

An Agenda for Change

By Rick Cohen

President Bush found a way of wrapping charity and philanthropy into his 2007 State of the Union address this past January. Talking about the strength, generosity, and self-sacrifice of Americans, the president recognized the backup center of the NBA's Houston Rockets, Dikembe Mutombo, for his charitable generosity toward his homeland, the Democratic Republic of the Congo. Mutombo has personally dedicated more than half the cost of a new 300-bed hospital in the country's capital, Kinshasa.

In this instance, the president was right. The Dikembe Mutombo Foundation¹ appears to be a stellar philanthropic institution, raising money from a variety of individual and corporate donors to add to the millions Mutombo himself had donated toward the hospital's construction.

But that was largely it. The speech lacked the usual feints toward the roles of nonprofits and the importance of stimulating more charitable giving through federal programs such as AmeriCorps or the faith-based Compassion Capital program. Actually, there was a surprise mention of quasi-volunteerism—a call to establish a “Civilian Reserve Corps” designed to “ease the burden on the Armed Forces by allowing us to hire civilians with critical skills to serve on missions abroad when America needs them.” It is a kind of AmeriCorps for “first responders,”² an idea in discussion at the State Department for the past couple of years in response to international conflicts like Iraq, but with origins going back to President Clinton's plans for U.S. participation in U.N. peacekeeping and reconstruction programs.³

Where in the State of the Union were the rhetorical flourishes and policy initiatives to support America's third sector? The *National Journal's* pre-State of the Union review counted “charity” as one of the 10 major areas of success of the Bush administration, citing increases in the rate of charitable giving and volunteerism during President Bush's White House watch.⁴ Charitable giving may be truly up, based on overall per-capita giving—abetted by the announcements of humongous gifts from billionaires like Warren Buffett—but few nonprofits are anywhere near so satisfied with the conditions they face every day. The lacunas embedded in the State of the Union may add up to part of a framework for a nonprofit policy agenda in 2007.

Hurricane Katrina: House Speaker Nancy Pelosi pointed out the omission of any mention of Hurricane Katrina in the president's address.⁵ Aside from the ongoing debacle of American policy in Iraq, the performance of FEMA on the federal side and several large charities, such as the American Red Cross, have sparked serious questions about how this nation, including foundations and nonprofits, mobilize resources to deal with disaster. Despite some foundation investments to help with the reconstruction of the Gulf Coast—notably the Rockefeller Foundation's \$3.5 million grant to the Unified New Orleans Plan, the Kellogg Foundation's major commitment to groups in rural Louisiana such as the Southern Mutual Help Association,⁶ and the Knight Foundation's support for redevelopment planning in Mississippi—local indigenous nonprofits have been grumbling that they have seen and benefited from relatively little of the philanthropic largesse flowing into the region.

One of the major themes of the upcoming Council on Foundations conference is a re-examination of foundation roles in disaster relief and recovery. Given the continuing devastation of the region, visible to anyone who has looked at the Lower Ninth Ward in New Orleans more than a year after the hurricane, nonprofits ought to make their voices heard, making the case that rebuilding the infrastructure of local nonprofits merits as much support as donors and funders offer to the big national charities.

Poverty: Among the guests in Speaker Pelosi's box were two family members of 9/11 victims, but no one represent-



U.S. Speaker of the House of Representatives Nancy Pelosi (D-Calif.) and Senate Majority Leader Harry Reid (D-Nev.) lead the 110th Congress.

Photo by Chip Somodevilla/Getty Images

ing the thousands of Katrina victims—most of whom are people of color, low-income, and living in some of the nation’s most distressed inner cities and rural communities. The U.S. is still a nation characterized by not only the persistence of poverty but also a growing divide between the rich, who are growing richer all the time,⁷ and the poor.

We could use someone like Michael Harrington, whose 1962 book, *The Other America*, galvanized the attention of political leaders in the Kennedy administration and nonprofits to the problems of persistent, structural poverty in the United States. But the times are changing. The House Ways and Means Committee just held a full-committee hearing to lay out its agenda for the calendar year, addressing the “economic and societal

Republicans to the eager-to-lead Democrats. Among those in the parade were miscreants like Jack Abramoff and Michael Scanlon, whose misbehavior included playing fast and loose—and illegally—with nonprofits, foundations, and lobbyists. The staff of then-ranking minority member of the Senate Finance Committee, Max Baucus (D-Mont.), released a report on the nonprofit implications of Abramoff’s misuse and abuse of charity and philanthropy⁹; the report also contained recommendations for the reform of 501(c)(3) and (c)(4) organizations, all still waiting for a legislative vehicle for their consideration. Similarly unenacted were a bevy of charitable governance reforms by then-committee Chairman Charles Grassley (R-Iowa), since only a small portion of the committee’s S.2020 bill finally made it into the Pension Protection Act of 2006.

