

S A N D R A S W I R S K I

Sandra Swirski

The Alliance for Charitable Reform enters the fray on Capitol Hill

Sandra Swirski is the executive director of the newly formed Alliance for Charitable Reform (ACR). She is currently a principal at Venn Strategies, LLC, in Washington, D.C. Ms. Swirski has more than 15 years of public policy and government relations experience in the private sector and on Capitol Hill, including stints with two senior U.S. Senators. With law degrees from Georgetown and George Washington universities, she has worked as a tax lawyer with Ernst & Young and was named one of Washington's Top 10 Tax Lobbyists by Tax Analysts.

In January 2005, with Congress expected to consider possible sweeping revisions to the laws governing tax-exempt organizations, ACR tapped Ms. Swirski to be their executive director and spearhead an aggressive campaign in which the Alliance would be a key voice on reform within the foundation community.



PHILANTHROPY: What is the Alliance for Charitable Reform?

SWIRSKI: The Alliance was formed this year to push for reform of the charitable sector while protecting the freedom of foundations to operate. It was launched under the auspices of The Philanthropy Roundtable and is currently composed primarily of private foundations, some of them associates of the Roundtable and others not. ACR members believe it's critical to form a coalition of donors to have one strong voice promoting common-sense laws and regulations that impose strict penalties on wrongdoers without trapping the innocent or wasting charitable assets. And so the Alliance supports increasing the resources available for charitable activities while improving financial transparency and accountability in the charitable sector.

The members of ACR are also eager to safeguard the freedom of foundations to use their best judgment in carrying out their charitable objectives. Our end goal is to expand America's leadership as the most generous and charitable nation on earth.

PHILANTHROPY: Who is eligible to join the Alliance?

SWIRSKI: Any charitable organization or donor that agrees with our guiding principles is invited to join. Anyone who wants to learn more may visit our website, www.ACReform.com.

PHILANTHROPY: What are the Alliance's main concerns?

SWIRSKI: We're most concerned with proposals affecting nonprofit organizations, and private foundations specifically, that would interfere with their decision-making freedom and impose new, burdensome regulatory requirements. The staff of the Senate Finance Committee released a "discussion draft" last summer detailing numerous such proposals, and then earlier this year the Joint Committee on Taxation issued a report that further refines some of the Senate Finance Committee's proposals and also puts new ones on the table. Both of these documents, as well as our detailed responses to them, can be found on our website. An urgent priority for the Alliance is to respond appropriately to these proposals, which we think could threaten the essential functions served by charities and foundations.

PHILANTHROPY: What happened at the Alliance's first public meeting held recently in Washington?

SWIRSKI: The event took place on March 3, and approximately 100 members of the philanthropic community attended. We heard a number of speakers well known to the community and experts in their fields. Speakers from the public sector included Randy Brandt of Senator Rick Santorum's office (R-Penn.) and Neil Bradley of Representative Roy Blunt's office (R-Mo.). Both those members of Congress are intimately involved with the well-known CARE Act that aims to increase charitable giving. We also heard from Tim Goeglein of the White House Office of Public Liaison and from Dean Zerbe,

—continued on page 15

RESPONSE TO THE SENATE FINANCE COMMITTEE'S PROPOSALS

Here are some highlights from the Alliance for Charitable Reform's response to the Senate Finance Committee staff's 2004 "discussion draft" that proposed broad changes in the laws governing tax-exempt organizations. For the complete response, go to www.ACReform.com.

THE ALLIANCE OPPOSES THE FINANCE COMMITTEE'S PROPOSED imposition of one-size-fits-all governance mandates and private accreditation requirements on charities and foundations.

Section G of the Finance Committee staff discussion draft has a long list of specific new internal governance requirements, detailed rules on the size and composition of governing boards, and private accreditation requirements, all to be imposed on the charitable sector by federal law. Some of the proposed governance reforms in the Finance Committee list, by themselves, seem sensible: for example, assuring oversight and control of a charity's budget, operations, and executive compensation by its governing board. But many of the proposals make little sense, for example:

- arbitrary limits on the size of governing boards, with no consideration of the needs of particular organizations; and
- specific requirements as to the proportion of the board that must be "independent" and which board members can and cannot be compensated, again with no consideration of the needs of individual charities.

Overall, the Alliance strongly opposes imposition of any such internal governance rules, or private accreditation requirements, by federal law. It is simply not the place of Congress or the IRS to police so intrusively the internal management and operation of charities. These detailed mandates would limit charitable freedom and discretion, and over time would greatly weaken the charitable sector. Such proposals represent a departure from a long tradition in federal and state law of respecting the diversity of charities in terms of mission, philosophy, size, operating style, and division of staff and board responsibilities. Good governance at charities and foundations is to be encouraged, but the rigid mandates in the Finance Committee discussion draft are not the way to go about it.

