

# The Catholic Lawyer

---

Volume 22  
Number 3 *Volume 22, Summer 1976, Number 3*

Article 11

---

April 2017

## Charitable Solicitation

Francis X. Doyle

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>



Part of the [Catholic Studies Commons](#)

---

### Recommended Citation

Francis X. Doyle (1976) "Charitable Solicitation," *The Catholic Lawyer*. Vol. 22 : No. 3 , Article 11.  
Available at: <https://scholarship.law.stjohns.edu/tcl/vol22/iss3/11>

This Diocesan Attorneys' Papers is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

## CHARITABLE SOLICITATION

**Francis X. Doyle, Esquire, Assistant Director  
Office of Government Liaison  
U.S. Catholic Conference**

Thank you very much. First, I want to salute my former Dean at St. John's Law School, Father Tinnelly.

Ladies and gentlemen, there has been a great deal of publicity in the recent 12-month period regarding charitable solicitations, and there is some misconception about what the pending legislation does and doesn't do. You have a handout and I plan to follow the same order in my presentation as is in the handout. Please feel free to refer to that during the presentation.

First, I would propose to identify the bills, the four bills, that are presently pending in Congress. Two of them are identical, so we'll refer to them as the three bills. Second, we'll indicate who the sponsors of those bills are and to what committees they've been referred to. Third, what the status is, and as we will see, one has advanced rather far in the legislative process, the others have not. Fourth, we'll discuss in some detail the provisions of that bill which has advanced, and all of this material is in the handout. And then we'll discuss for a few minutes the prospects for House passage of that bill which has advanced so far. The other two bills I would propose to spend very little time on but we will say something about them. Information on them is not included in the handout.

There are three bills, as I said, and they are listed in order on the first page of the handout. The first and the most important from the standpoint of how far it has progressed is H.R. 10922, which amends Title 39 of the U.S. Code and would require certain information to be divulged with the solicitation by solicitors who use any method to solicit contributions. The title of the bill might be a little bit misleading. The next to the last line under 10922 says "with the solicitation of charitable contributions by mail." Now that does not say "solicitation by mail." It says "solicitation of charitable contributions by mail." "By mail" refers to the donor sending the contribution, it does not refer to the method used by the soliciting organization.

The second and third bills, which we'll just call one bill, are identical, S. 1153 and H.R. 4689, the so-called Truth in Contributions Act which would amend the Internal Revenue Code, that part of the Code relating to private foundations. And the third, H.R. 1123, which in some respects is similar to the first bill, requiring the solicitor to make certain information available to the donor, or potential donor, on request. The second item is the sponsorship of these bills. The first bill, the one that has advanced more than the others, 10922, is sponsored by Congressman Charles Wilson of California, and that's a significant sponsorship because he is chairman of the subcommittee out of which that bill has come, and co-sponsored by every other member of the Postal Facilities Subcommittee, plus co-sponsored by Congressman Rees from California, who was the sponsor of the original bill on which this one is based. The second, S. 1153, the Truth in Contributions Act, is sponsored by Sen. Mondale, and that has been referred to the Finance Committee,

and the identical bill in the House, sponsored by Congressman Karth from Minnesota, and that has been referred to the Ways and Means Committee of the House. The last bill, H.R. 1123, sponsored by Mr. Van Deerlin, has been referred to the House Committee on Interstate and Foreign Commerce.

Now, what about the status of these four bills? The first, 10922, was ordered reported by the full House Post Office Committee last Thursday; ordered reported means, as you know, that the Committee has approved the bill but has not yet formally filed its report, which it can do at any time.

