEGO AREA CHAPTER
MUSCULAR DYSTROPHY ASSOCIATION
MYASTHENIA GRAVIS FOUNDATION, CALIFORNIA CHAPTER
NATIONAL KIDNEY FOUNDATION OF SOUTHERN CALIFORNIA
SAN DIEGO REGION
NATIONAL NEUROFIBROMATOSIS FOUNDATION, CALIFORNIA CHAPTER
NATIONAL SPINAL CORD INJURY ASSOCIATION - SAN DIEGO COUNTY CHAPTER
PREVENT BLINDNESS, SOUTHERN CALIFORNIA
SICKLE CELL ANEMIA EDUCATION AND INFORMATION CENTER
ST. JUDE CHILDREN'S RESEARCH HOSPITAL
SUDDEN INFANT DEATH SYNDROME FOUNDATION OF SOUTHERN CALIFORNIA

Mr. MICA. Again, I thank all our panelists for their participation and their testimony. We certainly separate your testimony from the previous panel and raise a number of questions I would like to address.

First of all, one of the basic problems we get I think to address if we make any changes in participation is that the definition of these groups, and I think Mr. Morris is pretty clear that he wanted to use the Presidential guidelines from the Executive order of 1983 I believe it was, of President Reagan. Do you think that would be sufficient, and—to curtail again the proliferation of activity from these advocacy groups?

Mr. MORRIS. Mr. Chairman, yes, I do. I think that the 1983 Executive order sets out a pretty clear definition of what ought to be at stake here.

Mr. MICA. You also—one of the important things is to limit legal, political and advocacy groups in participation and you think that that will help establish a criteria that can accomplish that and it should be enacted into law as opposed to rule. It would have to be enacted into law; is that correct?

Mr. MORRIS. Yes and no.

No in the sense that if Congress were simply to repeal Section 618 of the Fiscal Year 1988 Urgent Supplemental Appropriations Act, then that would leave in place unencumbered by the legislative proscriptions the effective language of the 1983 Executive order, but then the Executive order would need to be implemented. That is what the 1983 regulations did, but we are a number of bridges over the river past the 1983 recollections. Then I say come back to yes, therefore, I think a legislative fix is in order. A simple repeal is an excellent start but affirmative legislation enacting into law the Reagan standards I think would resolve the matter once and for all.

Mr. MICA. One thing that is a mystery to me is that legitimate charities seem to be rolling over and playing dead. That is kind of disturbing. Maybe because they have been through such a battle in the eighties, to see these people kick the door in and get a foot hold as far as advocacy groups—they almost seem intimidated by the advocacy groups. Is that just a perception I have?

Mr. MORRIS. Speaking for myself, my perception is that that is accurate. They are intimidated. They are also fatigued.

Mr. MICA. It seems like an embarrassment, too.

Mr. MORRIS. Anything that suggests to the donor population that there is something wrong with a charity drive hurts everybody that is in it. I suspect that some of the leaders of the human health and welfare charities are of the view that a long time of quiescence over the long haul is—provides conditions where they could find accommodations whereas there is a danger in controversy that there will be a diminution of the total pool of money that is given.

So that kind of conservatism, that kind of caution is understandable. I think it is misplaced, but I think it is the responsibility of the people in charge of the Federal work place, the President and Congress, frankly, to make that decision. The human health and welfare agencies will be the beneficiaries of that decision.

Mr. MICA. The statistics that have been presented today also indicate pretty clearly that there is a pretty steady decrease in par-

ticipation, and also, as you point out from looking at the exact figures of the chart that was presented, that also the amount of giving is decreasing although the number of charities participating and other groups is increasing.

It looks like about a third of a million dropped off the radar screen in the early 1980's, and then the only time we saw an increase was from about from 1983, I guess, in 1984 we saw an increase, 1985 we saw an increase, 1986 we saw an increase, and then it started declining and I guess that reflects some of the period of change that was implemented by Mr. Devine; is that correct?

Mr. MORRIS. That is correct, Mr. Chairman.

The other side of the coin is also important. I think the other thing that is worth examining and getting to the bottom of is what the trend line is in costs.

I think if nothing else, your inquiries will do us all a big favor if we can get a handle on what are the actual trend lines in terms of giving participation and giving rates and what are the actual trend lines in terms of costs. That latter point is not unimportant.

First of all, we have to get the definition straight on costs. Not only are we dealing with the direct costs as OPM defined them this morning, not only are we dealing with the indirect costs that OPM owned up to this morning, but I think there are some other indirect costs that weren't taken into account apart from what OPM discussed today including the fringe benefits.

Mr. MICA. What are some of those?

Mr. MORRIS. For example, time involved by nonOPM personnel in organizing local CFC's, the time involved not just on the part of key workers but also on the part of the Local Federal Coordinating Committees, the LFCCs. The time that is consumed in campaign-related events, kick-off meetings, mandatory programs held in auditoriums where people go and watch a movie for an hour on what charities do.

By the way, those events—talk about creating first amendment problems, when a government agency takes its work force into an auditorium and shows it a movie in support of the CFC that maybe only highlights 1 or 3 or 5 to 10 charitable agencies, would that not only perhaps have a tendency to skew giving but it sends direct speech into the ears of Federal employees that benefits some and excludes others?

So at every turn the way the campaign is currently operated under these circumstances, first amendment questions are raised and costs are imposed. Once we reach an agreement on what the costs are and get to the bottom of what they are, the trend lines in costs I think will be interesting.

From the data that OPM gave us this spring—in my statement those are set out in footnote 4 on page 3—OPM was saying the costs in 1991 were $13.6 million. Now they told us in the 1994 campaign it was $22.1 million. That is a pretty dramatic trend line by OPM's own numbers.

The fascinating thing is we are now at a point, in fact we got at a point a year or two ago, where the costs that OPM owns up to are greater than the undesignated gifts that are made during the campaign. The trend lines are moving toward intersection.

The gifts are coming down, the participation rates are coming down, the per capita gifts appear to be coming down although that may be an open question, but the costs are going up and therefore necessarily the percentage of the cost to contribution ratio——

Mr. MICA. I wanted to ask Mr. Devine about costs. You said it cost zip. Was that 1980?

Mr. DEVINE. It didn't cost zip. Zip is the amount that people actually chose to go to the charity that they wanted it to go.

Mr. MICA. The hundred percent designation; well, nondesignation. What were the costs in the 1980's when you took over?

Mr. DEVINE. This cost thing, nobody has ever had a handle on it. By the way, Mr. Morris mentioned some of the costs. I think probably the largest cost nobody has even mentioned here, except as a benefit, is the payroll deduction—80 percent of the people who contribute are involved in payroll deduction which means that they have to make a change that goes through the payroll system of every department in the government. That isn't counted at all in the figures kept by the government.

Mr. MICA. From that with 80 percent participating I should be able to get the information on how much is coming out and how much they are writing a check to each charity for; is that correct?

Mr. DEVINE. You should require OPM to write to the local campaigns, which is where that information exists.

Mr. MICA. But what stuns me is nobody has a handle on how much money the government is collecting or distributing. I have not seen that. A few individual charities and groups have disclosed to us the amounts, but we don't see the final figures, which I think should be public.

Mr. MORRIS. Mr. Chairman, may I underscore what Mr. Devine has just said? Those back office costs have been completely ignored.

We talked about the upfront costs of promotion, of solicitation, the key workers and so forth, but the back office cost of processing payroll deductions, collecting the money, assembling the money, putting it in funds, cutting checks and sending them to the charities, all those back office costs have never been accounted for.

Mr. MICA. Dr. Devine.

Mr. DEVINE. You talked about participation and when it dropped off. If you look through the 1970's, 1980's you have 2.8 million, 2.8 million, 2.7 million, 2.7, 2.8 million, 2.7, 2.7, 2.7, 2.7—1980, 2.2, these according to the numbers we had when I was Director of OPM. It is very clear that participation rates started going down dramatically when the campaign became politicized. Then it went down again and my figures show down about 500,000 as opposed to 300,000——

Mr. MICA. I see the difference, because you were talking about number of contributors and then number solicited, which would be the total number of employees at that time. So you are correct that it is in excess of a half a million drop off just at that one point. Then the percentage changes.

One of the problems I have now in approaching this is you can see these folks have established tremendous pressure groups and it is very difficult to stand up to them, and it is. You have heard the campaigns that have already been organized both by the legitimate charities who feel that there is some possible harm could be

done to them, and that in no way is justified as far as our intent. But do you see any possible other route to correct the situation in changing the criteria?

Mr. DEVINE. I would say as a practical level.

One thing when Mr. Morris's comment, if you were to go to straight legislative change, I would suggest that you refer to the old Federal Register proposal. When we made our proposal for the Federal Register on August 1, 1983—we spelled out very specifically how to make real reforms. The President's Executive order was only general.

The August 1, 1983 regulations specifically say how you could do real reform, right down to the level of administration. But I recognize the problem that you face, because I faced the same thing. As a matter of fact, the overwhelming number of traditional health and welfare charities agree with the San Diego testimony.

The difference is his people have the courage to say it. All of the traditional charities will tell, and have told me, the ones I have talked to, that they want it restricted.

Why don't they say that publicly? Some of the reasons Mr. Morris mentioned about public controversy, courage; mainly they feel they don't want to get out in front and be subject to the controversy themselves. It is very hard to do that. So practically, I would suggest you reverse the appropriations rider so that when we have a new administration someday, which I have every confidence we will, the new President will be free and a new Director of the Office of Personnel Management will be free to write that Executive order again with our regulations.

Thanks to Mr. Morris's diligent research, they can go to this book, look them up and republish them. I understand how difficult—at least allow the next President and the next Director of the Office of Personnel Management the freedom to make the right changes.

Mr. MICA. Thank you. Mr. Barrett, you had testified to some of these organizations have in fact created fronts to qualify their advocacy groups for participation. Is this a limited practice or did you see or have you seen most of these groups to qualify alter or create entities that qualify?

Mr. BARRETT. In the example I was giving you, I was thinking of one specific group, but there were other groups at different times, we had challenged their eligibility for violations of one—they didn't meet one of the criteria. And we—we got overruled on them or else they had another group that was eligible, but the story I was talking about was one specific group. But there were other ones that we were suspicious of as we read their applications.

Mr. MICA. One of the things that's disturbing to me in the process is there is no choice for the taxpayer of participating. They underwrite this whole activity whether they want to or not. And we posed a question this morning again, should these groups pay a larger percentage of costs involved.

Are there any opinions from the panel members on, again, requiring either the charities or participating groups to pay a larger share of the taxpayer-fronted costs.

Mr. Burrus.

Mr. BURRUS. I really wouldn't have a comment on that. I don't know.

Mr. MICA. Mr. Morris.

Mr. MORRIS. Mr. Chairman, if the purpose of the campaign is to provide support for human health and welfare agencies meeting needs of hungry, hurt, sick, destitute people, people who have been devastated by natural disasters and the like, in other words, a traditional charity campaign, then it's a legitimate, appropriate exercise of governmental function, it helps lessen the burdens of government and it's a good investment.

If, however, this is simply a free-for-all, it's an open channel for any 501(c)(3) organization to come in to the largest captive workforce in America and have access to that workforce and obtain contributions from it, then under those circumstances there is no necessary connection at all between the interests of the taxpayers, their burdens are not being lessened by this. If there is no connection at all, then I see no reason why user fees proportionate to benefits should not be imposed to carry the entire cost.

Mr. MICA. Mr. Barrett? Any comment?

Mr. BARRETT. The charities do pay the certain percentage of the administrative expenses.

Mr. MICA. They do.

Mr. BARRETT. As far as the other one, no, I have really no other thought on that.

Mr. DEVINE. I think Mr. Morris' point is very valid. If they are legitimate health and welfare charities, I think a good argument can be made that the benefits outweigh the costs. Where it is a free, open rein to any group that wants to apply, then I think they should bear the cost.

I'd also like to make one point. Take the OPM estimate of $21.2 million cost. It's also important to add the 7-percent local administrative costs that were just mentioned, or $14 million. The actual overhead that is admitted now to be $35.2 million, simply what's already admitted on the record. Then add the back-end costs of the payroll and you will be darned close to that $50 million that was in the earlier estimate, although they weren't counting that then either.

One of the points of establishing these—local principal funds is what we originally called them—was so they would account for what was going on in each local campaign, which they did not do previously. I haven't followed the administration, but your desire to get that information is legitimate because these institutions were specifically set up so that they could do that administrative work. They ought to do it to get a 7-percent fee.

Mr. MICA. Well, that does amplify one of the points that I have been trying to make here about government should at least have some idea of where the money is going and the amount of money these organizations are receiving and administrative costs, et cetera.

You said, I think, Dr. Devine, in your testimony also that based on some of the percentages of costs, now they cited 11 percent and it would be much higher under the 88 estimates or your guesstimates, you could be up in the 25 percent range of cost. Is that acceptable under standards for charitable administration? You said

the costs would bar most charities from participating under current rules. Is that accurate?

Mr. DEVINE. I don't think I said that, but the 11 percent OPM minimal estimate, 7 percent which the agencies—the local funds get as their fee, is 18 percent right there. You add the back-end costs, it's going to be up near 25 percent. Now, the very rules we promulgate here ask you to start getting suspicious of charities when the administrative costs go over 25 percent, which is what we're getting close to there.

Mr. MICA. And again, in the private sector, what kind of restrictions are there according to IRS codes or other qualifications for administrative costs for charitable administration? Are you familiar with those, Mr. Morris?

Mr. MORRIS. You are saying what restrictions are there?

Mr. MICA. What limitations. I mean, a group can't spend 100 percent of its money on fundraising administrative costs to charitable group and qualify, it's my understanding.

Mr. MORRIS. As I——

Mr. MICA. Is there sort of SOP, standard operating procedures, to qualify.

Mr. MORRIS. The 25 percent figure is a pretty universal red flag.

Mr. BARRETT. Excuse me. There is a group in New York called the National Charities Information Bureau which reviews charities and their standard is 50 percent.

Mr. MICA. What is it?

Mr. BARRETT. Fifty percent for administration of fundraising.

Mr. MICA. Up to 50 percent.

Mr. BARRETT. Up to 50 percent.

Mr. MICA. That's acceptable.

Mr. DEVINE. And of course if you are involved in direct mail, it would be much, much higher than that. I mean, this is not excessive in that amount, I would argue, but it's not nothing either.

Mr. MORRIS. Mr. Chairman, let's be clear, of course, that this question is a little bit different from the question of the constitutional validity of, say, the IRS imposing some such requirement or, say, a local government imposing some cap on overhead as a percentage of amount collected as a condition of existing or soliciting.

That case went to the U.S. Supreme Court a decade-and-a-half ago in a case came up called the *Village of Chambry, IL,* and the Supreme Court said, you can't constitutionally condition solicitation on a limitation on overhead because—and the case of the use of direct mail, for example, by political organizations is an excellent case in point.

Sometimes the whole purpose of the solicitation on the fundraising is simply to get the message out. A charity may legitimately collect money solely for the purpose of communicating a message. The Supreme Court told us that's a first amendment issue, so that's a little bit different from the question of what kind of yardstick you use to decide whether or not, as a donor or as somebody subsidizing a charity collection effort, you're getting bang for your buck in terms of delivery of services.

Mr. MICA. Well, I guess in conclusion here, I'd like to ask the panelists if you have any additional recommendations either in changing any of the rules or any of the procedures, anything that

could be done that you see from your experience and observation of the process, do you have any final recommendations?

Mr. Burrus. No. Mr. Morris.

Mr. MORRIS. At a minimum, repeal section 618. Let the next administration administer the matter or, as I suggested before, legislate the Reagan-Devine rules. Yes, there will be a spate of litigation, but I think Cornelius against the LDF decision by the U.S. Supreme Court tells us that this will pass constitutional muster.

Mr. MICA. Mr. Barrett.

Mr. BARRETT. Nothing.

Mr. MICA. And Dr. Devine.

Mr. DEVINE. You've heard mine.

Mr. MICA. He said it all.

Well, I want to thank the panelists for participating today. You certainly have shed a varying perspective on some of the other testimony that we've heard today and the intent of this hearing, of course, is to try to improve the process and to try to increase a real charitable giving and involvement with our Federal employees. From the testimony today, it appears that the program, in my opinion, has veered off course and that it could stand some correction and it may need some legislative and administrative attention.