Congress’ appetite for more legislation on charitable accountability is hard to predict, given the transition from Grassley to Baucus at Senate Finance and from Bill Thomas (R-Calif.) to Charlie Rangel (D-N.Y.) at the House Ways and Means Committee.

Grassley and Thomas had both taken aim at nonprofit hospitals, and Grassley has started to explore universities for exactly how egalitarian and charitable these nonprofits possessing sometimes mammoth tax exempt endowments might actually be.¹⁰ The drumbeat among nonprofits in the wake of the elections has been a full-court press in favor of self-regulation and against more government intervention, notably the self-regulation platform released for public discussion by Independent Sector’s Nonprofit Panel¹¹ and the consistently anti-regulatory commentary in the *Nonprofit Congress* report produced by the National Council of Nonprofit Associations.¹²

Regardless of the drumbeat for self-regulation, whose history of success regarding accountability has been limited and dubious in the for-profit as well as nonprofit spheres,¹³ there are opportunities for reviving public attention to critical issues of charitable accountability left undone. The pension bill expressly called on the Secretary of the Treasury to examine whether and what should be mandatory payout rates for donor-advised funds (DAF) and supporting organizations. The bill gives the nonprofit sector an opportunity to revive debate concerning what the payout should be for tax-exempt endowments. The 5 percent private foundation spending

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costs of poverty”⁸ and featuring NCRP’s board chair, David R. Jones of New York City’s Community Service Society, who presented expert testimony.

Like its concern for disaster relief, the Council on Foundations has made the role of foundations in addressing poverty one of its upcoming programmatic themes. If nonprofits on the receiving end do not join the discussion, the results could devolve into piles of self-promotional press releases describing foundations’ anti-poverty initiatives. Nonprofits might ask questions that some foundations would want to avoid: How much of the nation’s \$33 billion in annual grantmaking addresses issues of domestic poverty? How much reaches the nonprofits on the front lines of tackling poverty in their local communities? How much support is given toward advocacy and policy change rather than solely service delivery? How should foundations deploy their funds to help eradicate urban and rural poverty? What strategies really do work from the perspective of the nonprofits that have to deliver the goods?

Accountability: The parade of political figures getting a taste of “perp walks” toward indictments and sentencings the past few years may have been part of the motivation behind the nation shifting its support from the sitting

rate does not apply to public foundations, DAFs, or supporting organizations. Given the past year of record stock market returns—and foundations tend to do better in the market than the average stock-picking citizen—there ought to be an opportunity for nonprofits to tell Secretary Henry Paulson that vast reserves of unutilized tax-exempt wealth in foundation and university coffers do not help our society grapple with the critical issues of the day.

That being said, there are numerous other issues that have yet to get the level of nonprofit policy attention they deserve, including restrictions on the abhorrent practice of five- and six-figure fees to foundation trustees, the still inadequate protections against abundant loopholes for philanthropic self-dealing, the reluctance of both parties to call for enhanced corporate philanthropic disclosure, and the persistent unwillingness of Congress and the nonprofit sector to dedicate the private foundation excise tax—which is over half a trillion dollars a year—to pay for IRS and state government charitable accountability oversight and enforcement. It would be unfortunate to let the pension bill—a desperate effort by the Senate Finance Committee to find a vehicle to get a modicum of

charitable accountability improvements passed—close the door on public awareness of and attention to accountability and probity in the nonprofit sector.

Notwithstanding the lack of movement on many issues of charitable and foundation accountability, there might be a new wind discernable in Congress. The No. 2 Democrat in the House of Representatives is Steny Hoyer (D-Md.), who in the 1980s was among the leaders against various congressional attempts to restrict nonprofits to service delivery. Confronting the efforts of the Reagan administration, Hoyer solidified the participation of advocacy and social change nonprofits in the Combined Federal Campaign (CFC) with legislation in 1986¹⁴ that has not been contravened to this day.