S. 1153, the Truth in Contributions Act, sponsored by Sen. Mondale, is pending in the Finance Committee. Lengthy hearings were held by Sen. Mondale on the subject of children's charities. These hearings were held not in the Finance Committee, but in Sen. Mondale's Subcommittee on Children and Youth. It's a subcommittee of the Labor and Public Welfare Committee. Those hearings were not predicated on a particular bill, they were simply on the subject of children's charities and that bill, S. 1153, was introduced by Sen. Mondale after the hearings. The identical bill in the House, sponsored by Congressman Karth, is pending in the Ways and Means Committee; no hearings have been held on that. And the last bill, H.R. 1123, the Van Deerlin bill, is pending in the Consumer Protection Subcommittee of the House Interstate and Foreign Commerce Committee. Hearings have been completed on that bill. The subcommittee met for a markup session a few months ago but did not have a quorum. An additional remark about the bill. Congressman Van Deerlin, as you may have read, switched chairmanships; he is now chairman of the Communications Subcommittee of the Interstate and Foreign Commerce Committee; he is no longer chairman of the Consumer Protection Subcommittee.

An additional note about that bill. There are several similarities between that and the first one, H.R. 10922, and it seems to be the Consumer Protection Subcommittee's intent not to proceed any further but to wait and see what happens with H.R. 10922. So, inasmuch as 10922 has advanced to the state that it has, namely, it has been approved not only by the subcommittee to which it was referred but also by the full committee, the full Post Office Committee, that deserves attention. There were no negative votes in the subcommittee. There were no negative votes in the full committee. And as I mentioned, every member of the Postal Facilities Committee is a co-sponsor of that bill. So, thus far, through subcommittee and full committee, there has not been one negative vote cast against 10922. So it deserves attention.

The next step in the usual process after this, the Post Office Committee would ask to appear before the Rules Committee. The Rules Committee in the normal course of events would determine how much time is to be given to debate, how much time to amendments on the floor and would clear the bill for the floor. So we're still waiting for the Post Office Committee to file its report, but to emphasize the point, that bill has been ordered favorably reported by the full Post Office Committee without a dissenting vote. What organizations does that bill cover? In its definitions section it includes the usual language covering any person, association, organization, etc., organized for charitable, religious, medical, educational, or any eleemosynary purpose.

There's an exclusion section in that bill which says that bona fide membership organizations which are soliciting among their own memberships are not covered

by the bill. That obviously raises many questions. Of course, it raises the general question, "What is a bona fide membership organization?" That's not defined in the bill, and since there is no report filed yet, we don't know what the report will say. Specific questions that the language would raise were raised in the markup session last Thursday. The chairman of the full committee said: Well, I got a phone call from the president of my university and he wants to know and I want to know whether alumni would be included within that exception for bona fide membership organizations. And Mr. Wilson, who presented the bill to the full committee said: Yes, alumni would be included in bona fide membership organizations and therefore excluded from the operation of the bill. And the next question was: Well, what about parents? Wouldn't parents be included in that bona fide membership organization exception? And his response was the same: Yes, parents would be contemplated to be within bona fide membership organizations, parents of students, so they would be excluded too. So you can see how one defines a bona fide membership organization. It can be rather broadly construed.

The next question that was asked on that language was: "What about churches?" And Mr. Wilson's response was: "Well, there is a specific exclusion of churches in the bill." One is reluctant to disagree with a subcommittee chairman. There is no specific exclusion for churches in the bill. None at all. The only specific language in the bill would lead one to believe that churches are included, because right in the first couple of lines of the second page it says that religious organizations are among those organizations that are subject to this bill. What Mr. Wilson is referring to is the bona fide membership organization exclusion when they solicit from their own membership. I think there is a serious question as to whether churches, even our own parishes, are classified as bona fide membership organizations. So, apparently, it is his intention, the subcommittee's intention, that local parishes would come within the bona fide membership exclusion, but I wouldn't want to put my money on that.