Again, I thank each of you for participating and for your valuable contributions today. We have Congressman Hoyer's testimony. Steny Hoyer has asked to submit testimony for the record and, without objection, that will become part of the record. So ordered.

[The prepared statement of Hon. Steny H. Hoyer follows:]

TESTIMONY OF THE HONORABLE STENY H. HOYER

ON THE COMBINED FEDERAL CAMPAIGN

BEFORE THE SUBCOMMITTEE ON CIVIL SERVICE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

June 7, 1995

Mr. Chairman, I want to express my serious concerns about any efforts to further limit participation in the Combined Federal Campaign.

In 1986, a similar attempt was made to restrict the Combined Federal Campaign (CFC) to so-called "traditional charities." Because the definition of a traditional charity was so restrictive that many organizations providing valuable services would have been excluded from participation, Senator Hatfield and I developed legislation which was passed on July 2, 1986, and signed by President Reagan allowing the Office of Personnel Management to run the 1986 CFC under the 1984 rules.

Subsequently, in the autumn of 1986, we developed legislation which was also passed and signed by President Reagan ensuring that the 1987 CFC would operate under the same concepts.

Senator DeConcini and I included further legislation in the omnibus Fiscal 1988 spending bill, again signed by President Reagan, which ensured that all charities would be eligible if they met the qualification standards set out in 26 U.S.C. Section 501(c)(3) of the Internal Revenue Code.

Charities that qualified as 501(c)(3) organizations could participate as long as they provided human health and welfare service, benefits, assistance, or program activities. Contributions to charities which were "written in" by an employee were eliminated and a national eligibility process took the burden off individual Local Federal Coordinating Committees for deciding the eligibility of organizations applying for membership. Provisions were made for undesignated contributions to be shared with national and local charities.

Status as a 501(c)(3) corporation places restrictions on charities' funding for lobbying and grassroots activities.

From 1979 to 1983, giving to the Combined Federal Campaign rose 137 percent -- from $83 million to $197 million. Part of this increase may be attributable to the increase in the number of charities from 46 in 1980 to 155 in 1983.

Concerns have been raised that some of the charities in the CFC are counter to the philosophy of some taxpayers. Opponents argue that only organizations that do not advocate particular positions should be included.

However, this argument is based on the false assumption that taxpayers in some way fund the CFC. Beyond the time that Federal employees spend collecting pledges, there is no direct contribution of Federal funds.

I understand that CFC traces its roots to another Republican President, Dwight Eisenhower, who first signed an executive order instituting an annual charitable campaign for all Federal workers.

In a letter to the Chairman, OPM Director King states that the cost of running the CFC would be no greater or smaller if more organizations were added to or dropped from the CFC. The same amount of time is involved with passing out the information and collecting the pledges. Let me underscore that the money donated to the CFC comes from Federal employees' own funds. There is no Federal contribution to any of the charities and the cost of producing annual campaign materials is paid for by participating charities.

While the government may fund some programs of organizations within the CFC, those grants or other funds are separate and distinct from CFC contributions.

I am aware of no outcry against the charities which participate in the CFC from either Federal or private sector employees contributing to the CFC and the United Way campaigns. If someone does see an organization on the list with which they disagree or which they do not view as a priority for contributions, they can simply choose another charity to designate for their gift.

Any attempt to restrict CFC membership would appear to be an attempt to "defund" the charitable advocacy groups which currently participate in the CFC. Throwing these organizations out of the CFC could violate the Supreme Court decision in Cornelius vs. NAACP Legal Defense Fund, 473 U.S. 788, 811 (1987) which stated that restricting workplace giving in order to suppress a particular point of view is unconstitutional.

Today the Committee will hear arguments that, regardless of what restrictions are placed on CFC participation, Federal employees can still mail a contribution to any charity that they wish to support. While true, this does not reflect the ease of making a small payroll deduction each week versus a larger one-time check. Overall giving is no doubt higher because employees can, for example, donate $10 per pay period as opposed to writing a $260 check.

I sense that Federal employees appreciate the broad choices available in the Combined Federal Campaign. I urge the Committee to leave the program as it is -- open to many organization that reflect the wide spectrum of interests in the hearts and minds of Federal employees.

Mr. MICA. Mrs. Morella would like to submit additional written questions to this panel and the other panels and, without objection, and with your cooperation, that will also become part of the record.

We also have a request for additional written testimony to be submitted as part of the record and I will keep the record open until June 21, if others would like to submit testimony for the record and without objection, that is so ordered.

There being no further business before the Civil Service Subcommittee, this meeting stands adjourned. Thank you.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

SIERRA CLUB LEGAL DEFENSE FUND

STATEMENT FOR THE RECORD

HEARINGS OF THE SUBCOMMITTEE ON CIVIL SERVICE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

ON THE COMBINED FEDERAL CAMPAIGN

JUNE 7, 1995

The Sierra Club Legal Defense Fund appreciates the opportunity to submit testimony before the Subcommittee on the crucially important issue of maintaining a fair and open Combined Federal Campaign (CFC). The Legal Defense Fund is a non-profit public interest law firm that represents individuals, small businesses, Native Americans, local communities, and others in litigation to protect our environment.

I. Overview

The CFC is the largest workplace fundraising campaign in the country, allowing millions of federal employees to give to the charities of their choice. Under the current eligibility rules the campaign has flourished, controversy over the campaign has virtually ceased, and millions of charitable dollars are efficiently passed to organizations who serve the public. The CFC thus stands as a model campaign, which is driven by donor choice and, as such, empowers the American spirit of volunteerism by providing an easy, efficient and effective way for donors to participate in charitable work through their payroll contributions.

However, Chairman Mica's proposal to limit federal employees charitable CFC choices by excluding so called "political and ideological advocacy groups"[1] would undermine that volunteer spirit and unreasonably limit federal workers' choices in the campaign. By contrast, we believe that the CFC eligibility requirements should not be altered and in particular, should not be changed to exclude groups whose mission includes advocacy of the public's interest in important local, regional, national or international issues.

This statement describes our four primary concerns with Chairman Mica's proposal:

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[1] "Mica Calls for End of Federal Collection for Political Advocacy Groups," Press Release from the Office of Congressman John L. Mica.

First, any such change would unreasonably limit federal employees' ability to select the charitable activity of his or her choice.

Second, the fundamental principles of free speech entitle charities to participate in public workplace campaigns regardless of the viewpoint that charity may represent.

Third, further restrictions on participation in the CFC based on advocacy activities is a non-solution to a non-problem. The IRS restrictions on the legislative endeavors of CFC charities are adequate and effective. Allowing the federal government to further dictate what are acceptable activities is not only unnecessary, but problematic because of the difficulty in selecting additional criteria that can be implemented and enforced without undue confusion and controversy.

Finally, further limitations will not save taxpayers or the federal government significant sums of money. The costs of the CFC are direct and indirect fixed costs which do not decrease, and may increase, with a lesser number of charities participating.

II. Relevant Background on the Sierra Club Legal Defense Fund

As a nonprofit, public interest environmental law firm, the Legal Defense Fund provides direct human health and welfare services free of charge to people throughout the United States. As described above, we represent a broad spectrum of groups and individuals in lawsuits and administrative proceedings to protect public lands and forests, to save wildlife and endangered species, to control pollution and other toxins in neighborhoods and communities around the country, and to establish appropriate plans for local development and growth. Americans are the beneficiaries of healthier environmental and recreational opportunities as a result of the Legal Defense Fund's efforts.

In reviewing the Legal Defense Fund's work, the Office of Personnel Management (OPM) explicitly concluded that the Legal Defense Fund is a "human health and welfare organization" and thereby eligible to participate in the CFC:

> An agency that "provides environmental legal services that ... have a positive, beneficial effect on air quality, water quality and other aspects of the environment ... necessarily improves the quality of human life, and therefore ... qualifies as a 'human health and welfare' organization." Letter of Decision regarding Sierra Club Legal Defense Fund from Hugh Hewitt, General Counsel, Office of Personnel Management, to J.K. Parker, Chairman, South Hampton Roads LFCC (July 31, 1987).

We have participated in the CFC for over a decade. CFC donors contributed approximately $180,000 to the Legal Defense Fund during fiscal year '93-'94. We estimate that roughly 20,000 federal employees give to us through the CFC.[2]

The Legal Defense Fund qualified for charitable status under section 501(c)3 of the Internal Revenue Code in 1971. We comply with section 501(c)3's rigorous limitations on lobbying and other legislative activities. (We are completely independent from the Sierra Club, an organization that is not currently a 501(c)3 organization and that is not participating in the CFC.) The Internal Revenue Service requires, and the Legal Defense Fund ensures, that all of the cases it takes on serve a broad public interest.

III. Why CFC Eligibility Should Not Be Altered

A. Federal Employee Choices Should be Respected

Federal employees are a respected work force of educated, skilled and dedicated individuals serving their country. They are capable of making their own decisions as to whether to donate to charity and which charities are worthy of their support. A contrary message is sent by Congressional efforts to limit their CFC choices.

As the campaign is currently structured, employees are free to choose from an extensive and inclusive list of charitable organizations that serve the public. Employees are free to contribute to organizations whose goals they agree with, or not to contribute to any groups at all. Because the campaign is based on open choice, the campaign provides a fair opportunity both for charities and donors. Arbitrarily limiting that choice to certain types of charities, such as so-called "non-advocacy" groups, creates its own bias toward particular activities (by excluding other activities) and undermines the donor's free choice.

The federal workplace reflects the diversity and individualism of America. Having employees with different backgrounds, interests, and attitudes fosters creative thinking, effective teamwork, and personal empowerment in the workplace. Naturally, individuals of heterogenous backgrounds will have different charitable causes as priorities. Restricting their CFC choices to a limited group of charities stifles not only an

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[2] Much of CFC giving is anonymous, and therefore a precise number of donors is not available. The 20,000 number quoted represents our total CFC annual revenue ($175,000) divided by an average CFC contribution of approximately $90.

interest in charitable giving in the workplace, but also a form of individual expression that can be beneficial to the workplace and to the worker.

Not surprisingly, federal employees clearly enjoy and prefer having a broad range of choices such as those currently available through the CFC. A June 1995 survey[3] of 800 randomly selected federal employees confirmed that 71.5% of federal workers "are satisfied with the way the Combined Federal Campaign is run." Most of the respondents (88%) "believe that federal employees should be able to choose to support -- through the Combined Federal Campaign -- charities that speak out on behalf of the people they help." A 66.3% majority of employees do not "feel Congress should limit the types of charities that you can support in the Combined Federal Campaign."

Given the overwhelming support for the current CFC structure by federal employees, congressional efforts to restrict participation, and thus the employees' choices, appear to be nothing more than a politically motivated effort to limit federal employees' role in the democratic process.

B. The Fundamental Principle of Free Speech Entitles Charities to Participate

Charitable solicitation of funds is a form of speech fully protected by the First Amendment to the United States Constitution. As the Supreme Court noted in Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 632 (1980): "Soliciting financial support is undoubtedly subject to reasonable regulation but the latter must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views ... and for the reality that without solicitation the flow of such information and advocacy would likely cease." In Cornelius v. NAACP Legal Defense and Education Fund, 473 U.S. 788, 799 (1985), the Court held that solicitation by charities in the Combined Federal Campaign, even though limited in scope, fully qualifies for First Amendment protection.

Although solicitation for funds is subject to reasonable time, place and manner regulation to protect the functions of the federal workplace, the Supreme Court unanimously held in Cornelius that the federal government may not discriminate among charities admitted to a workplace campaign based on the viewpoints those charities advance. Cornelius, supra, at 811-813

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[3] Fabrizio, McLaughlin & Associates, Inc. Executive Summary -- Combined Federal Campaign Survey of Federal Employees, June 6, 1995.

(plurality opinion), 832-833 (dissenting opinion of Justices Blackmun and Brennan); 833-36 (dissenting opinion of Justice Stevens). As Justices Blackmun and Brennan noted, exclusion of organizations that employ advocacy or litigation is inherently viewpoint discrimination:

> By devoting its resources to a particular activity, a charity expresses a view about the manner in which charitable goals can best be achieved. Charities working toward the same broad goal, such as "improved health," may have a variety of views about the path to that goal. Some of the "health services" charities participating in the 1982 National Capital Area CFC, for example, obviously believe that they can best achieve "improved health care" through medical research; others obviously believe that their resources are better spent on public education; others focus their energies on detection programs; and still others believe that the goal is best achieved through direct care for the sick. [Some groups] concerned with the goal of improved health, on the other hand, obviously think that the best way to achieve that goal is by changing social policy, creating new rights for various groups in society, or enforcing existing rights through litigation, lobbying, and political activism.

As Justices Blackmun and Brennan noted, to exclude groups based on their belief that advocacy or litigation is a valid means to achieve charitable goals is "blatantly" viewpoint discrimination. To do so would explicitly favor charities that believe charitable goals may best be achieved through working within the confines of existing social policy and the status quo, at the expense of other charities that hold equally sincere views that the public interest may best be served through seeking social change. The federal government has no business, and no right under the Constitution, to make that choice for its workers.

C. Further Eligibility Restrictions are a Non-Solution to a Non-Problem

Reducing the number of participating organizations -- whether based on advocacy-related criteria or otherwise -- is simply unnecessary. We are not aware of any significant number of complaints from federal employees regarding the current CFC. As described above, 71.5% of federal employees are satisfied with the current CFC.[4] In fact, total giving increased 137% (from $82.8 million to $196.8 million) from 1979 to 1993. OPM testified that "federal employees have been well served by [the

[4] Id.

CFC's] wide range of choices" and that the CFC is not "in need of major changes."[5] Importantly, survey results show that reducing the types of charities that are eligible to receive CFC donations would actually make many federal employees less likely to contribute to the CFC.[6]

Even if we agreed that further restricting CFC participation was advisable, which we do not, imposing additional CFC eligibility restrictions related to advocacy is unnecessary. The campaign's current national eligibility requirements ensure that participating charities meet the standards of tax-exempt organizations as defined by Internal Revenue Code section 501(c)3, and that they serve human health and welfare. The IRS restrictions are ample, ensuring that purely political organizations and groups that do substantial lobbying do not participate in the campaign. The IRS rules are accepted and clear, making enforcement by OPM simple and cost-effective.

Any additional restriction on "advocacy" activities would, by definition, be subjective in nature, making it difficult to understand, implement, and enforce. For example, many critics of the current campaign structure advocate restricting CFC participation to so-called "traditional health and welfare groups." It is not possible to distinguish, however, among human health and welfare organizations, including hospitals, food banks, children's health groups and others, all of whom advocate in various public fora on behalf of the interests of people they serve. It would simply be confusing to charities and federal donors alike. Thus, instead of benefitting the campaign and the workplace, further restrictions related to "advocacy" would inevitably throw the CFC back into controversy, affecting employee morale, the spirit of volunteerism, the total charitable contributions raised, and the reputation of the CFC as a model charity drive.

D. Limiting the Type or Number of Participating Groups Does Not Reduce CFC Costs to the Taxpayer

The total cost of the CFC program has been criticized (mistakenly, we believe) as a federal "subsidy" to the campaign. Critics, however, seem to miss the point that in this instance

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[5] Statement of Honorable Lorraine Green, Deputy Director, Office of Personnel Management, before the Subcommittee on Civil Service Committee on Government Reform and Oversight, U.S. House of Representatives, June 7, 1995, pp. 2,3.

[6] A plurality of 38.5% of federal employees said they would be less likely to contribute, while only 28.9% said they would be more likely to contribute, and 20.8% were "not sure." Fabrizio *et al.*, *supra*, note 3.

the federal government is assisting the raising of additional monies toward charitable activities that by law must enhance the health and welfare of our nation. In effect, the government is spending a small amount of money to generate a significant amount of money ($195 million annually) that will improve the health and welfare of our nation and its residents. Thus, the CFC is an extremely efficient way of providing funding for charitable services that arguably would otherwise fall -- complete with burden and costs -- upon the federal government.

Currently, the government's costs in running the campaign are spread equally among the broad spectrum of charitable human health and welfare activities represented by the participant charities. Thus, the government is equitably encouraging charitable contributions as an activity. It is not endorsing or promoting any particular type of charity. However, if the campaign is restricted to charities that engage only in certain activities, the campaign becomes a funnel for taxpayer money to that particular subset of charitable activity to the exclusion of others. That is precisely the kind of biased politically-manipulable situation that the current system is intended to, and does, prevent.