Equally or perhaps more important may be the nonprofit bona fides of some of the incoming members of the 110th Congress elected this past November. Vermont's Peter Welch helped create the Vermont Housing and Land Conservation Trust Fund, a model resource for nonprofit housing developers. Kentucky's John Yarmouth founded the Center for Kentucky Progress, a state-level policy think tank promoting progressive strategies for social

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change. In Pennsylvania, Jason Altmire comes to Congress having served on the board of the Manchester-Bidwell Development Trust, associated with one of the nation's standout entrepreneurial nonprofits run by MacArthur "genius award" winner Bill Strickland. Several come to Congress with experience as public defenders,

President Bush would have had a hard time missing all 7 feet, 2 inches of Dikembe Mutombo, a veritable pillar of selfless generosity. Unfortunately, the White House, Congress, and much of the nonprofit sector have yet to grasp, much less successfully emulate, the meaning of Mutombo's philanthropy: Mutombo's foundation does not hoard its assets—it mobilizes its capital; it directs its capital toward the intersection of poverty and health in ways that other philanthropists might well study and emulate; and it is as public and transparent a philanthropic institution as there is, much like its founder

and benefactor, who has long been known as one of the honest "good guys" in the NBA and in all of sports. Would our government and our sector stand as tall as Dikembe Mutombo on behalf of philanthropy's role in social justice?

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law clinic workers, legal services attorneys, and ACLU activists, bringing with them an awareness, one might expect, of the importance of charitable fundraising that supplements, not substitutes for, federal funds in these crucially important nonprofits. The freshman class of Congress brings a potentially new and invigorating lens to the issues and controversies facing the nonprofit sector in 2007, though these members will only focus on these issues so long as they hear nonprofit voices.

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NOTES

1. <http://www.dmf.org/index2.html>.
2. Sally B. Donnelly, "Iraq Rebuilding Blunders", *Time* (February 27, 2006).
3. *The Clinton Administration's Policy on Reforming Multilateral Peace Operations*, <http://clinton4.nara.gov/WH/EOP/NSC/html/documents/NSCDOC1.html> (May 1994).
4. Neil Munro, "Successes: The Generous American," *National Journal* (January 19, 2007).
5. "Pelosi Criticizes Katrina Omission During Bush Speech", *Congress Daily AM* (January 25, 2007).
6. Kellogg had awarded over \$36 million to the region as of mid-2006 (cf. http://www.wkcf.org/DesktopModules/WKCF.00_DmaSupport/ViewDoc.aspx?LanguageID=0&CID=6&ListID=28&ItemID=5000226&fld=PDFFile).
7. John Maggs, "Inequality; Yes, the Rich Are Getting Richer," *National Journal* (January 20, 2007).
8. <http://waysandmeans.house.gov/hearings.asp?formmode=detail&hearing=508>.
9. *Minority Staff Report: Investigation of Jack Abramoff's Use of Tax-Exempt Organizations* (U.S. Senate Finance Committee, October 2006).
10. Cf. the Senate Finance Committee's December 5, 2006, hearing titled "Report Card on Tax Exemptions and Incentives for Higher

- Education: Pass, Fail, or Need Improvement?" (<http://www.senate.gov/~finance/sitepages/hearing120506.htm>).
11. "Draft Principles for Self-Regulation" (http://www.nonprofitpanel.org/self-reg/index_html); IS did largely endorse most of the Senate Finance Committee's charitable accountability insertions in the pension bill and in the preceding Committee bill, but self-regulation has long been on the Nonprofit Panel's agenda to pursue.
12. The Nonprofit Law Blog perceptively noted that all of the mentions of regulation in NCNA's Nonprofit Congress briefing book, *Voices from the Field* (NCNA: 2006), were generally negative compared to an overwhelming preference for self-regulation (cf. http://www.nonprofitlawblog.com/home/2006/10/nonprofit_congr.html). The final report of the Nonprofit Congress is similar, rarely venturing into issues of regulation, and generally only to propose self-regulation as the answer to the "threat" of government "overregulation" (cf. *Deliberations, Decisions & Planning*, pp. 22 and 24).
13. Cf. Rick Cohen, "The Accountability Toolbox", *Responsive Philanthropy* (Spring 2005); also Rick Cohen, *Building Solid Foundations: New Approaches to Substantive Philanthropic Accountability* (NCRP: December 2006).
14. "History of Charitable Fundraising Within the Federal Service" (http://www.opm.gov/cfc/html/cfc_hist.asp).