The Alliance opposes granting any private accrediting agency the power to approve or disapprove a charity's or foundation's continued tax exemption. The Finance Committee staff suggests imposing private accreditation requirements (see section G, paragraph 5 of the report), and even funding private accrediting agencies with taxpayer dollars (section H). Even though assurances have been given that philosophical positions and public-policy stances would not be taken into account in the accreditation process, these proposals still remain unacceptable, as they would place

the coercive power to tax, and thus to determine the future of the whole array of tax-exempt organizations, in the hands of unelected individuals with no accountability to Congress. The Alliance supports the basic goal of limited government in order to maximize the scope of private charitable and philanthropic endeavors, but the administration of federal tax exemption is a core government function that must not be handed over to private groups. The power to approve or disapprove any charity's or foundation's initial or continuing tax exemption must never be outsourced to private organizations.

• • •

As part of its discussion of increased penalty taxes on improper activities at private foundations, the Finance Committee report proposes restrictions on the ability of foundations to pay compensation to the individuals who serve them (section B, paragraphs 4 and 5 of the report):

- foundations would be forbidden to compensate the members of their governing boards at all;
- alternatively, governing board members could receive only de minimis compensation, regardless of the work they perform;
- compensation paid to foundation executives would be limited to federal government pay scales, or else would be subject to some ceiling that would trigger additional reporting requirements; and
- foundations would pay processing fees to the IRS to permit review of certain executive compensation decisions.

The Alliance opposes these restrictions. Many foundation directors and trustees perform very substantial services for their institutions, including research and investigation of charitable programs and grantees. There is no reason to forbid payment of reasonable compensation for services rendered by directors and trustees. Moreover, artificial restrictions on executive compensation would simply drive competent managers out of the charitable sector. Congress should maintain current law permitting the payment of reasonable compensation (but no more than reasonable compensation) to all persons who serve foundations and other charitable institutions. Charitable freedom and diversity are ill-served by making it more and more burdensome for people to serve as charity and foundation executives and governing board members, particularly at a time when the liability risks of such positions are already increasing.

The Finance Committee report also proposes new restrictions on administrative expenses of grantmaking foundations (section C, paragraph 1), and on travel, meal, and accommodation expenses of all charities (section C, paragraph 4). Foundation administrative expenses—meaning all expenses other than actual charitable grants—that exceed 10 percent of total expenses would be subject to special scrutiny, and administrative expenses over 35 percent of total expenses would be disallowed in measuring a foundation's charitable grantmaking activities.

Also, all charities would be subject to extra scrutiny and reporting if they paid more than U.S. government travel allowance rates for program-related travel, meals, and accommodations.

The Alliance strongly opposes any effort to restrict or disallow reasonable administrative and travel expenditures in support of charitable and philanthropic activities. The Alliance also opposes eliminating the ability of private foundations to make grants to donor-advised funds (see section C, paragraph 3 of the Finance Committee report). Some donor-advised funds, including a number of community foundations, are important charitable grantees for a variety of foundations. Donor-advised funds serve an important role in, for example, anti-terrorism educational and charitable activity, where anonymity can be crucial. The Alliance opposes a flat rule against foundation grants to all donor-advised funds.

With regard to the administrative costs of foundations, there is no "one size fits all" formula.... Foundations should continue to be held to the same standard as the for-profit community and public charities: administrative expenses should be reasonable and necessary.

An especially ill-considered aspect of the Finance Committee's report is that it would treat all expenses of private nonoperating foundations except for grants to public charities as "administrative expenses" subject to the restrictions described above. In other words, expenses of in-house charitable programs (i.e., direct charitable activities) maintained and supported by foundations themselves would not count as charitable expenditures of those foundations. This proposal reflects a serious misunderstanding of how private foundations support their charitable missions. The Alliance strongly opposes any such restriction on charitable program expenditures made by foundations.

•••

The Finance Committee discussion draft contains a variety of proposals to hand enforcement authority over to state officials and private parties—and to provide federal funding to do so. The proposals include

- giving state officials the authority to pursue federal tax law violations (section D, paragraph 2 of the report);
- giving private rights of action to charity governing board members and to private citizens to enforce federal tax-exemption standards (section I, paragraphs 2 and 3); and
- federal funding of state officials' enforcement activities (section H).

The Alliance opposes all these suggested diminutions of the core authority of the IRS to administer and enforce federal tax exemption laws. There is no evidence that this "spreading around" of enforcement authority in a very complex area would have beneficial consequences. It is more likely to generate distracting litigation, sow confusion, and limit the freedom of charitable organizations to accomplish their mission.

•••

The Senate Finance Committee discussion draft (section A, paragraph 1) suggests requiring every charity to submit a large package of information to the IRS every five years, describing its governance, operations, and finances, in order to justify its continued tax-exempt status. The information would be available to the public. Failure to submit the information, along with an unspecified filing fee, would result in automatic loss of tax-exempt status.