Further, the total costs of the CFC do not decrease even if the number of participating charities is reduced. The Director of OPM testified that the "cost of the campaign does not significantly differ if we include a hundred charities or a thousand."[7] Thus, any government subsidy of the campaign remains essentially the same whether advocacy groups are included or not.

The direct cash outlay by the federal government is incredibly small for raising such a large amount of contributions. OPM estimates direct costs for 1994 at a total of $731,300.[8] This is less than one half of one percent of the $195 million raised that year. OPM's direct costs include OPM staff salaries, audits, and compliance reviews. Other costs associated with printing campaign materials, the local management of the campaign, and contribution processing are paid by the participating charities.

Although campaign costs to the federal government are currently low, costs could actually increase if groups were excluded from the campaign. Implementing and enforcing new eligibility limits based on a subjective, arbitrary definition of what constitutes a worthy charity would probably result in higher

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[7] Statement of Honorable Lorraine Green, p.4, supra, note 4.

[8] Id.

campaign costs due to increased paperwork, controversy, and general inefficiency requiring more OPM staff time.

Whereas direct and indirect[9] costs of the CFC will not decrease (and may increase) if the number of participating agencies is reduced, the indirect benefits of the campaign could be greatly reduced by a change in the eligibility requirements. The indirect benefits include a positive impact on productivity and pride among federal employees.[10] These positive attributes could be diminished if changes to the CFC limit employee choices and thus result in a campaign that is controversial and does not share the support of the majority of federal employees.

IV. Conclusion

The Legal Defense Fund strongly recommends that Congress not attempt to politically micromanage the CFC -- a program that is effectively and efficiently enabling federal employees to contribute to the health and welfare charities of their choice through a payroll deduction program.

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[9] The indirect costs of the CFC constitute the value of time voluntarily donated by federal employees to the campaign.

[10] Id.

PAUL F. GAVAGHAN
9103 BRIERLY ROAD
CHEVY CHASE, MARYLAND 20815

May 25, 1994

Hon. John L. Mica
United States Congress
427 Cannon H.O.B.
Washington, D.C. 20515

Dear Congressman Mica:

I want to congratulate and support your efforts to rid the Combined Federal Campaign of political and ideological advocacy groups in favor of tradittional charities that actually help health and welfare. The poor and handicapped deserve better.

It is deplorable that CFC contributions have been wending their way to the coffers of advocacy groups - regardless of their political coloration.

I am a long-time observer and opponent of extremist advocacy groups, who proliferate in Washington and unduly pressure federal agencies, brainwashing all too many members of Congress. My experience indicates that rule-or-ruin single issue groups tend to warp the entire process of government.

As a board member of the American Council on Alcoholism and recent president of the LEAP school for the handicapped, I would cast my vote for the 1966 OPM rules. Best wishes.

Sincerely,

Paul Gavaghan

FOUNDER
Luke Tupper
O.F.M., M.D., D.Sc.

EXECUTIVE DIRECTOR
Charles C. Post
Phoenix, Arizona

PROGRAM DIRECTOR
William V. Dolan, M.D.
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ADMINISTRATOR BRAZIL
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Scottsdale, Arizona

Spence Van Alsburg
Fort Collins, Colorado

Bobbe Vidulich, R.N.
Phoenix, Arizona

June 13, 1995

Representative John L. Mica
Subcommittee on Civil Service
Room B-371-C
Rayburn House Office Building
Washington, DC 20515

Dear Rep. Mica:

This is to express my appreciation, once again, for the work your committee is doing to differentiate true charitable work from lobbying and advocacy.

I approve advocacy, and I approve active political involvement. This is the American way. I do think, however, with the emphasis in the non-profit sector in recent years on advocacy, we have turned the Federal Combined Campaign into something other than was intended.

I believe that your proposition, to return the workplace charity drive at the federal government level back to the cause of true charitable enterprise, and away from lobbying and political influence, would be a positive step.

Implementation, of course, will be a great challenge. I can see a pure advocacy organization rolling a small cot into their office to put up an occasional hungry client. This makes them a "mixed" organization. Perhaps you have already thought of some way to handle that problem.

1911 WEST EARLL DRIVE PHOENIX, ARIZONA 85015-6095 TELEPHONE (602) 252-7772 FAX (602) 340-9197

We can hardly blame the advocacy groups for their full-scale press in Washington. Washington is simply too big, too rich, too influential. Perhaps with the current trend in politics there will be a small step of return to states and localities, in terms of economics and power. Then this frenzy of activity in the lobbying area could cool down and return to actual "works," at the grass roots level. Your situation with respect to the CFC is only symptomatic of our whole social structure: too Washington heavy.

Best wishes in your upcoming effort to return the charity drive to charity.

Sincerely,

Charles C. Post
Executive Director

CCP/at

WRITTEN TESTIMONY OF
EARTH SHARE
3400 INTERNATIONAL DRIVE NW
SUITE 2K
WASHINGTON DC 20008

The purpose of this document is to submit written testimony by Earth Share to the Congress of the United States, House of Representatives Committee on Government Reform and Oversight, Subcommittee on Civil Service's June 1995 hearings on the Combined Federal Campaign (CFC).

Earth Share believes that the current laws and regulations which govern the CFC are working well and should not be altered, with the exception of the continued development of regulations which help make the campaign more efficient. The lack of litigation over the last several years is a testament to the sound approach the CFC has developed, and we are certain that any major change now in the eligibility of charities would have the effect of critically impairing the CFC's ability to raise funds for all its participating charities, including traditional health and human service charities.

The CFC was never intended to support any specific charity or cause. The purpose of the CFC has always been to make it easy for federal employees to give to charities in a manner which is both efficient and fair. No one person would ever support all the charities which are now eligible to participate in the CFC, but the CFC helps makes people more charitable by offering a wide variety of charitable choices which meet objective standards.

Consequently, the CFC is a classic example of how a free market can efficiently and capably allocate scare resources, and it recognizes both the inherent wisdom and generosity of individual federal employees. The CFC has established a responsible course expanding its list of eligible recipients, and it should be applauded by all Americans who support the rights of each of us to support the charity of our own choosing.

Earth Share was incorporated as the Environmental Federation of America in 1988 by prominent national environmental and conservation agencies to educate the public and broaden financial support for the member agencies, principally by obtaining access to government and corporate employee payroll deduction fundraising campaigns, including the CFC. The Earth Share operating name was adopted to reinforce the concept that individuals and companies can produce positive environmental changes by "doing their Earth Share".

Each of Earth Share's 43 member agencies works for the prevention of human health problems through their efforts to eliminate air, water, and toxic pollution; for the preservation and conservation of fresh water, marine, and land resources; and for the development of educational programs which promote a sound and balanced use of natural resources.

All Earth Share agencies must meet stringent eligibility criteria that are intended to assure the public that all member organizations hold to the highest standards of accountability and charitable practices. Earth Share and all its members have been granted non-profit tax-exempt charitable organizations status under I.R.S. Section 501 (c)(3), and all are subject to strict limitations on lobbying and are prohibited from political activities, including endorsing candidates or political parties.

Earth Share now participates in workplace campaigns with many corporations and governmental employers, including seventeen state governments. Federal employees have generously supported Earth Share and its member agencies with gross pledges from the CFC that have ranged from $5,358,337 in 1989 to $7,449,888 in 1993.

Earth Share also sponsors a public service advertising campaign with The Advertising Council, which is a multi-year, electronic and print media effort to encourage individuals to take easy-to-do action steps to help protect our environment. The advertisements are distributed to over 11,000 media outlets twice each year, including all television and radio stations, newspapers, magazines, and bus shelters. The campaign currently receives over 40,000 caller responses each year, and during the past year has received over $20 million in donated media, placing it third among all national public service campaigns in terms of donated media time and placement.

Earth Share believes federal employees should be able to continue to contribute to environmental and conservation charities through the Combined Federal Campaign, along with the other charities now present in the campaign. Federal employees have demonstrated with their donations that they support a variety of charitable issues, including medical research, international relief and development, and social justice and human rights, along with the environment and conservation.

What separates these charities from traditional health and welfare organizations are their varied approaches to improving our world and the different constituencies they serve. Modern workplaces are quite diverse, and many people

feel they belong to several different communities: neighborhoods, cultures, cities, regions, countries, the world.

The emergence of new social issues and the creation of new charitable organizations to address these issues has changed the face of charitable giving in the United States. Increasingly, the traditional definition of "health and human welfare" services is changing, and becoming more inclusive.

A study by the United Way of America shows that as United Ways across the country attempt to meet the changing needs of communities, they are broadening their definitions of "health and human service," as well as allowing choices beyond "health and human service" to other service domains, including environmental and conservation services.

This expansion is mirrored by the increasing numbers of governmental workplace campaigns that have broadened their employees' giving choices to include environmental and conservation charities, recognizing that such charities provide crucial health and welfare services.

The health of our environment directly and substantially impacts all aspects of human health and welfare; indeed, health and welfare is the central concern of environmental organizations.

An example of this impact is the problem of lead in our communities. Deteriorating paint in many older homes and lead-contaminated soil threaten the health of young children, who ingest lead dust while playing. Childhood lead poisoning was once one of the chief causes of learning disabilities, and even death, in children in this country.

Since the 1970s, however, Earth Share's member agencies have worked to educate the public about the dangers of lead poisoning. They have helped develop policies -- including the phase-out of lead from gasoline -- that protect children from lead poisoning today.

The problem of childhood lead poisoning is far from solved, however. Controlling the remaining lead in the environment remains an urgent priority. Our member agencies continue to work to protect the health of children, and particularly children from disadvantaged and urban areas, whose communities are often at greater risk of exposure to toxic pollutants.

Is it therefore more important to address the social and developmental needs of children who have been impaired by lead poisoning, or to research better cures for lead

exposure, or to keep lead out of the environment in the first place? Attending to the societal impact of lead poisoning would be a traditional "health and human service", but the environmental approach is ultimately a less expensive and more humane approach to solving the same problem over the long term.

Another example of the impact of the environment on public health is the problem of contaminated drinking water. Tainted water can carry bacteria and other hazardous contaminants, which can lead to sicknesses, some even life-threatening in the cases of the very young and elderly.

That is why the health of our rivers and streams, which provide the freshwater drinking supply for most Americans, is so crucial. Earth Share's member agencies work to protect our water resources and drinking water supplies, and help to establish policies to safeguard our water and improve existing protections.

A final example of the impact of the environment on public health is the problem of chemical exposure. Earth Share member agencies research the risk to humans of chemicals in the air, soil and water. They have helped demonstrate the dangers of dioxin, a poison that causes cancer and reproductive, immune system and hormone-related disorders.

They have identified the risks of exposure to sulfur dioxide emissions, which cause respiratory problems in the elderly, infants and asthma sufferers. Furthermore, Earth Share's member agencies do not just identify problems -- they propose solutions to reduce or eliminate exposure. They educate the public -- including businesses, industries, and federal, state and local officials -- about these dangers, and remedies. They find ways to improve environmental protections, and safeguard human health, without undermining business and industrial competitiveness, by collaborating with business, industry and government officials.

These are just a few examples of the ways in which the quality of our environment directly impacts the quality of our health. In addition, there are countless, indirect examples of how environmental quality improves our well-being, and our quality of life. For example, the benefits provided to human health from our enjoyment of National Parks, forests, farmland, wilderness areas, rivers, wildlife, and hiking and bicycling trails may not be easy to quantify, but are nonetheless substantial.

Our member agencies provide services to all citizens, and even to the federal government itself. They preserve and

protect water supplies, counsel community citizens' groups, provide information and support in situations of environmental crisis, and arrange for the acquisition and protection of land and wildlife for use and enjoyment by all citizens.

Earth Share member agencies organize citizens' groups to initiate recycling programs, and help businesses maintain environmentally sound operations. They educate the public through publications and hands-on training sessions about how we can make our lives better, and healthier, by protecting our natural resources.

The public has benefitted from our member agencies' programs and services for many years. Children are widely protected from asbestos poisoning, and from hazardous PCB contamination, thanks to the work of our member agencies. Residents enjoy the National Parks, wilderness areas and open spaces across the country because of the help of our member agencies. The air and water that surrounds residents is protected by federal, state and local policies that Earth Share member agencies helped achieve through their educational efforts.

In summary, environmental and conservation charities provide important health and human services -- in fact, there is little more vital to our health, not to mention our general well-being, than a healthy environment. Federal employees have recognized and supported the crucial health and human services provided to the public by environmental and conservation charities by supporting Earth Share and its members in the CFC. Federal employees benefit from our member agencies' work. They deserve the opportunity to continue to show their support through the CFC for the benefits they receive every day.

MARK SILBERGELD,
WASHINGTON OFFICE CO-DIRECTOR
CONSUMERS UNION OF U.S., INC.

Consumers Union of U.S., Inc.,[1] respectfully submits this statement and requests that it be included in the record of the hearing held by the Subcommittee on June 7.

Consumers Union is opposed to any change in the rules of the Combined Federal Campaign that will reduce the choices of federal employees among the nonprofit organizations to which they can contribute through the campaign. How ironic and how wrong it would be for a Congress that has made personal responsibility one of its primary themes to seize responsibility away from individual contributors and limit their choices to a narrower list of organizations that may be contemporarily viewed by the Congress as "appropriate".

Consumers Union provides direct services to individuals by providing information and advice about products and services. Yet, we are deeply concerned that because we also provide information about economic and public policy issues that affect consumer welfare, and advocate a consumer point of view on those issues, changes along the lines suggested by the Chairman would affect our eligibility to remain a part of the Combined Federal Campaign. We currently receive about $100,000 in voluntary, individual contributions through the campaign. The views expressed by the Chairman indicate that, if the CFC rules were revised as he indicates he would like them to be, our organization may well stand to lose these contributions. And the federal employees who choose us as a recipient of their donations would stand to lose the opportunity to exercise their choice in the convenient way that the CFC has established.

Employees' choices and recipients' rights to receive gifts should not depend upon whether the recipients express views about public policy, to the public or to the Congress. Implicit in the suggestions to change the CFC rules is that there is something wrong with advocacy. That is not so. The expression of views

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[1] Consumers Union is a nonprofit [Section 501(c)(3)] membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports with approximately 5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

about public policy is so cherished a public value that in the United States it is written into our Constitution, which guarantees both the freedom of expression and the right to petition the government for the redress of grievances.

In fact, many "conventional" charities express their views about public policy, because they see both their own direct assistance and public policy as appropriate, complementary ways of dealing with the human problems that it is their organizational purpose to reduce. Or, in some cases they may see public policy as adding to these problems. We see no way that distinctions among currently eligible organizations can be drawn between service and advocacy organizations that would be both meaningful and fair.

Nor would society benefit from forcing organizations to choose between service provision and expression as a result of new CFC eligibility rules. Feeding the hungry, to take a most basic example of conventional charity, is a most worthy organizational activity. But worthy also is activity that educates the citizenry about hunger, that seeks policies to remove the root causes of hunger, and that educates those who live at the economic margins as to how they can stretch their food dollars to get the best possible nutrition. A federal employee who is concerned about alleviating hunger and who wishes to make a contribution through CFC to help do so should have the choice to contribute to an organization that does any one or any combination of these activities. We can discern no valid public policy reasons why the educational or advocacy activities of some organizations that participate in the CFC should disqualify them and thereby reduce that federal employee's choice.

If the Congress truly believes in personal responsibility, it will permit federal employees to make these choices. It will not remove organizations from the CFC based on the particular forms in which they perform their work. And it will not do so, as it is constitutionally forbidden to do, based on the content of the organizations' views about solutions to the conditions to which they address their work. (See *Cornelius v. NAACP Legal Defense Fund, 473 U.S. 788, 811 (1987)*.

We commend the Chairman for holding hearings to air the views on all sides of this issue. We believe that the hearings have demonstrated the wisdom of the current rules regarding participation in the Combined Federal Campaign. We urge the Subcommittee to leave stand the current CFC eligibility rules. We also urge the Congress not to change the Hoyer-Hatfield provisions of law, signed by President Reagan in 1986, which assure that the Office of Personnel Management does not allow its political views of the moment to interfere with federal employees' rights to choose the organizations to which they give through the Combined Federal Campaign.