What type of fundraising is the second item on page two? First, we've seen the organizations that are subject to the bill. What type of fundraising is subject to the bill's requirement? A little bit of history on this. When this bill was first introduced by Congressman Rees of California, it was a much narrower bill than this bill is. The bill that was introduced early in 1975 was predicated on the use of the mail by the soliciting organization. And that's what Congressman Wilson had his hearings on, a bill that would require the soliciting organization, the organization that used the mail to solicit, to provide certain information with the solicitation to the donor, and the witnesses who testified, there were very few, incidentally. I should mention that not one fundraising organization testified during the one hour and 43 minute hearing that was conducted on the original bill. Subsequent to that hearing, Mr. Wilson introduced a new bill which very significantly altered the coverage so that in the new bill, 10922, the one that is explained, the soliciting organizations would be covered not only if they used the mail to solicit but any means to solicit the receipt of a contribution by mail. So the thrust of 10922 is far different. The original bill's thrust was to cover those organizations using the mail to solicit. H.R. 10922 predicates its coverage on the use of the mail by the donor, so any method of solicitation—radio, television, billboard, newspaper, magazine, brochure, I guess even a Goodyear blimp—would be covered by it, although no one raised that question. It would be the type of fundraising that would be subject to

this bill. Now, assuming the organization is covered and the type of fundraising is covered, all types are, what must the solicitation include? They are specified in the five items beginning in the middle of page two. The solicitation itself, this means the fundraising letter, or the brochure, or the newspaper advertisement or the radio or television spot, or if it's a dirigible, any method must include in the solicitation itself the following information: The name and address of the soliciting organization. We've been given a sample compliance by the subcommittee and their sample shows a little box which presumably would be inserted at some prominent place in a fundraising letter, or some prominent place in a newspaper or magazine solicitation. I don't know how it would be included in television or radio except as visual or audio, but it must contain this information: Name and address of the soliciting organization, no problem there; second, the purpose of the solicitation and the intended use of the contribution; third, a statement that the soliciting organization will supply at the request of any person receiving the solicitation—the person doesn't have to be a donor, he may be a potential donor, he just receives the solicitation—it has to contain a statement to the effect that any pertinent financial information reasonably sufficient to verify any information included in the solicitation, that statement has to be included in the solicitation and the fact that it must be provided within 30 days of receiving the soliciting organization's receipt of the request. They do not specify in the bill at all in any detail what this financial statement is to be. Fourth, the solicitation itself must contain a statement which explains the portion, in percentage form, I presume, of all contributions for the same charitable purpose collected or received during the most recent complete fiscal year which remained for the direct application to the charitable purpose. In other words, the soliciting organization has to say to the potential donor, last year we spent 76% of the monies received on the charitable purpose for which we raised the funds, and 24% was used for administration and costs of fundraising. It has to be stated in the solicitation itself. There is an exception here, or a refinement, that TV and radio spots, if they are 60 seconds or less in duration, will not have to contain that particular statement.

Now, at the top of page three, the fifth requirement, if the soliciting organization is part of an affiliate of a national organization which disburses part of its receipts to the national organization, the information required under paragraphs three and four, which are on the preceding page, must relate both to the affiliate and to the national organization. So this would be applicable, I assume, in cases such as the Campaign for Human Development, or any other similar method of raising funds on the national level and through the use of affiliates. Now, what are the implementation and the sanctions attached to this bill? The Postal Service, this is one of the implementing sections, is authorized to adopt accounting methods and procedures for use by charitable organizations. Now, I don't know what expertise the Postal Service has to issue accounting methods and procedures, especially when the organizations for which they might be issuing them have no connection with the Post Office, except receiving a contribution in the mail. Second, the Postal Service can request and the soliciting organization must furnish, upon request, such audit reports, accounts, or other information, as the Postal Service may require to establish or verify information, etc., etc. It's a rather broad requirement. And, finally, the sanction section is an amendment to the false representation statute of the U.S. Code, and it would enable the Postal Service to stop the mail,

issue a mail stop, so that the soliciting organization, if it has not complied with the requirements of the bill, wouldn't get their contribution.

Now, what are the prospects for House passage of this bill? Well, since it has passed the subcommittee without dissenting vote, passed the full committee without dissenting vote, we believe that if it goes to the House floor, we could anticipate passage. Voting against a bill of this nature is very difficult, like voting against motherhood. Who wants to vote against something that's going to regulate fraud? Are there any questions thus far? Yes, Father Bennett.

