

Policymaking by Consensus?

By Jeff Krehely

After months of rumors—and much hand-wringing in the nonprofit and philanthropic sectors—the U.S. Senate Finance Committee finally held hearings on the string of recent scandals plaguing both nonprofits and foundations alike, and the current state of government oversight of the sectors. On June 22, 2004, 13 individuals on three different panels testified before the committee. Those testifying included Internal Revenue Service Commissioner Mark Everson, state-level charity officials, witnesses whose identities were kept hidden, and executives from mostly national nonprofit organizations, including NCRP Executive Director Rick Cohen.

The several-hour-long event was congenial—no one was raked over the proverbial senatorial coals. Most of the committee's members did not even attend the hearings, or attended only for a few minutes. Sen. Olympia Snowe might have set a record for the briefest attendance at a committee hearing ever when she walked in, turned her nameplate up, came within inches of actually sitting in her chair, and then stood up and walked out. Apparently, she is still a contender for the Senate's perfect attendance award at the end of this session.

Considering the marked absence of most of their colleagues, the Republican chair of the committee, Sen. Charles Grassley of Iowa, and the ranking Democrat, Max Baucus of Montana, ran the show. Nothing new or terribly controversial was revealed over the course of the hearings, which concluded with Grassley stating that he would like to introduce legislation to toughen regulation of the nonprofit and philanthropic sectors, perhaps within months. But considering that it is an election year and the ongoing political stalemate in the Senate, the chance of anything significant happening this ses-

sion seems rather small, at best.

In an effort not to lose whatever momentum the formal hearings generated, the Finance Committee staff, led by Dean Zerbe, produced a white paper that provides an overview of the various reforms being considered. Zerbe also organized a round-table discussion in late July to allow other nonprofit and philanthropic experts to put their spin on the issues discussed at the hearings and in the white paper. NCRP was initially invited to submit a paper and make a presentation at the round table, but was uninvited at the last minute, because this event was supposed to be an opportunity for people and organizations that had not testified at the formal hearings to speak out on the issue. Apparently the committee staffer who caught Rick Cohen's name on the list of speakers for the round table did not also notice that of Independent Sector's chief executive officer, Diana Aviv, who testified on June 22 and was also allowed to submit a paper and address the round table in July.

Considering that 18 people provided their opinions at the round table, an entire issue of *RP*—let alone one article—would not be able to capture all of the commentary provided. As of this writing, each of the papers submitted by these individuals is still available at the Senate Finance Committee's Web site (<http://www.senate.gov/~finance/>). Unfortunately, no one who spoke was from an organization that represented the interests of smaller nonprofit organizations and their constituents in the nation's communities and neighborhoods. If and when another round table is scheduled, perhaps its organizers will be mindful of the lack of input from the kinds of organizations that make up the majority of the sector. It is cause for concern that the Senate has asked Independent Sector—which represents the interests of national and very large nonprofits and foundations—to play a lead role in articulating the sector's feelings on the proposed accountability and oversight reforms.

At the same time, however, the hearings and round table raise the question of how much input

Senate Finance Committee Chairman Charles Grassley (R-Iowa) talks to ranking member Sen. Max Baucus (D-Mont.) before a 2003 hearing.



and feedback are needed before this process can move from discussion to action. Considering the remarkable diversity of the organizations in the nonprofit and philanthropic sectors, it is impossible for lawmakers to translate the wide-ranging needs, concerns and priorities of these organizations into policy with which everyone agrees. Most policy decisions—i.e., lawmaking and rule-making—produce winners and losers.

Of course, it's not politically palatable for lawmakers to appear to be punishing nonprofits and foundations—especially in an election year. Most members of the media and public assume that these organizations are do-gooders, and imagine that the groups are run by individuals with halos on their heads and wings on their backs. Most of us who work within the sector know that these notions are simply untrue, and that tax status does not determine whether an organization is run and managed in an ethical and law-abiding manner. The easy thing for Congress to do at this point is to jump on the “self-regulation” bandwagon, which would make the leaders of the trade groups that represent the sector quite happy.

But it's not the right thing to do. The abuses in both nonprofits and foundations that caught the Senate's eye are real. More importantly, they violate the public's trust and, in some cases, state and federal laws. They've taken place because savvy people know that the ability of the Internal Revenue Service and state governments to regulate these organizations is laughable. Congress has effectively defunded the IRS's oversight function, and some state governments do not have enough funding to devote even one full-time employee to tax-exempt oversight.

Policymakers face a stark choice. They can continue to allow leaders of national, multimillion-dollar organizations to weaken efforts to strengthen government oversight of foundations and nonprofits. Or they can reassert the government's right and duty to police the nonprofit and philanthropic sectors and the sectors' control of trillions of tax-exempt, quasi-public dollars. It's not an exaggeration to say that the path taken will impact the lives of millions of the nation's most disadvantaged people and communities, as well as show just how responsible—or dysfunctional—Congress has become. ○

New York Nonprofit Self-Auditing (Continued from page 10.)

posed legislation in New York is directed at nonprofit corporations of a certain size—those with at least \$3 million in assets or that receive more than \$1 million in annual revenue. In nonprofit organizations of that size, any additional outlay of time, energy or funds would be minimal compared with the potential benefits of establishing an audit committee. An audit committee would safeguard an organization from inappropriate financial transactions that could potentially hurt the integrity of the organization's mission and its fiscal health and sustainability.

If the proposed legislation is to be effective, it must also be enforceable. While the mandate alone should help to at least partially restore the public's confidence in New York's charitable sector, few nonprofit corporations may actually follow through with the new law if they believe it will not be enforced. It is highly possible that this will be the case, as the New York State Charities Bureau, like most state-level nonprofit regulatory agencies, is severely understaffed and lacking in resources comparable with the number of charitable corporations it is required to monitor. William Josephson, the assistant attorney general for oversight of charities in New York, operates on a shoestring budget and outdated resources.

If the attorney general's proposals regarding the financial accountability of nonprofit corporations are to be taken seriously, additional resources will be needed to bolster the efficacy of the Charities Bureau and instill public confidence in its watchdog capabilities.

Of course, the attorney general's recent actions to bring attention to nonprofit organizations' financial accounting practices may quickly dissipate if the legislation is not passed. As it currently stands, the legislation is still in the Corporations, Authorities, and Commissions Committee of both the New York State Senate and Assembly. It is unlikely, however, that the bill will move forward this year.

If the bill is to gain any momentum, it would most likely be at next year's general legislative session, where it would have to be reintroduced. Perhaps by that time, additional discussion among other charity watchdog groups and nonprofit corporations themselves can enhance the proposed legislation to ensure its efficacy in strengthening the integrity of nonprofit fiscal accountability and accounting practices in New York state. ○

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