ALLIANCE FOR JUSTICE

Thank you for the opportunity to submit written testimony to the Civil Service Subcommittee on the issue of reforming the Combined Federal Campaign. The Alliance for Justice, a 501(c)(3) charitable organization, works to advance the cause of justice, to strengthen the ability of public interest organizations to influence public policy, and to foster the next generation of advocates. Alliance for Justice members are civil rights, environmental, and consumer legal organizations based around the country. The Alliance as well as a number of its member organizations participate in the CFC on the local and national level.

For over ten years the Alliance for Justice has worked with the nonprofit community to insure that federal workers are provided a broad range of charities which they may support through the Combined Federal Campaign. In 1984 the Alliance released a report criticizing the eligibility standards and application and appeal process then in place, and, in collaboration with other nonprofits, led coalition efforts to institute neutral eligibility criteria and a fair application process. The Alliance opposes efforts to restrict participation in the Combined Federal Campaign.

During the June 7, 1995 hearing before the House Civil Service Subcommittee, the Subcommittee Chairman suggested three means for revising the CFC: instituting a reporting process for amounts donated to individual charities; establishing a "user fee" for participating charities; and imposing narrow eligibility criteria to eliminate advocacy groups. While the Alliance does not object to a system tracking donations to groups participating in the CFC, such a system should not burden nonprofits or donors with reporting requirements. Imposition of a user fee is more problematic.

Prohibitive fees would preclude a number of groups from participating in the CFC. Additionally, requiring a charity to pay a user fee means draining funds from an organization's primary purpose - its charitable activity.

The Alliance is most concerned about the third proposal, changing eligibility criteria. In the Chairman's statements and in remarks and written testimony of a number of witnesses, attempts have been made to distinguish between "advocacy groups" and "traditional" charities. This is a distinction without merit. Advocacy is part of the work of all charities. Charitable organizations play a vital role in the development and implementation of public policy. Groups that feed the hungry and house the homeless have experience and views that are of great value to policy makers; advocating on behalf of the constituencies they serve is an integral part of charitable activity.

Efforts to prohibit groups that advocate from participating in the CFC set up a false dichotomy and do a disservice to the charitable community. Who is to say that securing a consent decree to insure that poor children are tested for the level of lead in their blood or obtaining a court order to protect a battered woman is any less worthy or charitable than operating a soup kitchen or housing refugees?

Statements which characterize advocacy groups as political are also inaccurate. In 1954 language was added to the 1934 Revenue Act prohibiting public charities from intervening in elections and supporting candidates for office. A 1987 amendment to the legislation provided that opposition to candidates is also prohibited. Using the term political to depict charities merely injects a loaded term into discussion, silencing

charities and foundations who fear their efforts will be misunderstood and mislabeled.

Finally, and most importantly, federal workers have demonstrated their approval of an open Combined Federal Campaign and they should not be deprived of the ability to give to the charity of their choice. Indeed, at the hearing on the CFC representatives from the Office of Personnel Management testified that per capita contributions have gone up over the years since the CFC was opened to include groups that advocate. OPM receives few, if any, complaints about the CFC.

Clearly, the open campaign, providing employees with real choice in charitable giving, has been a success. Rather than increasing burcaucracy and government control of the CFC, Congress should take steps to encourage voluntary giving. Placing additional restrictions on participation in the Combined Federal Campaign will not further this goal.

June 20, 1995

The Honorable John L. Mica
Chairman
Civil Service Subcommittee
U.S. House of Representatives
B-371C Rayburn House Office Building
Washington, DC 20515

RE: Comments of Trout Unlimited (TU) for the Civil Service Subcommittee Hearing on the Combined Federal Campaign (CFC), held June 7, 1995.

Dear Chairman Mica:

Trout Unlimited requests that the following comments be made part of the hearing record on the above-referenced hearing.

TU is the nation's leading coldwater fisheries conservation organization with over 75,000 members in 450 chapters across the country. TU is dedicated to the conservation, restoration, and protection of the nation's coldwater fisheries and their watersheds. At the local grassroots level, TU chapters all across the country engage in a variety of stream and watershed restoration and protection projects, which in turn have great public health value by providing cleaner water and healthier aquatic habitat for a variety of activities including fishing, swimming, hunting, and boating.

TU is opposed to your proposed changes to the Combined Federal Campaign (CFC) which would limit participation by certain non-profit organizations. The CFC is not "broken" and does not need to be "fixed." Our objections to your proposal are threefold: 1) CFC is cost-effective; 2) human health and public welfare is well-served by TU and others benefiting from the CFC; and 3) although we do some conservation advocacy, we are not an advocacy group.

I. Administration Of The CFC Is Cost-Effective

The CFC is a mechanism for government employees to make on-the-job, payroll deduction gifts to private charities without disruption of the workplace. By reducing many separate solicitations to one campaign, the CFC has created a beneficial infrastructure for workplace giving. Organizations admitted to the CFC must meet strict accountability standards, such as having an annual audit and keeping fund raising and administrative costs below 25%.

One of your objections to the CFC is that it is a "mushrooming taxpayer-financed grab bag." What you fail to acknowledge is the Office of Personnel Management has stated

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Washington, D.C. Headquarters: 1500 Wilson Boulevard, Suite 310, Arlington, VA 22209-2310
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that the cost of running the CFC campaign is the same for many charities or a few. Any additional costs are paid for by the charities themselves.

In an era of reduced government spending, it falls upon the non-profit sector and the public to work together to fix the problems that government has not addressed or is unable to address. To do this, the non-profit sector needs the continued financial support of government employees through the CFC. Since the CFC began admitting additional charities in 1980, workplace giving has increased dramatically. From 1979 through 1993, as giving options continued to increase, giving by federal employees rose 137%, from $83 million to $197 million. There was also a per person increase in giving from $30.50 in 1979 to $97.04 in 1993, up by 226%.

Throwing charities out of the CFC would result in a decline in employee giving, at the same time government spending for a variety of programs is being reduced by the government. A private sector study by Yale University confirmed that employee morale and giving increased when workplace charitable drives were opened up to more charities. Private sector employee surveys show that 70% want expanded giving choices. Federal employees want the same.

II. Human Health And Public Welfare Are Well Served By the CFC and TU.
In your letter addressed to the Honorable James B. King, Director of the U.S. Office of Personnel Management, dated February 23, 1995, you singled out Trout Unlimited as an organization that does not provide direct benefits to human health and welfare.

This is an erroneous statement. Nothing is more critical to human health and welfare than clean water, and plenty of it. The old saying "We All Live Downstream" is of particular interest in this debate, because we all do indeed "Live Downstream" of someone else, and while efforts to provide clean water and healthy habitat for trout and salmon benefit anglers and fish alike, other wildlife species and mankind benefit greatly as well.

TU chapters engage in projects that eliminate or reduce pollutants such as sediments, nutrients such as phosphorous and nitrogen, and other chemicals, such as pesticides and herbicides.. TU chapters have worked for years to reduce and eliminate polluted runoff flowing into the nation's rivers, lakes, and streams. Polluted runoff has had fatal effects in this country. In 1993 in Milwaukee, Wisconsin, 104 people died when they were subjected to *Cryptosporidium* in their drinking water, a protozoan that flourishes in polluted water. TU chapters have worked for years to reduce agricultural polluted runoff and to relocate livestock or fence them away from sensitive watershed areas. All of these projects are done cooperatively with landowners and state and federal natural resource management agencies.

For example, this year TU spent over $121,727 on direct grants as part of our Embrace-A-Stream program, to TU chapters for local stream restoration projects across the country. A project-by-project listing is attached. Recent projects that have been funded by TU include the following:

- In Montana, TU is leading the Big Blackfoot River watershed restoration project. This project will reduce and in some areas eliminate harmful polluted runoff that would otherwise degrade this famous river, which author Norman Mclean wrote about in his novella *A River Runs Through It.*
- In New York, TU has undertaken an extensive effort to evaluate the factors causing degradation of the Beaverkill and Willowemoc, two famous trout rivers that are considered collectively to be "The cradle of American fly fishing." This evaluation will allow TU to undertake efforts to clean up and restore the river, improving it for fish and humans alike.
- In Arizona, TU is leading the effort to restore the federally-listed threatened Apache trout. Working with private landowners, state and federal agencies, and local businesses, TU has reduced polluted runoff and restored riparian areas on the West Fork of the Black River on the Apache-Sitgreaves National Forest, thus improving water quality and habitat for this species and humans.

TU chapters also do numerous conservation education projects that help children. An excellent example of this is the annual TU/4-H Fisheries & Fishing Camp put on every summer by the Northern Virginia Chapter of Trout Unlimited and the Northern Virginia 4-H Educational Center. Each year, children from around the state attend this weekend camp and are educated about the aquatic environment and are schooled in a variety of useful outdoor and fishing skills. Many of these children, recruited by county extension offices, are considered "youth at risk" because of unwholesome conditions at home and in their community. Fishing and related skills are taught as a wholesome and fun alternative to drug use. This clearly is another example of how TU benefits human health and public welfare.

III. TU Is Not An Advocacy Group

Your proposal would eliminate most charities from the CFC because they are "advocacy" groups. This is unnecessary because Internal Revenue Service (IRS) regulations already restrict so-called "advocacy" groups. All charities must be (1) IRS approved; (2) cannot engage in partisan political activity; (3) are restricted from using more than a sum portion (approximately 15%) of their receipts for lobbying activities; and (4) must keep fund raising costs below 25% of collections

TU does engage in some advocacy activities, but our expenditures on these activities constitute only a small portion of our overall expenses, well within IRS requirements. Further, our stream and salmonid restoration efforts would be undercut if we did not participate in federal and state government decision-making processes - processes that can have potentially huge impacts (positive or negative) on trout, salmon, their watersheds, and the people that utilize these resources for commercial and recreational benefit. To be true to our mission, participation (albeit limited) in government decision-making processes is essential.

Attached to this letter is documentation which further illustrates our stream and river restoration and conservation education work. We appreciate the opportunity to submit comments on this important issue.

Sincerely,

Steven N. Moyer
Director of Government Affairs

Neal D. Emerald
Legislative Assistant

cc: Members of the House Civil Service Subcommittee

MONTANA'S BIG BLACKFOOT

PHOTO: LAWRENCE S. DORR, JR.

BY GREG TOLLEFSON

The real life trout stream that flows across the pages of Norman Maclean's fictional *A River Runs Through It* is in trouble. An ambitious Trout Unlimited restoration project seeks to revive the glory.

Paul Roos began guiding fishermen on Montana's Big Blackfoot River 27 years ago.

"We fished many different rivers in those days," recalls Roos. "We took clients to the big name water, the Madison, the Big Hole and so forth, but somehow we always ended up back on the Blackfoot. Nothing could beat it for just plain beauty and solitude. By the early '80s, though, the river had begun to change. The fish just weren't there. It was no longer a place we could take customers who had come to Montana to fish. It's still my river. But now, instead of taking from it, the time has come to give something back."

Betty duPont is a retired Blackfoot Valley rancher and fly fishing enthusiast: "It gradually dawned on some of us—the fishing just didn't seem to be what it once was in the river. Lots of people I knew who were very fine fishermen would come back day after day barely having seen a fish. At first, when we contacted the Department of Fish, Wildlife and Parks, I think they probably thought we were just a bunch of people who didn't know how to catch a fish. When they finished that first study, they realized they had a hell of a problem on their hands."

Munroe McNulty, a retired contractor from Illinois was one of those fishermen Betty duPont was talking about. McNulty has been fishing the Big Blackfoot for the last 33 years. For him, lack of fish in the river was a problem to be solved, like a tough construction job.

"I don't think it's an exaggeration to say I know pretty much every rock in that river over a good portion of it," says McNulty. "I'm a pretty good fly fisherman, but I was also a typical fisherman. I didn't understand how a stream was supposed to work. I didn't know why fish chose one place over another. I didn't know the mechanics of a healthy stream. I think that's the way it was for most people with the Blackfoot. It isn't that way now."

Still Breathtaking

The Big Blackfoot River flows roughly 130 miles from its headwaters on the Continental Divide in Montana to its confluence with the Clark Fork River near Missoula. Native Americans called it "The River on the Road to the Buffalo." They were the primary users of the valley until the 1860s, when prospectors discovered gold. Casual observation from the window of a vehicle cruising Montana Highway 200 through the Blackfoot valley betrays no sign of those long gone Native residents, but there is plenty to suggest the heavy hand of man since.

Clearcuts and mining scars are scattered like acne across the face of the mountains. Foul-looking mine waste, gathered in settling ponds, laps against the highway in some places. Where the valley widens out, ranches big and small dot the landscape. Away from the main highway, retirement and recreation homes are beginning to appear, along with the essential television satellite dishes, tagged by some as "Montana's new state flower." Much of this might escape the notice of one unfamiliar with the Blackfoot. After all, the valley is still a place of breathtaking beauty. When the road comes close to the river, it is impossible not to imagine large, dark trout sliding among the rocks in those shadowy waters.

Easy to imagine, but hard to find.

This is the same isolated, trout-filled Blackfoot River that flows across the pages of Norman Maclean's novella, *A River Runs Through It* (1976). The river weaves through the lives of the characters in Maclean's wonderful story of family love and tragedy as it has done over the years with the lives of countless people who have fished its waters, grazed cattle along the banks, mined the ore deposits, or logged the hillsides. It came as no surprise to many of these people—such as Paul Roos, Betty duPont and Mun McNulty—when it was announced that the river that movie goers will see in Robert Redford's film version of *A River Runs Through It* will not be the Blackfoot.

The Big Blackfoot River is in trouble but fortunately has found a few friends.

For years, in fact, the Nature Conservancy has been quietly collecting conservation easements along much of the Blackfoot that remains undeveloped. The Conservancy had worked with state and federal agencies to develop plans for public access and use on much of the corridor created by easement development. These were and are laudable efforts, necessary in any overall river management plan. Meanwhile, though, the fishery declined.

Some say it was plans for a new mining project that finally brought this group together. Some say it was worries about the effects logging was having on the drainage. Still others contend it was the fishing, plain and simple. Something was very wrong with the fishing in the Blackfoot. Whatever the individual motivation, a group of 44 people showed up for a meeting on the night of November 12, 1987 in the tiny town of Lincoln, Montana. The Big Blackfoot Chapter of Trout Unlimited (BBCTU) was formed that night.

Over-Fished, Over-Looked

Becky Garland runs a store in Lincoln, the center of commerce and industry for the Blackfoot Valley. She lives in the house in which she grew up, tucked right in behind her store, located on Lincoln's main thoroughfare, Highway 200. Garland, who is the current president of the BBCTU, was not an angler at the time, but she was worried enough about the river to go to the meeting.

"Sure, for some it was the mine," explains Garland. "There were lots of things that brought people to the meeting. But what it amounted to was that we all thought this river and this valley were in trouble. And we needed some way to get the agencies and companies out there to take our concerns seriously. The health of that river, you see, is the key to our economic future here. A mining boom will pump some money in, I know that, and it will pump some people in, too. When they pack up and leave, it will just be us, the mess the mining company leaves behind, and what's left of the river. Anyway, Daryl Parker suggested that Trout Unlimited was a good alternative."

The problems that brought 44 people to a meeting in Lincoln did not crop up overnight.

The first mining boom occurred in the 1860s and mining activity has ebbed and flowed in the valley ever since. Several potential large mining operations are in various planning and permitting stages right now. Meanwhile, abandoned mines and settling ponds continue to drip acid waste and toxic heavy metals into the Blackfoot watershed. In 1975, a major failure of a settling pond at the Mike Horse mine in the headwaters poured its contents into the river, and those heavy metals continue to migrate downstream each year, effectively eliminating any fishery left in their path. Logging has been a constant element in the economic life of the valley with its vast tracts of private timberland, now mostly logged off. The timber industry is lobbying hard to get access to the timber left on public lands. Ranching activity started in the valley about the same time as mining. It, too, has been a key economic activity and had done its share of damage to the valley.

And ever since the first miner took a rare day off to see if he couldn't entice one of those fat cutthroat trout with a hunk of bacon rind, the Blackfoot has been used by those who lived along it as a balm for the aches and pains of daily existence. By the early 1980s, recreational use of the Blackfoot, especially on the lower 20 miles near Missoula, was very high. Each of these factors had contributed to the state of the river by the autumn of 1987.

What it all amounted to, Garland told a local reporter recently, was that the Blackfoot "has been over-mined, over-cut, over-fished, over-recreated and over-looked."