**Q.** Father Bennett's question not audible.

**A.** Yes, again, what that exactly means is not clear because the language is broad and it would be clearer if and when the Postal Service issues regulations that would implement this, but there is a section in the bill that says very simply, the Postal Service may adopt rules and regulations which establish accounting methods and procedures for use by charitable organizations to insure compliance with the provisions of this section.

**Q.** Mr. Reed: Are churches covered in this bill?

**A.** I don't think we can give a definitive answer to the question. Apparently, this question was raised from the very beginning when that lengthy hearing was held last June 30. The question of church was raised, and I think it's their intention that the bill should not be applicable to parish church fundraising. But that's not at all clear. If it's not clarified, I guess it could happen. Theoretically, I'm sure that they don't intend this and the Postal Service is not going to stop local parish mail solicitation or hold up the mail, but it has to be clarified at some point.

**Q.** Bill Wholean, Connecticut Catholic Conference. First part of question inaudible. . . One question that arises here is one of our favorite ways of raising money is through chances, cars, trips, etc. Would that be covered, provided they are not returned in the mail?

**A.** Well, as to the sweepstake or raffle, I assume it would be because of two reasons. It is a solicitation for a contribution. And, I think one would construe it to be a solicitation for a contribution by mail. I think the normal way of responding to that kind of a solicitation is by mail, rather than going to the organization and handing it in. So, no.

**Q.** Mr. Reed - question not audible.

**A.** Well, okay. I probably have to have definitions. I'm not totally clear about all the definitions of sweepstakes and raffles. The organization which was mentioned earlier utilizes, what is the technical device that they use, sweepstake or raffle sweepstake? So that method is a lawful method of raising funds. That Baltimore organization used that. I don't have much more time, so let me tell you some more about that bill, some of the procedural deficiencies that we have talked about in our office, and after that, I'll talk just for a couple of minutes about the Mondale bill and the Van Deerlin bill. But not long, because their prospects don't seem to be serious in this Congress.

Now, that bill which we have been talking about, I'm doing this for several reasons, one of which is to show you what the climate is, a poor climate for us, and

a good climate to pass legislation like this. That bill, as originally introduced, was based upon use of the mail by the solicitor. So, its scope was much narrower than 10922. It had a hearing, which was last July 30, of one hour and 43 minutes. Not one fundraising organization testified. The Postal Service testified, as did the sponsor of the original bill, Mr. Rees, and the third witness was Harvey Katz, who was writing a book about charity fraud. The Direct Mail Marketing Association, which is the principal trade association for direct mail people, was there to testify, but time ran out and the subcommittee had to go to the floor for a vote. So not even they testified. The entire record is very sparse on statements from fundraising organizations. So that bill had a very, very short hearing. And it's a very different bill from the one that we've been discussing.

Another question that has been raised about this bill is, what is the authority of the Postal Service to issue regulations or regulate in some manner television and radio. And as far as I can see, that question has not been resolved, because the bill would apply to solicitation by radio and television. It's a jurisdictional question that I feel has not been answered.

Q. (not audible)

A. I don't know that we are going to go into an analysis of the bill. I don't know if we are going to discuss what problems it would cause. Well, I think obviously for all the publicity, not just about the one organization but other organizations, too, has I believe created a climate on the Hill that the members feel that they have got to address this.

Q. (inaudible).

Well, it's hard to say because of several reasons. One primary reason is that the hearing record is so brief. In other words, when you want to see who's for the bill and who's against it, the bill that we've been talking about is not the bill that the hearing record is based on. So, there are very few indications in the hearing record as to who's for it and who's against it, other than the sponsor and the Postal Service. The hearing record is so brief. Secondly, I think there was not a tremendous amount of publicity given to this bill after it was re-introduced by Congressman Wilson and substantially changed so that many organizations were not aware of it. So I think for those reasons it's hard to say who's for it and who's against it.