Trout Unlimited was an unlikely mixture of folks, many of whom "did not know one end of a fishing rod from another when this all started," according to Betty duPont. The group included a building contractor, two fishing guides, a couple of cattle ranchers, a horse logger, a storekeeper, a college professor, guest ranch operators, a professional forester or two, and many more. They didn't waste time in getting down to business.

People were concerned about the fishery, and what a decline in the fishery said about the overall health of the Blackfoot. One guest at the organizational meeting was Dennis Workman, Regional Fisheries Manager for the Montana Department of Fish, Wildlife and Parks (MDFWP). The group grilled Workman on the availability of fisheries data from the Blackfoot. It was skimpy. They wondered about making regulations more restrictive on the river. Not without data, Workman told them. The problem: no money available for the necessary studies. The MDFWP had their money and manpower tied up elsewhere. Workman explained that the Blackfoot was not atop the priority list for fisheries work in the region.

Dollars for Trout

At that first meeting the group decided to find ways to short-cut the process of collecting baseline data, including coming up with the necessary funding and manpower. The group also determined that night to take an active role, watchdogging the permit application process for the proposed Sunshine Mine a few miles downstream from Lincoln.

They accomplished that and more. By the third meeting, in January 1988, the chapter had extracted a proposal from Workman detailing baseline work needed to justify changes in existing regulations. Workman told them the work would cost about $13,000. Okay, responded the group, and what do we need to do once that's done?

To get that first $13,000, members of the new TU chapter determined to do a one-time-only fund raising letter, tapping old friends, customers, business associates, anyone they could think of. Roos and another local outfitter, Mark Jones, graciously allowed the chapter to use their client lists. Operators of an old line area dude ranch did the same. Within two months, the chapter raised $16,000.

"Even before we were sure we had enough money, we started looking to the next phase. We wanted the agency to know we were serious," duPont recalls.

From the start, BBCTU assumed that fishery studies would show something

PHOTO: ROY LACE

PHOTO: DON PEDERS

PHOTO: DON PEDERS

Overgrazing by domestic livestock [above] has caused spawning tributaries to deteriorate. Excess nutrients stimulate algal growth [middle] in the Blackfoot.

The 1975 rupture of a dam holding back a mine waste settling pond in the headwaters [above] sent a slug of toxic heavy metals downstream.

was wrong in the river. With that in mind, they began searching for ways to find funding to fix problems as they were identified. Before long, the group had set up committees to deal with a variety of issues, including mining, ranching, fisheries, and of course, fund-raising.

Meanwhile, when it became clear that BBCTU meant business, Workman re-assigned veteran biologist Don Peters to the Blackfoot River. The one-year fisheries study had now become a five-year plan involving the main river and selected tributaries. And after that first year, study results showed that the BBCTU concerns about the river were well founded. Peters' first report was summarized this way:

"Results from the 1988 study concur with the concerns anglers were expressing about the river's trout fishing—the Blackfoot River fishery, indeed, appears to be at a level well below its potential."

Peters concluded from the study that there was great variation in habitat, fish population and the specific nature of problems to be solved in each section of the river. Wild trout populations were lower than expected in all sections. Especially alarming, Peters concluded that the native species, cutthroat and bull trout, were in serious trouble.

"Once we established that there was a problem," recalls the biologist, "it was time to figure out what to do about it. There was enough information to justify some special regulations, and those were applied, but there was lots more to it than that. The interesting thing about BBCTU is that once we identify a specific problem for them, they are already out there trying to tackle a solution. The whole group has educated themselves on the issues. Sometimes they know more about what's going on than we do."

Peters makes no attempt to disguise his enthusiastic admiration for the TU volunteers and the things they have accomplished.

Tackling The Tributaries

In general, according to Peters, the problems on the Blackfoot could be traced to economic activities in the area, mining, forestry and agriculture, along with natural factors such as drought and wildfire. Trout reproduction was not good because habitat in crucial spawning tributaries had been destroyed or disturbed by one or more of those activities.

What we did right away was focus on man-caused problems . . . We thought that if man could cause the damage, man should be able to fix it.

To address one of those problems, and provide data necessary to the over-all project, BBCTU soon joined forces with Mun McNulty and his friends in the Oakbrook, Illinois Chapter of TU to fund a comprehensive water quality study of the Blackfoot. The results of that study helped to identify specific sites in need of immediate attention and added to the growing body of information on the resources of the Blackfoot drainage being collected in part at least, due to the efforts of BBCTU.

Ron Pierce is a fisheries biologist who joined with Peters on the Blackfoot work in 1990:

"Most of what we see in the basin is fixable. All trout species in the Blackfoot rely on tributaries for spawning and rearing. To improve river trout populations, we need to improve tributary habitat. That can be done with improved riparian management and stream restoration with attention to fish passage and cover."

Jim Masar is an attorney in Missoula, Montana. In his salad days, he wrangled at a ranch on the Blackfoot River and later he served as County Attorney for Powell County which includes a big chunk of the Blackfoot. His connections to the river are strong. By the second or third meeting, he had signed on as a board member for BBCTU. He now acts as treasurer. Like the other jobs in this chapter, treasurer is not a figurehead title.

"What we did right away was decide that we would focus on man-caused problems where we could," says Masar. "We thought that if man could cause the damage, man should be able to fix it. For the most part that seems to be true."

Peters and fellow biologist Pierce developed a "wish list" of potential projects to enhance the fishery. These projects are focused on spawning tributaries; they range from such seemingly insignificant items as getting the right kind of bridges or culverts installed, to complicated stream channel improvement projects. Slowly but surely, as funding becomes available, work has begun on these projects.

Results have been encouraging. Fish passage work and habitat improvement have already resulted in greater spawning success in some key areas. Spring creek enhancement projects, underway and completed, promise to provide more spawning habitat. One startling result: an 800 percent increase in wild rainbow and brown trout spawning at one location. Another benefit of spring creek restoration may be the decrease in thermal pollution of the mainstem.

All of these things are exciting, especially for professionals Peters and Pierce, who know how difficult it is to effect change.

"These TU people aren't fazed by the difficulty of a problem. They sit down and get to work on it," Peters remarks.

The Larger Threat

The chapter has not focused solely on the fishery. The legacy of more than 100 years of mining is never far from the minds of most in the valley, and the problem of drainage from abandoned mines in the Blackfoot headwaters demanded attention. Members of BBCTU set out to find a way to clean up those sites, and managed to identify a source for funding the job. Funding in the amount of $400,000 was eventually secured and plans were drawn up for the clean-up. Ultimately, the effort failed due to bureaucratic bungling at the Montana Department of State Lands. The money for the project was withdrawn. Undaunted, the chapter continues to push for those reclamation projects to be tackled.

Planned mining activity remains a spectre on the horizon. The Sunshine Mine, which was embroiled in the permitting process when Trout Unlimited was formed locally, has not been heard from much lately, the process appar-

ently in suspended animation until economic factors are more favorable to proceed with development. A new, larger and potentially more damaging proposal is now in the works a few miles upstream from Lincoln. Called the 7UP Pete Joint Venture, with Phelps-Dodge as the managing partner, the proposed mine situated on mostly state and private land could nearly double the population of Lincoln if it goes through. Plans and details remain sketchy, but nearly everyone involved in the effort to get the Blackfoot back on its feet views it as the biggest threat to the river.

Biologist Pierce is blunt:

"With money, creative thinking and cooperation, we can deal with most of the problems on the Blackfoot. Mining, on the other hand, represents the most insidious long-term threat to the river."

Bruce Farling is Conservation Director for an influential environmental group called the Clark Fork-Pend Oreille Coalition. Part of Farling's beat is the Blackfoot River. He watches what's happening to the river with concern.

"Right now," says Farling "the mine is without a doubt the biggest threat. The mining law doesn't have enough teeth in it to do anything and the industry does not have a record that instills confidence. If you are going to use the cyanide leach method, chances are you are going to have leaks. That's just the way it is. And when that mine is gone, you're gonna have a hell of a mess up there, and a bunch of empty apartments and trailer houses in Lincoln."

A Lucky River

Betty duPont laughs when she talks about all of the activities in which the chapter is involved.

"You know," she says "we never have had a fly tying demonstration at one of our meetings. There is just too much stuff to be done. We have bitten off a great deal more than we ever expected."

Although they have varied interests and different motivations for their involvement, every active member of the Big Blackfoot Chapter of Trout Unlimited repeats the same litany. They stress the fact that they want to get everyone involved—ranchers, miners, loggers, and recreationists—in an effort to come to some consensus about the need to protect the river. The chapter sponsored a symposium in the autumn of 1991 at which all the major players in the Blackfoot watershed—agencies, timber companies, ranchers and mining companies—were invited to discuss their activities and plans for the drainage. That was followed in June 1992 with the first meeting of an as-yet-informal group with a working name of the Blackfoot River Conservation Coordinating Council. In addition to representatives of 11 different government agencies, there were ranchers, miners,

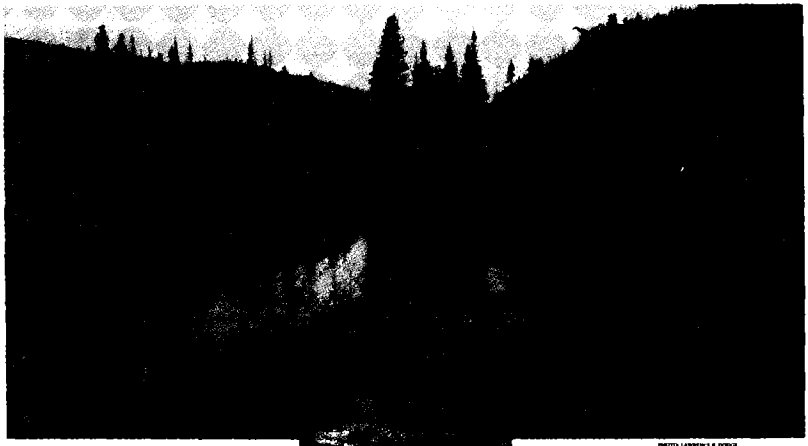

PHOTO: LAWRENCE S. DODGE

A Trout Unlimited-funded study of the Blackfoot revealed populations of wild trout well below their potential in all reaches of the river.

and representatives of other conservation groups.

Although the jury is still out on the success of these efforts, duPont is optimistic about the future.

"I think we have started to make a small dent in a large problem," she says. "We're doing stream restoration work. We've created an awareness of the problems. We have the general public tuned in to the idea that preserving natural values is in everybody's interest in the long run. Now if we can get another couple of the old line ranchers on board, we can really make some progress."

Jim Masar agrees.

If it is possible for a river to be lucky, then the Blackfoot River is lucky. It's lucky these people came along.

"Until we came along, nobody had really expressed an interest in taking a leadership role in the Blackfoot valley," he points out. "We have done that, and I think we are having some influence."

Farling sums it up this way: "If it is possible for a river to be lucky, then the Blackfoot River is lucky. It's lucky these people came along to give it a hand. What the Blackfoot River does not need, as a result of all the attention it seems to be getting, is a bunch more people coming to visit, float and fish it. What the river needs is more people like Trout Unlimited, willing to do everything they possibly can to save it."

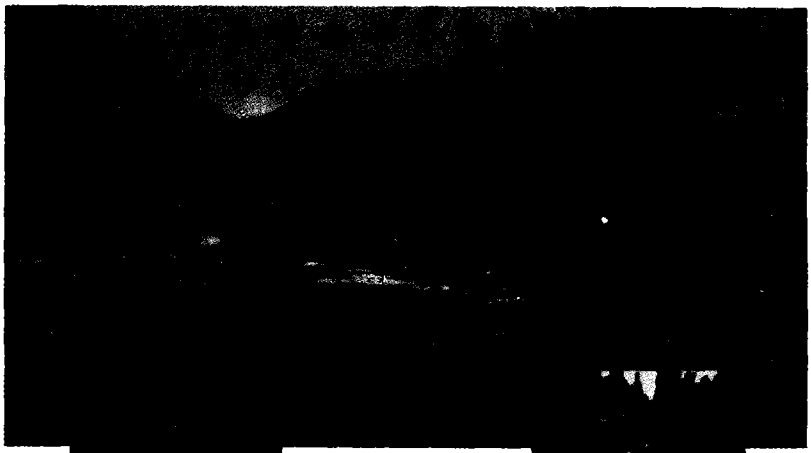

PHOTO: RON PRINCE

Echoes of glory days past: the Big Blackfoot at Lafferty Creek, near Missoula, in autumn splendor.

PHOTO: RON PRINCE

All wild trout in the Blackfoot River depend upon tributaries for spawning and rearing; fencing to restore healthy riparian vegetation will help.

Fish passage and habitat restoration work here already resulted in an 800-percent increase in brown and rainbow trout spawning in this spring creek.

1995 Embrace-A-Stream Winners

Project Descriptions Compiled by Christine Arena and Kate Costenbader

Contributions from TU members, corporations, and foundations fund Embrace-A-Stream (EAS), which annually awards grants to TU-led stream restoration, research, and education projects. In 1995, Embrace-A-Stream will award 26 grants totaling $121,727 for projects located in 25 states. Five projects will be eligible for $15,000 in matching funds through the following fisheries programs sponsored by the National Fish and Wildlife Foundation: *Bring Back the Natives, Fisheries Across America,* and *Ecosystem Restoration.* Winning projects are listed alphabetically by state.

Old Pueblo Chapter (AZ) -- Continuing an effort that began in 1992 to restore threatened native Apache trout in Arizona's West Fork of the Black River, the Old Pueblo Chapter will use $10,000 to build a primary fish barrier on the West Fork, construct 30 instream habitat improvement structures and put up riparian fencing. This EAS/*Bring Back the Natives* project takes a comprehensive watershed approach in restoring a blue ribbon fishery in cooperation with the U.S. Forest Service, Arizona Department of Fish and Game, the U.S. Fish and Wildlife Service, and the National Fish and Wildlife Foundation.

Arkansas Chapter/Arkansas Council— A $5,000 grant will help the Arkansas Chapter and Council in its ongoing efforts to restore the Beaver tailwater, which comprises the middle section of the White River, to a quality coldwater fishery. The Beaver tailwater fishery has the potential to sustain increased populations of rainbow, brown and cutthroat trout. By eliminating bank erosion, re-channelizing the river to its original configuration, restoring holding pools and riffle waters, and providing cover for trout habitat, TUers will return the river to its previous condition before a flood nearly destroyed the fishery five years ago.

Gunnison Gorge Anglers Chapter (CO) — To restore and enhance native riparian vegetation to the shoreline area of Rowdy Reservoir, located in the Cimarron River drainage, the Gunnison Gorge Anglers Chapter will use a $500 EAS grant to construct a fence of lodgepole pine to enclose 10 acres surrounding Rowdy Reservoir. Willow cuttings and seeding with native riparian and wetland vegetation will stabilize the shoreline, provide shade to the rainbow trout inhabiting the lake, and reduce erosion and nutrient loading impacts resulting from current grazing practices.

Georgia Foothills Chapter (GA) — An EAS grant of $600 will support the Georgia Foothills Chapter's efforts to construct an outdoor learning center along the Soque River. The construction of a 0.6 mile loop trail, creating an "outdoor classroom," is one aspect of a three-part approach to outdoor education. The facility will promote hands-on learning of ecosystem management principles. The EAS funds will enable Georgia Foothills to acquire aquariums to educate the public about healthy watersheds and fish populations.

South Carolina and Georgia Councils (GA) — A $10,000 EAS research grant will support the South Carolina and Georgia Councils in their investigation of critical habitats on the Chattooga River, a regionally important trout stream in the Southern Appalachians. In a partnership with the U.S. Forest Service, the TU councils will use visual implant tags and electronic transmitters to monitor fish movement and will compile and analyze the data using state-of-the-art computer technology. The data will provide fisheries managers with information regarding seasonal movements and spawning habitats of the Chattooga's brown trout. In recognition of the Chattooga's recreational and biological importance, Duke Power Company has recently awarded funding support to the investigation.

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Idaho Panhandle Chapter (ID) — Using a $5,000 EAS grant, the Idaho Panhandle Chapter will work with the U.S. Forest Service to restore critical habitat for bull char and westslope cutthroat trout, both federally listed as sensitive species, on the Grouse Creek in northern Idaho. Idaho Panhandle TUers will place wood in stream beds and banks in order to restore Grouse Creek to its original configuration. The project will teach local students in riparian and stream rehabilitation techniques.

Illinois Council— To address the use of gill nets in the Great Lakes, the Illinois Council will use $4,000 of EAS funding for publications for a symposium on this topic, scheduled for December 4-5, 1995. Gill nets are the primary traditional tool of Great Lakes commercial fishermen. Trout Unlimited, Great Lakes United, the American Fisheries Society and the Assembly of First Nations, as well as several other organizations and government agency groups, will sponsor the symposium, which will provide information and recommendations on gill net use and guide policymakers in analyzing the future use of gill nets and their impacts on the conservation and management of the Great Lakes' diverse coldwater resources, including native lake trout and native coaster brook trout.

Illinois Council— In an effort to restore declining populations of native "coaster" brook trout in Lake Superior, TU's Illinois Council will participate in a genetic characterization study. The U.S. Fish and Wildlife Service's Fishery Resources Office, based in Ashland, Wisconsin, will coordinate the study as part of its overall plans to develop a lake-wide restoration plan for coasters.

An EAS research grant of $7,000 will help attain the genetic information necessary to making informed decisions about protecting extant remnant populations of coasters and rebuilding populations. Using extensive DNA analysis, the study will identify individual coaster populations and determine the range of genetic variability within and among them.

The Illinois Council anticipates that the study will be an important step toward identifying specific opportunities for Trout Unlimited volunteers to become involved in on-the-ground restoration and public education activities to conserve, protect, and restore this important native fish.

Maine Council— Through educational programs, bank stabilization, run-off diversion, and pasture fencing, the Maine Council hopes to develop and increase community involvement and awareness of water quality and fisheries issues on the Sheepscot River, which is one of seven rivers in the United States that boasts a native, sea-run Atlantic salmon population. Part of this community process has been to secure the support of local landowners.

The U.S. Fish and Wildlife Service, the Natural Resources Conservation Service, the Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Marine Resources, along with the $2,100 EAS grant, will assist the Maine Council in stabilizing riparian zones and developing educational activities with local schools.

Hacklebarney Chapter (NJ)— The Hacklebarney Chapter will use its $2,500 EAS grant to restore a one-quarter mile stretch of the Rockaway River. Restoring native trees and plants to the riparian zone will reduce sediment loads in the Rockaway and provide shade and shelter for trout populations. Members of the Hacklebarney Chapter will also install stone deflectors and other instream structures to improve trout habitat.

Adirondack Chapter (NY)— Working with the New York State Department of Environmental Conservation and the U.S. Forest Service, the Adirondack Chapter will put $2,172 in EAS funds towards bank stabilization and fisheries enhancement on the Mettawee River, which supports a high-quality rainbow and brown trout fishery.

The Adirondack Chapter will plant more than a hundred feet of vegetation to secure eroding streambank along the Mettawee. The TU-led restoration effort along the Mettawee was profiled last year in the "Habitat Watch" segment of the *On The Fly* fly-fishing show.

Northwestern North Carolina Chapter (NC) — The Northwestern North Carolina Chapter, along with three TU state councils and 13 TU chapters, will use a $10,000 EAS grant to improve and enhance habitat on the South Holston River in Tennessee.

Given its limestone structure and productivity, the South Holston is a unique ecological and recreational resource in the Southeast.

In cooperation with the Tennessee Valley Author-

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ity, the TU-led project involves installation of four butterfly valves on the South Holston labyrinth weir, located 1.2 miles below the South Holston Dam, to increase stream flows by over 44 percent. The resulting increase in water depth will substantially improve South Holston's habitat for rainbow and brown trout, as well as other aquatic species.

Oregon Council — As part of a major EAS/*Bring Back the Natives* restoration effort, TU's state council and several chapters in Oregon are resolving fish passage problems on tributaries to the McKenzie River watershed, located in the Willamette National Forest. TU volunteers are also involved in reseeding efforts, instream habitat improvements, and riparian recovery.

The effort, which is supported by the U.S. Forest Service, the Bureau of Land Management, and the Oregon Department of Fish and Wildlife, will rehabilitate a total of three miles of habitat for bull trout, currently considered as "warranted but precluded" for listing under the Endangered Species Act; redside rainbow trout; Chinook salmon; and westslope cutthroat, and will reintroduce another year class of bull trout in 4 miles of two of the tributaries.

Deschutes River Chapter (OR) — The dramatic decline of fall Chinook salmon has spurred the Deschutes River Chapter to work with the Confederated Tribes of the Warms Springs Reservation of Oregon (CTWS), the Bureau of Land Management and the Oregon Department of Fish and Wildlife to take a life-cycle approach to population recovery.

The first stage of the effort, which is also a *Bring Back the Natives* project, focuses on protecting and enhancing riparian areas along the Deschutes and Warm Springs Rivers. Over four miles of streamside fencing and three miles of pasture fencing will be constructed to protect riparian vegetation and aid in livestock management. A $2,250 EAS grant, which will be matched by the National Fish and Wildlife Foundation, will enable project partners to acquire eight solar jacks that will fill water tanks for livestock and wildlife use away from the riparian corridor. This effort will benefit Chinook salmon, redband trout and bull trout.

Klamath Basin Chapter (OR) — To provide protection for a one-half mile reach on either side of Deep Creek, an important spawning and juvenile rearing tributary to the Williamson River in Klamath County, Oregon, the Klamath Basin Chapter will use a $4,150 EAS grant to connect a half mile of smooth wire fencing on each side of the reach to the three-quarter miles of fencing that has already been installed on public lands. The total 1.25 miles of protection will provide increased riparian recovery, lower water temperatures, better flows, and cleaner spawning gravel for Deep Creek's native redband rainbow trout.

Ochoco Chapter (OR) — The Ochoco Chapter will continue its award-winning environmental education project with the Crooked River Ecosystem Education Council. An $2,520 EAS grant will assist in the development and implementation of natural resources curriculum for grades K-12. Students will collect data, monitor and survey the Crooked River watershed, and protect redband rainbow and bull trout populations.

Sandy River Chapter (OR) — The Sandy River Chapter will use a $5,000 EAS grant to support the Beaver Creek Project at Centennial High School. The project aims to raise community awareness of the need to protect, enhance, and restore the Beaver Creek watershed.

Project activities will address increased turbidity due to soil erosion, insufficient anadromous fish habitat, and elevated water temperatures. Beaver Creek currently supports wild runs of Coho salmon, steelhead trout, and cutthroat trout.

Donegal Chapter (PA) — A $5,000 EAS grant will further the Donegal Chapter's effort to restore eroded stream banks along Lititz Run, a scenic limestone stream in Lancaster County. The Chapter will use limestone rock, fencing, native plantings to restore banks and habitat, benefiting Lititz Run's trout fishery. The project is supported by the Chesapeake Bay Foundation, as part of an overall effort to restore the Chesapeake Bay watershed.

Pike-Wayne Chapter (PA) — The Pike-Wayne Chapter received $3,700 for the second phase of construction in a project to restore refuge and foraging habitat for the resident brown trout population of the Wallenpaupack Creek. With technical and financial support from the Pennsylvania Fish and Boat Commission, the Chapter has scheduled five work days to in-

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stall trout habitat structures. TU volunteers and staff from the Fish and Boat Commission will continue to monitor Wallenpaupack Creek to collect and analyze data on the physical and biological results of rehabilitation efforts.

Narragansett Chapter (RI) — The Narragansett Chapter will use a $5,000 EAS grant for two erosion control projects on the Wood River and Falls River, a small headwater tributary to the Wood River. In coordination with the Rhode Island Division of Fish, Wildlife , and Estuarine Management, which is attempting to reintroduce Atlantic salmon in the watershed, the Chapter will terrace and revegetate eroded areas at both sites. The Falls River will also benefit from a regraded gravel road and parking area, which will redirect stormwater run-off. The Chapter will also install a gate to protect the Wood River from vehicular access to its embankment.

Great Smoky Mountain Chapter (TN) — Using a $2,605 EAS grant, the Great Smoky Mountain Chapter will collaborate with the Tennessee Valley Authority and the Tennessee Wildlife Refuge Resource Agency to enhance the natural reproduction of rainbow trout in Clear Creek.

Great Smoky Mountain chapter members will restore the natural width-to-depth ratio in the channel, repair structures, clear debris, create gravel beds, and stabilize eroding banks in order to provide consistent flows and protect natural spawning areas.

Little River Chapter (TN) — Working with the National Park Service, Little River TU members are dedicated to eliminating non-point source pollution impacts on the tributaries of Abrams Creek, located in the Great Smoky Mountains National Park.

A $10,000 EAS grant will be used to construct 28,728 feet of fencing to create a 100-foot riparian corridor on both sides of the Abrams Creek's six tributaries. TUers will break up the soil, seed and install erosion control devices on the most degraded areas to lower sediment loads and allow the stream to return to more natural levels, which will protect the watershed's rainbow and brown trout populations.

The project is also supported by the National Fish and Wildlife Foundation, the Tennessee Valley Authority, the University of Tennessee, and the Tennessee Wildlife Resources Agency.

Upper Valley Chapter (VT) — The Upper Valley Chapter will use a $2,218 EAS grant to eliminate barriers to spawning habitat on the Mill Brook in Promfret, Vermont, which was once one of the two largest spawning and nursery tributaries for the native rainbow trout inhabiting the main stem of the White River.

With assistance from the Vermont Department of Fish and Wildlife, the Chapter will construct a fish ladder by retrofitting existing culverts with strategically placed baffles made of pressure treated timber. The fish ladder will increase existing spawning habitat by 70 to 80 percent.

Olympia Chapter (WA) — TU's Olympia Chapter received an EAS grant of $3,000 for its youth educational efforts in Puget Sound's Budd/Deschutes watershed. In cooperation with the Global Rivers Environmental Education Network, the Olympia Chapter will assist local school teachers and students in monitoring water quality and quantity, planting riparian vegetation, and restoring nature trails. In addition to teaching students about the importance of conservation through "hands-on" field work, the project will help protect a valuable trout and salmon fishery.

West Virginia Council— In a partnership with the West Virginia Department of Natural Resources and the U.S. Forest Service, TU's West Virginia Council will treat five native brook trout streams with sand-sized limestone in order to raise the pH and calcium per hydrogen ratio levels in the five streams. EAS funding in the amount of $9,550 will help neutralize the effects of acidification from acid rain and the stream geology's poor buffering capacity, on the following streams: Dogway Fork of the Cranberry River and Glade Run, Fishing Hawk Run, Lambert Run and Red Run of the Shavers Fork watershed.

Kiap-TU-Wish Chapter (WI) — In a cooperative effort with the Wisconsin Department of Natural Resources, the Kiap-TU-Wish Chapter will use a $5,562 EAS grant to install a monitor station at the Little Falls Dam on the lower Willow River. Located in a state park, the Willow River supports a valuable brown trout fishery.

Members of Kiap-TU-Wish will measure the flow and temperature regimes below the Little Falls Dam. The Chapter will use this data to develop a "fish-friendly" management plan for the dam.

KID'S STUFF

By Thomas R. Poro
With Photography by
James A. Yuskavitch

An exciting Trout Unlimited-backed education program is teaching young people in California to care about their natural environment.

The enrapt faces of 19 fourth-graders are pressed against the cold, clear glass of a gurgling aquarium incubator. The children have watched each embryo develop, day by day. Now, this bright spring morning, dozens of tiny pinkish balls of flesh are beginning to move about the gravel. Suddenly an elfin sliver, a miniature steelhead trout with tiny black eyes, pops out of its translucent shell. The children's eyes bulge.

"Wow!" they exclaim in unison. "Awesome!"

New life is emerging as they watch, as they learn.

Before this school year is finished, these fourth-grade students will know more about fish than most fishermen. They will understand how a steelhead's olfactory and optic lobes function—how it smells and sees. They will peer at a scale from an adult steelhead under a microscope, be shown the varying compression of its growth rings, and learn the difference is the time it spends growing rapidly to maturity in saltwater.

The children will take a class trip to the nearby Feather River. They will feel the rush of clean water on their ankles and feel the wet stones with their hands. They will touch caddisfly cases and mayfly nymphs, aquatic insects upon which the young steelhead depend for nourishment. They will be intrigued by the fact that newly emerged fry drift downstream to the tail of a riffle, because that is where there is food and oxygen, but that natural predators—other adult fish and diving birds—will be waiting. They will become resigned to the predators devouring many of the tiny steelhead. They will hear for the first time the words "food chain." They will understand how really fragile it all is. And what a miracle it is that *any* of these distant ocean travellers make it back to spawn—the adult female sensing the quality and size of gravel with her anal fin, finding just the right place in the

Out of it, like, thousands of fish, not very many make it. Cuz of obstacles. Yeah. They got a whole bunch of enemies.
Brett Wilkerson, 10

Help Is Already on the Way

Members of the Big Blackfoot Chapter of Trout Unlimited, in cooperation with Don Peters and Ron Pierce of the Montana Department of Fish, Wildlife and Parks, have developed a plan of action designed to restore a healthy wild trout population to the river. Some might refer to this plan as a "wish list" of projects, but it reflects a careful evaluation and ranking process, in which 10 tributaries were identified as top priority. The components of this comprehensive plan include everything from stream restoration to land purchases. Jack Thomas, chair of the Finance and Grants committee of BBCTU is the fellow in charge of finding the money to move those projects off the wish list and into reality. So far, Thomas and BBCTU have a pretty good track record when it comes to finding money. They have funded, found matching funds for, or been awarded grants to complete numerous stream improvement projects, fishery studies, water quality studies and resource management symposia.

The job of restoring an entire watershed, however, is not cheap. The money will have to come from a variety of sources, including federal and state funds, grants from foundations, corporations, private businesses, and most importantly, individual contributors.

The Orvis Company, a reliable supporter of Trout Unlimited, has stepped up with a plan that focuses its considerable fund-raising abilities on the Blackfoot project. It has arranged $200,000 of two-to-one matching funds for the Blackfoot project from the National Fish and Wildlife Foundation and has committed to raising up to $50,000 from its company, its directors, and its customers.

Robert Redford, Northfork Productions, and Columbia Pictures have agreed to dedicate the Montana premiere of the movie as a Trout Unlimited fund raiser to support the Blackfoot project.

The Big Blackfoot Chapter's project is rapidly becoming a flagship project for TU—the new TU that has refocused its energies on major resource issues identified at the grassroots level. Everyone's support is needed and encouraged. This is a unique opportunity because your contribution will trigger matching funds. There will be no administrative overhead; 100% will go directly into resource work.

Help TU fulfill the leadership position that it has taken on this resource project. Send $50, $100, or more to: The Big Blackfoot Project, Trout Unlimited, 800 Follin Lane, Suite 250, Vienna, Virginia 22180. If you would like more information on the activities of the Big Blackfoot Chapter of Trout Unlimited, write to the chapter, in care of Jack Thomas, Post Office Box 9237, Helena, Montana 59604; or call him at 406-444-5319 (work) or 406-442-5299 (home).

Please help us bring new life to a river whose story has inspired so many! ■

streambed for her springtime nest. Awesome.

These and many other wonders of the arduous life of a wild Pacific steelhead the children will learn with glee. And these basic lessons will be with them, intellectually, emotionally, for the rest of their lives.

The Guy Who Makes School Fun

"Thank you for coming. Thank you," says David Armocido to his fourth grade class and Miss Tarkey's fifth grade class, dozens of 10- and 11-year-old California kids decked out in hot-pink-edged sunglasses and pricey running shoes. They are crowded around. They are listening. They adore "Mr. A," the Fish Man, the guy who is their teacher but is more, the guy who makes school fun, the guy who tells them: "Would you please come up and get your *steelhead*? Come on kids, just *look at him*! Spend some quality time with your fish. Hold him *right up to your face*. Remember to focus on his fins. Okay, let's start returning our fish to their habitat..."

Armocido is knee-deep in the willow-lined Feather River, a tributary of the Sacramento. It's April and it's sunny and he is leaping this way and that like the cheerleader he is for youth and for fish.

"Okay!" he signals his young streamside audience. "This is a riffle. Can you see how the flow of the river is?" Armocido is pointing: "Right out in the middle, there's a sand or gravel bar. It diverts the water either to the right or the left. And that one going up against the bank on your right is cutting underneath the bank and taking away some of the dirt. Right here, we have the beginnings of an undercut bank. Right here, fish will be lying because the shrubs are gonna *provide*... what?"