Q. My name is Bill Wood, attorney for the Indiana Catholic Conference, and I'll tell you what's wrong with this bill. It's another example of hare brained legislation by people who are trying to kill a fly with a sledgehammer. Now, we've seen Truth in Lending legislation. It hasn't done the borrower much good. We've seen the Fair Credit Reporting Act, and what has that done good, nothing at all. We've seen a thing called RESPA, which was so bad even the bureaucrats had to withdraw it, regarding real estate closings. And then, there's the one called the Interstate Land Sales Act. All of these things are aimed at helping the consumer. They don't do any good. All they do is harm people like ourselves who are in legitimate fundraising operations. There are bound to be some bad apples in any bunch. But it doesn't do any good for somebody down here on the Potomac to put us to millions of dollars of expense just for some unproved fraction of a percent of fraud.

**Q.** (not audible)

**A.** I think that the questions you raise are questions that indicate the lack of sufficient hearing and precision resulting in this bill. There are many questions that can be raised, such as that. There is no definition in the bill of a bona fide membership organization. Now, there may be some report language clarifying that, but the report hasn't been filed yet. And the same question that he raised was raised last Thursday during the markup session by the chairman of the full committee. Are alumni members of a membership organization; are parents of students members of a bona fide membership organization? And his answers to these questions were in the affirmative. So, I can't really answer the question. There is no definition in the bill and it remains to be seen what they will say in the report.

**Q.** Mr. Robinson - not audible.

**A.** This says that a membership organization can solicit its own members. I think I can speak for Jim and say we are very concerned about this legislation and its implications and we are watching it very closely. You never know what to predict, but I would think, based upon the record of the bill so far, that it will not encounter a roadblock in the House which it can't surmount. But then it has to go to the Senate.

I said I would say a few words about the other two bills, and I have to live up to that promise, I guess. The Mondale and Karth Truth in Contributions Act and the Van Deerlin Charitable Solicitations bill. I will just tell you the highlights of those two and where they are. The Mondale bill was introduced after he had hearings on children's charities, lengthy hearings. They were held not in the Finance Committee where the bill is pending but in his subcommittee on Children and Youth, which is part of another committee, the Labor and Public Welfare Committee. That bill is an amendment to the Internal Revenue Code and, among other things, it has a tax on undistributed revenue. It would require certain charities to distribute at least 50% of their revenue for the charitable purpose within a taxable year, or within 12 months following the close of the year. If they fail to do that, an initial tax and an additional tax can be imposed. The initial tax, if the charity does not disburse that 50%, these are penalties. The initial tax is 15% of the amount of expenditures for charitable purposes which would be required to bring the charity's charitable expenditure up to the 50% of gross revenue level. And, then, there is an additional tax beyond that 15% which is a 100% tax, 100% of the amount of the undistributed revenue. There is an exclusion for churches in the bill, but I think if the bill is going to advance we would look at that very closely to see that the language would be satisfactory. And, of course, one of the dangers is—if legislation such as this does pass, even with an exclusion for churches in it—it is not a difficult thing, or possibly could not be a difficult thing in the future to remove that exclusion.

The final bill, the Van Deerlin bill, was referred to the Consumer Protection Subcommittee, which was chaired until the last couple of weeks by Mr. Van Deerlin himself. It is similar in some ways to the bill that we've been discussing most of the time this afternoon. But, rather than go into any detail, which is really not

necessary, Mr. Van Deerlin is no longer chairman of that subcommittee, he switched over to the Communications Subcommittee, and in any event the subcommittee has indicated that they are not going to give any additional attention to that bill at the present time. Rather, they are waiting to see what disposition is made of the Wilson bill, 10922, since they are similar in many respects. However, there were hearings on the Van Deerlin bill which have been completed. The subcommittee attempted to meet for a markup session several months ago and did not get a quorum. There is some significant opposition in that subcommittee to passage of this bill, so at the present time we're not too concerned about that. It is inactive.

Is there anything that I have failed to cover that anyone would like covered or emphasized or are there any other questions regarding these bills? If there are no other questions, thank you very much.