All: "Shade!" Not a pair of eyes is distracted.

Teacher: "Also, what?"

All: "Shelter!"

Teacher: "Shelter and...?"

All: "Food!"

Teacher: "Thank you, very much. When the river is... Listen up, please, Joe... when the river goes off in this direction, we have the same effect. We have the undercut bank, we have a lot of vegetation, we have some structures in the river, such as this log that's submerged. The log can mean protection. But the log can also mean, what?"

All: "Danger!"

Teacher: "Danger. Because what could stand on it to eat the fish?"

Some: "Water dippers."

Teacher: "Water dippers. Yes. And snakes."

A lone voice: "Water scorpions."

Teacher: "No, not water scorpions; they hang off underwater branches, remember?"

Some: "Bears."

Teacher: "Ah, bears usually go right into the water. How about a great blue heron?"

All: "Wading birds!"

Teacher: "Now, you see how the water has slowed in the pool down here? Can you see?"

I think it's amazing. It's different. It's not like raising goldfish.
Amanda Helzer, 11

All: "Yeah."

Teacher: "Try to give me the name of one insect that would live in this pool area. Somebody, raise your hand. What insects would live in the pool?"

A lone voice: "Mayflies?"

Teacher: "Mayflies. Some, but there are more in the riffles. What else?"

A lone voice: "Caddis."

Teacher: "Right! A portable, case-making *caddisfly*." Okay, good. Thank you. Now, if you were a coho salmon, and we released you here, where would you go to be raised?"

All: "Pool."

Teacher: "Pool. And if you were a steelhead, where would you stay?"

All: "Riffle!"

They have to go through a lot of obstacles. Well, it's Nature, but some of it's pollution and things. The odds of the fish getting back to spawn, it's really, you know, very small.

Chris Ramsey, 11

Teacher: "How long do young steelhead live here before they go to the Pacific Ocean?"

All: "One to three years."

Teacher: "One to three years. And how long will they stay out in the ocean?"

All: "Two to three years."

Teacher: "Thank you. If you were a Chinook salmon, and I released you today, what would you do?"

A lone voice: "Just go."

Teacher: "You'd head straight out to the ocean. Good job, Ronnie. How about a coho?"

All: "Hang around."

Teacher: "Hang around for how long?"

All: "One year."

Teacher: "About one year. Good. Okay, now we're gonna try to pick a spot to plant two of our Colorado spruce trees that we brought with us. And what are these trees gonna provide for our fish...?"

It's Watershed, It's Birds, It's Man

David and Susie Armocido are sitting in the family living room of their well-kept home in Colusa, California. Colusa is an hour-and-a-half-drive north of Sacramento. It's a small town (population 5,000) with older neighborhoods, neat lawns and rows of green trees. Colusa has the feel of a midwestern town, quieter, slower, more, well, *established* than most of California. Colusa County has one of the highest per-capita incomes in America. Its prosperity gushes from the south-flowing Sacramento River, one of the two great freshwater streams making up the enormous Central Valley. The Armocidos' town is an oasis amidst flatlands—as far as the proverbial eye can see are rows of beans, melons, tomatoes, as well as seemingly endless dwarfed forests of trees bearing almonds, walnuts and pistachios. And there are the rice fields. Vast quantities of dammed, diverted, channeled, flooded and sprayed river water make it all grow. The snowmelt-origin water once made salmon grow, sending hordes of silvery juvenile migrants each spring downstream to the delta and through the Golden Gate to the blue Pacific. A century of intensive agriculture has utterly transformed Nature's system. Now few wild salmon return. Miraculously, some still come back to spawn.

I thought it was pretty neat because all I did before was catch 'em. I didn't know anything about the alevin or the fry or the smolts or whatever. And I didn't know how they got to the ocean. I didn't even know they went to the ocean.
Chris McVeigh, 11

"I love to fish," declares David. "I've dedicated a lot of my life to fishing and working with kids. I really believe education is much better than restoration. I think it's cheaper. Once a river is destroyed, I don't think man can ever get it back to the way it was in the first place, to the way it was created."

Armocido recalls reading a story in *Outdoor California*, the magazine of the California Department of Fish and Game, about an experimental salmonid education program aimed at young people. Salmon had been raised from eggs in aquaria in scattered classrooms throughout coastal Humboldt County. But that's where the novelty ended. The children *weren't* really learning much about the natural lives of salmon in the wild. Educator Diane Higgins, married to fisheries biologist and Trout Unlimited enthusiast Pat Higgins, was hired to develop a special curriculum.

With a grant of $10,000 from the California Advisory Committee on Salmon and Steelhead Trout, Higgins came up with aces. She wrote a comprehensive plan for educating children in grades kindergarten through six. The curriculum was filled with creativity—fish anatomy crossword puzzles, salmon survival board games, salmon poetry, easy-to-grasp concepts of watersheds and ecosystems. Diane elevated it from a simple exercise in classroom fish-rearing to a full-blown learning program encompassing wild fish, their habitats and complete life cycle.

"I want this in my classroom"—Armocido, seldom bashful, had read the piece, picked up the telephone, and called Diane Higgins.

At David's urging, the youth effort—now formally the California Trout, Salmon and Steelhead Education Program—was swiftly adopted by the Colusa County Chapter of Trout Unlimited, which he had organized in 1986. One thousand copies of the 228-page spiral-bound curriculum guide were printed with funding from Trout Unlimited of California, the Humboldt Chapter of the American Fisheries Society, and the Marin Rod and Gun Club.

"We started small," says Armocido, "with just 10 teachers, raising 50 steelhead in each classroom."

Then Channel 13, the Sacramento-based ABC affiliate, came up to Armocido's science class. Cameras rolled. Editors were impressed. The television station ran a full three-minute segment. Armocido's telephone began ringing off the hook.

Today 300 teachers are involved, each personally trained by David Armocido, fireball, who has spent countless Saturdays during the last several years organizing all-day teacher workshops. He has donated all of his time since day one. Armocido stresses the importance of teaching the teachers. They are the key to the program's success.

"We hold workshops on a Saturday for one reason," Armocido explains. "If a teacher is willing to spend a whole day of his free time to learn about a particular program to use it in the classroom, he will probably use it. Instead of the information ending up in a filing cabinet somewhere, we want the teachers to make a personal commitment to the program."

I'm 10½ and I'll be 11 in August and the thing I liked was we got to learn things we never knew before and was really fun. I think you have to try to save things instead of making them extinct.
Jody Slack, 10½

I didn't think that a fish could be extinct but they can. Cuz of all the dams and things and the river loss and they can't spawn successfully so they die and then all their eggs are dead, too, so you lose a bunch of fish there, and then all the fish on the other side of the dam, when it's built, when they hatch, they can't get to the other side of the dam. So sooner or later, they die And it's a loss of fish

Jess Tout, 11

"It has spread like wildfire," says Susie Armocido, herself a teacher. "Teachers from other school districts call us because they've heard from other teachers how well the program works and how excited the kids are."

Twenty-five thousand students have shared in the excitement. Not all have cookies and milk and a Sony Walkman waiting at home. Not all are rich farmers' kids. Some are sons and daughters of migrant workers, living in an old station wagon, on a canal bank. In 1992, They, too, are intrigued. Says Susie: "Here these very, very poor children are trying to survive themselves, and yet they are interested in the survival of some other animal. It's such an amazing story.

"We start out by explaining to our classes that just because we have 50 fertilized eggs, that doesn't mean we'll end up with 50 baby fish to release. We explain that the aquarium is a completely controlled environment—no predators, no silt, nothing except bacteria that might harm them. So we're simulating Nature almost at its best. But what about logging, we ask the kids, and what about a bad storm, and what about all the other fish that would eat the eggs in the wild?

"Every day, when the kids come to school, they can't wait to see how many of *their fish* are still alive. They're thrilled to see them alive. It really means something. It begins to dawn on them how fragile life is, and, if they don't do something, the fish aren't going to be there in the future. They realize that it's not just fish—it's everything. It's the watershed, it's birds, it's man."

"I think kids should have a working knowledge of what's going on when they walk by a stream," adds David. "I want them to see what a stream really is, that there is life, that there's a lot going on below the surface.

"By watching the fish hatch and struggle through the first stages of life," says Armocido, "the kids build an emotional bond. That bond will be there forever. And when they look at a salmon or steelhead river, they're going to look at that river differently than they ever have. They're going to look at it differently than their fathers or grandfathers looked at a river."

This is fun today, bringing them to the water. I'm Kinda happy and Kinda sad. I'm Kinda happy because they get to go back to their own place and do things they're supposed to do. And I'm Kinda sad because it was fun having them in the class.

Amber Frost, 10

Afterword: Readers interested in learning more about the California Trout, Salmon and Steelhead Education program may write: Mr. David Armocido, 232 Cynthia Drive, Colusa, California 95932; or telephone him at 916-458-5848.

The BeaMoc Project

TU Launches An Unprecedented Effort to Safeguard the "Cradle of American Fly-Fishing"

by Peter A. Rafle, Jr.

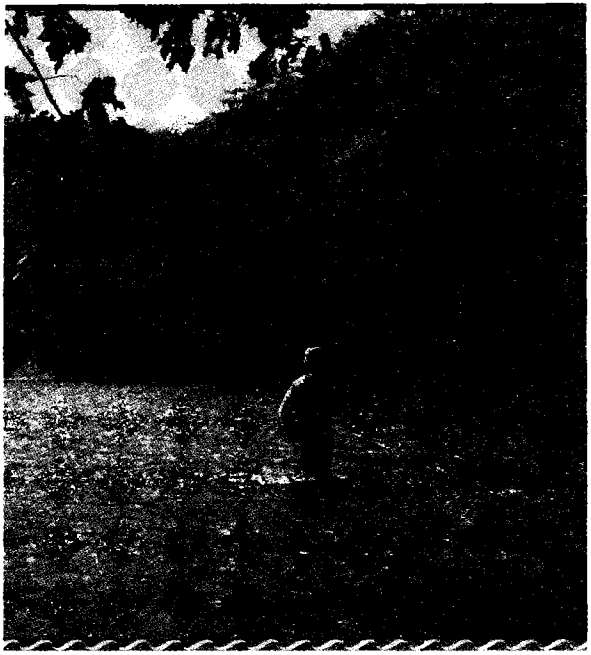
THERE MAY BE NO OTHER WATERSHED IN NORTH AMERICA that holds a more hallowed place in the fly-fishing mythology than the Beaverkill. Nestled in the Catskill Mountains of New York State, just 100 miles from Manhattan, the Beaverkill was "home water" to many of the originators and innovators of American trout angling. Spanning a century-and-a-half, from Theodore Gordon to Lee Wulff, their names still grace the hackled flies inspired by the Beaverkill's legendary mayfly hatches.

These miles of river, from the tiny mountain headwaters (now mostly in private hands) to the famous pools and runs of the "Big Beaverkill" below its confluence with its sister Willowemoc Creek, have played host to uncounted anglers from around the nation and around the world. And the river's wild brown trout (and the remaining brookies) have humbled more than a few.

Today, though, it is the BeaMoc (as the Beaverkill-Willowemoc watershed is known collectively) that is being humbled—by unrestrained development along its banks, by water withdrawals, by a widening streambed, blocked tributaries and a deteriorating watershed. The BeaMoc is at the crossroads. Decades of recreational use have gone hand-in-hand with habitat degradation. In 1991, and again during the summer of 1993, the effects of drought and habitat degradation combined to pose a serious threat to the trout in the watershed.

That first step? An ambitious Trout Unlimited study and conservation proposal to encompass the entire 260 square-mile watershed. "The Beaverkill and Willowemoc are great trout streams that hold very special places in the heart of every American angler," says TU president Charles Gauvin. "It was time to take a positive step toward preserving and restoring the BeaMoc." First proposed in 1992 by New York State TU activist Bob Brealin and angling author and advocate Art Lee, the BeaMoc Project's first phase was elaborated and developed in concert with the TU National Staff into a program of intensive watershed research and economic evaluation of the BeaMoc's legendary wild trout fishery.

In June, the Richard King Mellon Foundation awarded Trout Unlimited $120,000 for a comprehensive research project to assess the economic value and biophysical condition of the BeaMoc watershed. The Mellon grant, when combined with a $60,000 challenge grant received in February from the



RICHARD FRANKLIN

The Beaverkill valley (left, in autumn colors) is the subject of TU's most ambitious research and restoration project.

National Fish and Wildlife Foundation, should fully cover the estimated $180,000 cost of the TU studies.

"The watershed cries out for integrated management," said watershed specialist Jack Imhof, the principal TU investigator for the BeaMoc studies. "While we cannot avoid drought, we can mitigate its effects by restoring the integrity of the watershed's river channels and the tributaries that provide refuge from thermal stress and serve as spawning habitat for the trout."

The first phase of the project, a watershed assessment expected to span a 15-month period beginning June 1994, will seek to gather the baseline data necessary to protect, conserve, and restore the wild trout fisheries of the Beaverkill River and Willowemoc Creek.

The scientific studies slated for the first phase of the effort will examine:

- Identity and extent of point and non-point pollution;
- Instream flow characteristics necessary to maintain and increase wild trout productivity within the watershed;
- Estimates for the watershed's wild trout populations;
- Location and condition of critical trout habitats;
- The extent to which trout use mainstem versus tributary habitat for spawning;
- Location and nature of obstructions preventing access to tributary habitat critical for spawning or refuge from mainstem thermal stress; and
- The overall biophysical integrity of the BeaMoc watershed in comparison to undisturbed habitat of the region.

"We want to spend our money wisely. The first step is to acquire previous studies," explained Imhof at a May press conference held to announce the project. "Over the decades, as reservoir projects and the like have been proposed for the watershed, a lot of good, solid baseline data have been collected, only to gather dust. We'll be starting by doing a thorough analysis of the data that already exist. Then we will start filling in the missing pieces with field study."

The Project will also include an economic valuation study to determine the value of the BeaMoc watershed's recreational trout fishery to the local, regional, and statewide economies.

"Private landowners and farmers in the watershed, community leaders, anglers and conservationists all have a stake in the future of the BeaMoc," said Whit Fosburgh, Fisheries Director for the National Fish and Wildlife Foundation. "This project is unique in its potential for bringing together diverse interests."

A major benefit of the project is to provide the agency responsible for managing the BeaMoc's trout fishery, the New York State Department of Environmental Conservation, critical information about the fishery's economic value and biological dynamics. The project studies will help local authorities in making land-use decisions.

"Over the last couple years, local officials, residents and anglers have agreed that the rivers are key to the well-being of the local economy," says Bob Breslin. "Barriers are coming down. It's time for studies to give us the data needed to mutually protect our interests in a thoughtful manner."

When completed, the assessment should identify opportunities where governmental and non-governmental organizations can make intelligent changes in land-use management regulations and pollutant discharge requirements, purchases of conservation easements and development rights, and water conservation programs; and where TU and other conservationists can make a difference through "hands-on" stream improvement projects.

Trout Unlimited's national organization will serve as project manager in partnership with TU's 21 chapters in New York State, where TU has 5,400 members, and by chapters and councils throughout the Northeast and New England.

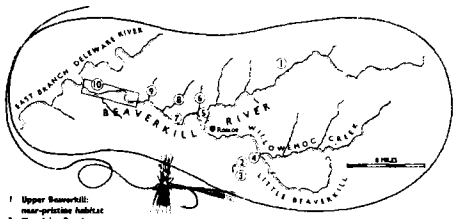
The proposed studies were developed in consultation with NYSDEC personnel responsible for managing the BeaMoc's trout fishery and from the framework which ecologist James Karr has developed to measure the biological integrity of aquatic ecosystems. [J. Karr, "Biological Integrity: A Long-Neglected Aspect of Water Resource Management," *Ecological Applications*, Vol. 1, No. 1, 66-84 (1991).]

"Karr developed the Index of Biotic Integrity (IBI) to measure the biological integrity of aquatic ecosystems with reference to fish community structure," explains Jock Conyngham, a Yale University researcher who is assisting in the biological studies. "We're going to base our research on fishery management objectives by looking at the factors Karr identified as key indicators of biological integrity: food sources, water quality, habitat structure, flows, and interactions between species."

And because it involves comprehensive scientific and economic studies, an application of technical information to residential, commercial, and recreational uses of a watershed, and the establishment of lasting partnerships among local communities, government agencies, and voluntary organizations, Trout Unlimited hopes the BeaMoc Project will serve as a model for restoration of other watersheds.

"I expect this will be just the beginning," explains Gauvin. "I hope this project will be just the first of many. What we learn from the Beaverkill will give us better tools for restoring other rivers. That's what this study is all about." ■

STUART MONTGOMERY



1 Upper Beaverkill: near-pristine habitat
2 Shandelee Brook: commercial water supply
3 Proposed Livingston Manor wellfield
4 Livingston Manor sewage treatment plant
5 Buckel streambank clearing
6 Horse Brook: sedimentation of spawning tributary
7 Streamflow gauge at Cook's Falls
8 Russell Brook: sedimentation of spawning tributary
9 Horton Brook: sedimentation and proposed water-supply development
10 Thermally-stressed zone

1994 Embrace A Stream Grants

ALASKA

Juneau Chapter ▸ THE JUNEAU CHAPTER will continue stream assessments and restoration on Duck Creek, an urban stream in Alaska's capital. Duck Creek historically supported wild populations of pink, chum, and coho salmon, Dolly Varden char, and cutthroat trout. Today several of these species are extinct or in severe decline. The Advisory Group will use baseline data and $7,500 to implement a restoration program.

Alaska Wild Trout Chapter ▸ THE ALASKA Wild Trout Chapter will use $1,350 to construct instream structures to restore and add rearing habitat to Williwaw Creek, which meanders along the Portage Valley Trail. The creek currently supports wild runs of chum, sockeye, and coho salmon and provides opportunities to view spawning salmon. Interpretive exhibits will showcase the chapter's partnership with the U.S. Forest Service and educate visitors about fish habitat needs and improvements.

ARIZONA

Old Pueblo Chapter ▸ IN A MULTI-YEAR effort to restore threatened native Apache trout in Arizona's West Fork of the Black River, the Old Pueblo Chapter will use a $10,000 EAS grant to construct over 15 habitat improvement structures and put up 4.5 miles of riparian fencing, as part of a cooperative management plan that uses a watershed approach to improve aquatic and riparian habitat.

CALIFORNIA

Modoc-Alturas Chapter ▸ AS PART OF A watershed program in California's Goose Lake Basin, Modoc-Alturas will use a $5,000 EAS grant to improve grazing practices. Volunteers and ranchers will construct fences to keep cattle away from riparian corridors along Davis and East Creeks, each of which support major wild trout fisheries. Members will also develop alternative sites for watering and pasture, re-vegetate stream banks with native plants, and monitor fish populations.

Sierra Chapter ▸ WITH A $1,000 GRANT, the Sierra Chapter will evaluate the Dry Creek/Secret Ravine drainage, which supports the last salmon runs in Sacramento County. The spawning areas lie in a rapidly growing metropolitan area, and only about 1,000 Chinook salmon and steelhead trout return to their spawning grounds, fighting their way through farms, shopping centers, a golf course, and a college campus. TUers and volunteers will count migrating fish and identify polluted run-off sources.

Six Rivers Chapter ▸ TO COMBAT THE decline of coho salmon in the Pacific Northwest, Six Rivers and two local salmon recovery groups are targeting Humboldt Bay and the Mattole watershed, where irresponsible land-use practices degrade aquatic habitat, placing native stocks of coho salmon at risk of extinction and leading to the decline of commercial and recreational fishing. $6,000 will help Six Rivers and their partners maintain hatcheries and rearing pond facilities and train commercial fishermen in data collection for restoration and management.

COLORADO

Colorado Council ▸ THE COLORADO Council will use $6,000 to finalize a public television documentary about the Greenback cutthroat trout's recovery. Indigenous to Colorado, Greenbacks were virtually extinct until TUers spearheaded a statewide education and restoration program, which has successfully reintroduced self-sustaining wild Greenbacks from only six small remnant populations.

Ferdinand Hayden Chapter ▸ ALONG the banks of Colorado's Roaring Fork River, the Ferdinand Hayden Chapter will stabilize 2.5 miles in a national habitat demonstration project, resulting in improved riparian vegetation, water velocities, and habitat for fish and macro invertebrates. EAS will kick in $5,000 to maintain Roaring Fork as a Gold Medal trout fishery.

Grand Valley Anglers Chapter ▸ A GRANT of $2,500 will help the Grand Valley Anglers restore Colorado River cutthroat trout to Trapper Creek. Trapper Creek holds a genetically pure, self-reproducing population of the native fish, which is a candidate for listing as threatened or endangered by the U.S. Fish and Wildlife Service. Hybridization, overfishing, and drought have contributed to the Colorado River cutthroat's decline, and the chapter wants to increase existing populations and expand their range. Volunteers will maintain and rebuild fences along riparian areas, construct log drop structures, and plant trees to stabilize stream banks and provide cover for fish and wildlife.

IDAHO

Upper Snake River Chapter ▸ UPPER Snake River will construct and operate an upstream fish ladder and a fish screen to mitigate downstream passage problems on Rainey Creek, historically spawning and rearing habitat for native Yellowstone cutthroat trout and Snake River fine spotted cutthroat trout. Irrigation withdrawals currently divert 100-percent of Rainey Creek's natural summer flow. With funds of $10,000, members will construct a headgate to divert migrating fish to a loading facility. Fish then will be released in the Snake River, saving thousands of native fish.

MICHIGAN

Muskegon/White River Chapter ▸ Muskegon/White River will enhance stream productivity and recreational opportunities on Cedar Creek, home to a native population of wild brook trout. Historically considered to be one of the finest brook trout fisheries in southern Michigan, Cedar Creek is facing erosion and excessive sedimentation. $2,000 will purchase filter fabric, field stone, white pines, cedars, and dogwoods needed to stabilize a severely eroded section of the stream.

MONTANA

West Slope Chapter ▸ WITH $3,000, West Slope will acquire a conservation easement on Rock Creek, which holds spawning grounds for bull trout, cutthroats, browns, rainbows, and brookies. Rock Creek is critical to sustaining the beleaguered Clark Fork River's remaining fishery. The one-mile conservation easement is part of a plan to preserve over 3,300 acres along Rock Creek, west-

ern Montana's only blue-ribbon trout stream. The project will protect a healthy stream and preserve grasslands, forests, and habitat for bighorn sheep.

NEW JERSEY

Hacklebarney Chapter ▸ A $4,000 GRANT will allow Hacklebarney to launch a six-month clean-up and awareness campaign along the Rockaway River, which is critical to providing unique aesthetic, biological, and recreational opportunities in New Jersey. The Rockaway's tributaries support naturally reproducing trout, yet some area residents have been slow to appreciate the river's value. Members will recruit 1,000 volunteers for clean-ups along the 30-mile-Rockaway, enlist groups to adopt one-mile sections for clean-up and monitoring, and distribute an informational brochure on conservation to property owners along the river.

TROUT UNLIMITED

OREGON

Deschutes River Chapter ▸ IN A COOPERative research initiative, Deschutes River will use radio telemetry to study bull trout, a candidate for listing under the Endangered Species Act. With a $5,000 grant, the chapter will concentrate on the Metolius River system, which contains extremely remote spawning grounds. Radio telemetry will enable volunteers and fisheries biologists to assess bull trout populations and answer questions about lifespan and spawning habits. High school students will assist in trapping, tagging, and monitoring.

Ochoco Chapter ▸ OCHOCO RECEIVED $7,500 to continue its involvement in the Crooked River Watershed Cooperative Education Program (CRWCEP), a conservation and aquatic education program. CRWCEP's field work is aimed at protecting native redband rainbow trout, and EAS funds will allow students to install boulder structures, plant trees along riparian areas and examine management practices on Deep Creek, a Crooked River watershed tributary. To evaluate their efforts, students will survey fish populations and measure sediment and temperature before and after restoration activities.

PENNSYLVANIA

Arrowhead Chapter ▸ IN WESTERN PENNsylvania, the Arrowhead Chapter will continue stream improvement on Buffalo Creek. $1,000 in EAS funds will improve overhead cover deflectors, which will stabilize banks, provide cover for trout, and flush out silt in the stream channel. Boy Scouts and other volunteers will assist TU members.

Donegal Chapter ▸ THE DONEGAL CHAPter will use a $5,000 EAS contribution to restore a mile along Little Run, a limestone stream in the agricultural heartland of Lancaster County. The chapter has planned 10 work days for installing erosion control structures and will assist landowners and dairy farmers in controlling polluted run-off and preventing habitat degradation on this tributary of the Chesapeake Bay. The Chesapeake Bay Foundation has promoted the project as a model for all bay tributaries in the effort to restore the Chesapeake Bay watershed.

TENNESSEE

Overmountain Chapter ▸ OVERMOUNtain will use $3,350 to enhance and protect the water quality and habitat in Laurel Fork Creek, a rare southern Appalachian stream that supports naturally reproducing brown trout populations. Working with the U.S. Forest Service, TUers will install habitat improvement structures and sediment traps, secure road closures on illegal roads, and plant bank vegetation, providing the basis for a stronger, healthier wild trout population in an area traditionally dominated by put-and-take fisheries.

VIRGINIA

Massanutten Chapter ▸ MASSANUTTEN will use innovative techniques and $1,600 to restore native brook trout habitat in Black Run and Gum Run, located in George Washington National Forest. Heavy sedimentation and habitat loss from illegal roads and a major flood degraded both streams, which are part of the largest contiguous system of native trout waters in Virginia. The chapter will stabilize stream banks and place floating cover logs, root wads, and boulders to provide habitat until natural processes can restore stream habitat.

WASHINGTON

Olympia Chapter ▸ USING AN EAS grant of $5,000, the Olympia Chapter will work with the Global Rivers Environmental Education Network (GREEN) to expand their watershed education program in Puget Sound's Budd/Deschutes watershed. The project brings together schools and communities to enhance fisheries and wildlife habitat and develop an informed and engaged citizenry. Schoolchildren monitor water quality, plant trees, develop and distribute information brochures, and participate in the legislative process to improve the environment. ■

—Compiled by Christine Arena

Statement on behalf of the American Heart Association

The American Heart Association (AHA), on behalf of its 3.7 million volunteers, would like to take this opportunity to submit a statement to the Civil Service subcommittee on the Combined Federal Campaign eligibility issue.

The AHA is dedicated to the reduction of disability and death from cardiovascular diseases and stroke. Cardiovascular diseases take an enormous toll both financially and emotionally on this nation. Cardiovascular deaths cause almost as many deaths as all other causes of death combined, at an estimated cost in 1994 of nearly $128 billion in medical expenses and lost productivity . To combat and prevent more deaths from cardiovascular disease the AHA places an emphasis on cardiovascular research, cardiovascular education and revenue generation. It is in these areas that the AHA invests its resources. Over the years, AHA-funded research has yielded many important discoveries, such as cardiopulmonary resuscitation (CPR), life-extending drugs, bypass surgery, and other surgical techniques.

The American Heart Association is concerned over recent statements by Chairman Mica relative to the Combined Federal Campaign, particularly the correspondence to the Director of the Office of Personnel Management (OPM), James B. King, urging him to exclude certain advocacy groups from participating in the combined Federal Campaign. For more than 25 years, the CFC has been the primary means through which employees of the federal government may contribute to private voluntary organizations such as the AHA.

Congress has stated that advocating for legislative and regulatory actions is an appropriate and legitimate activity for charitable organizations like the AHA, although 501(c)3 organizations play a decidedly limited advocacy role as a result of strict caps

upon advocacy expenditures and prohibitions on engaging in partisan politics via campaign contributions and endorsements. Further, of a total budget of $297.3 million, of which nearly $100 million was spent on funding for biomedical research and $100 million on public and professional education, far less that $1 million was expended on advocacy efforts, less than 1/2 of 1 percent of our total budget.

Further, legislation passed in 1987 states that requirements for eligibility "shall not, to the extent that such requirements relate to litigation, public policy, advocacy, or attempting to influence legislation, be any more restrictive than any requirements established with respect to those subject matters under Section 501(c)(3) of the Internal Revenue Code of 1986." Further, the Conference Report to that legislation states that the OPM is prohibited from imposing additional limitations on the eligibility of agencies which lobby or conduct public policy advocacy in their charitable activities.

Charities and government agencies have long worked as partners in addressing social needs. However, the Contract With America calls for deep cuts in federal spending on social programs and Congressional leaders have stated that the non-profit sector will be called upon to provide many of these programs. With charitable giving expected to increase by only $3 billion a year and average household contributions dropping between 1989 and 1993 by a disturbing 23 percent after inflation, the non-profit community will be hard-pressed to pick up the slack.

As an organization which strives to work towards a better America, a more productive and healthier America, which believes that it is important to partner with government and corporations in order to make a difference in the quality of life in this country, we are concerned that some members of the House leadership are attempting to censor, prohibit and dampen legitimate organizations and corporations

from carrying out programs and activities that are designed to make a difference on our society.

On the opening day of the 104th Congress Speaker Gingrich expressed the need to "create a partnership" and make the congress "more accessible to the American people." In a previous speech he stated that "if people know you'll listen to them, learn from them and help them, they want you to lead them.

We at the AHA are concerned over a number of efforts by Congress to do just the contrary by restricting the ability of nonprofit organizations, representing tens of millions of Americans, to represent their constituencies before the Congress. In addition to Mr. Mica's proposal, House Majority leader Dick Armey recently wrote to all House Republicans asking them to contact their corporate contributors to urge them to "challenge your contacts in the corporate world to change this disturbing pattern of contributing to 'liberal' advocacy groups." A copy of *Patterns of Corporate Philanthropy*, published by Capital Research Center, accompanied Mr. Armey's letter. According to the book's authors, "corporate money can obscure the radical economic or political agenda of an advocacy group (and) corporations undermine traditional charities by giving to advocacy groups."

Our organization, which receives no federal money, is comprised of Americans from all walks of life, with differing and varying political perspectives. We are disturbed that the House Majority Leader would use his elected office to carry out an obviously political agenda of special interests. Some members of the house leadership would have Americans believing that providing corporate subsidies is OK while activities and partnerships to promote the health and well being of its citizens is not. The American Heart Association and thousands of other nonprofit health organizations

stand ready to advocate before Congress on issues affecting prevention or treatment of diseases and their impact upon the American Public.

An April 15th article in the National Journal refers to "defunding the left" as the catchphrase for the effort to stop the flow of federal funds to "liberal" nonprofits. By all of the aforementioned standards, such groups include nearly all members of the Independent Sector, testifying here today, representing a variety of voluntary health organizations, hospitals, social service organizations, civic, social and fraternal groups. A May 22nd editorial in the Washington Post, referred tongue in cheek to the "wild-eyed folks at the American Cancer Society, American Heart Association, American Lung Association, Anti-Defamation League of B'nai B'rith, the League of Women Voters and others," referred to by Capitol Research. Referring to a letter sent by Mr. Armey directly to Fortune 250 CEOs, the editorial further stated, "The House majority leader should not be writing CEOs on congressional letterhead to tell them where they should or shouldn't make their charitable donations. Talk about intrusive federal government." We agree with that assessment and flatly oppose efforts by the Congress to politicize charitable giving.

In 1976, Congress enacted lobbying legislation which expanded the ability of nonprofits to advocate before Congress. While Congress intended to limit lobbying activity by public nonprofits to certain statutory levels, the legislation was meant to encourage public charities to bring their expertise and perspectives to bear on public policy issues. IRS regulations, finalized in 1990, echo the law and send a clear message that Congress and the IRS strongly support lobbying by nonprofits. The "insubstantial part test"; placed upon nonprofits' lobbying activities together with prohibitions upon partisan politics -- including the endorsement of candidates and

expenditure of campaign contributions -- significantly limit non-profits' advocacy activities.

The nonprofit community is concerned over what appears to be a multi-pronged effort by Congress to politicize charitable giving with a result of restricting the ability of nonprofits to advocate before Congress and the Executive Branch. In the case of the CFC, the message to the voluntary sector is most worrisome. Smaller groups will cease to advocate on behalf of their members. Groups remaining in the CFC will be buried by paperwork in an effort to substantiate the 85 percent test.

The American Heart Association opposes any action by Congress to restrict our lawful participation in the legislative process through advocacy on behalf of our mission.

Thank you for the opportunity to submit this statement.

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