The Alliance opposes such a burdensome and redundant new filing requirement. We believe that the proper basis for improved financial reporting and financial transparency by charities already exists: the Form 990 information returns filed by every public charity with annual revenue over \$25,000, and the Form 990-PF returns filed by every private foundation.

RESPONSE TO THE JOINT COMMITTEE ON TAXATION

The Alliance for Charitable Reform has also responded to the Joint Committee on Taxation's "Tax Gap Study" released this January. The complete response is at www.ACReform.com; a brief excerpt follows.

THE CORE PRINCIPLES OF THE ALLIANCE ARE TO SUPPORT policies that encourage philanthropy and increase the resources available for charity and philanthropy. For this reason, the Alliance strongly opposes the Joint Committee's proposals to restrict or eliminate the deduction for the fair market value of non-cash charitable contributions such as land, artwork, stock in family companies, and all other non-cash assets.... The Joint Committee would limit the deduction to the donor's basis in the assets.

Restricting charitable deductions to basis rather than current value would be devastating to public charities nationwide, especially in parts of the country where family wealth is concentrated in assets such as farmland and ranchland. One of the Joint Committee options would allow market-value deductions for certain gifts of "charitable use" property (gifts of artworks to a museum for display, for example), but even this deduction would be restricted, and donations of such items would still dwindle. The Joint Committee mentions difficulties in determining the fair value of some donated assets, but administrative concerns cannot justify the drastic harm this change would cause to public charities and individual donors.

The answer to valuation concerns is to give the IRS appropriate funding to enforce appraisal requirements and other donation rules, not to destroy the incentive for charitable giving. That funding can come from sequestering the excise taxes collected from the nonprofit sector and devoting them, as Congress originally intended, to IRS enforcement and guidance activity in the exempt-organization area, including enforcement of appraisal and valuation requirements.

—Swirski Interview *continued from page 12*

a majority staffer on the Senate Finance Committee who's a driving force behind the Finance Committee staff discussion draft. The full agenda, including the private-sector speakers, can be accessed on our website. The briefings by congressional staffers gave us a comprehensive insider's perspective on legislative efforts underway that will affect the charitable community, including the good, the bad, and the ugly. The panelists from the charitable community talked about the real-world impact some of the legislative proposals would have on foundations and public charities. The day ended with a panel of Washington insiders who offered their prognostications about what the coming legislative year could look like and where charitable reform efforts are headed.

PHILANTHROPY: What were the most important points of the day's discussions? Did anything surprise you?

SWIRSKI: From my perspective, there were several take-aways. First and foremost is that Chairman Grassley of the Senate Finance Committee is very motivated and wants to make big changes in the charitable sector, including new regulations to require stricter internal governance. Another important point is that a number of the proposals included in his committee's discussion draft have been scored by the Joint Tax Committee as bringing in more tax dollars—even if that meant constricting donations that public charities have been relying on—and that will add to their appeal for other Senators. Chairman Grassley's staff also insisted that the Senate Finance Committee would not take up the popular CARE Act without including at least some of the regulatory proposals that the Senator is pushing.

PHILANTHROPY: Could you summarize the Alliance's response to the regulations threatened in the Senate Finance Committee's discussion draft?

SWIRSKI: Yes, as we put it in our response's executive summary, the Alliance

- opposes the Finance Committee's proposed imposition of one-size-fits-all governance mandates and private accreditation requirements on charities and foundations;
- supports the Finance Committee's call for increased penalty taxes and other punishments for wrongdoers in the charitable sector, where appropriate;
- opposes arbitrary restrictions on compensation of foundation trustees and executives who perform valuable work for their institutions. The Alliance also opposes arbitrary restrictions on foundations' administrative expenses and on charities' travel expenses;
- believes that federal tax exemption enforcement authority should remain in the hands of the IRS, ultimately subject to the oversight and control of Congress. The Alliance opposes giving federal tax enforcement authority—or federal funding—to state officials or private parties;
- opposes making every foundation and charity file a substantial package of information every five years to justify

its tax-exempt status. A better way to enhance financial transparency and accountability to the public and the IRS is through improvements to the annual Form 990 and 990 PF. The Alliance supports in concept the Finance Committee's call for "accurate, complete, timely, consistent, and informative reporting" by foundations and charities;

- urges that foundation excise taxes and other taxes collected from charities and foundations be sequestered and devoted to funding the IRS's exempt-organization enforcement and guidance projects.

PHILANTHROPY: Similarly, what issues has the Alliance raised with the more recent report from the Joint Tax Committee that lists potential tax increases and new regulations?

SWIRSKI: We're concerned the Joint Committee's proposals could threaten the essential functions served by charities and foundations, and we've developed four specific policy proposals that address areas covered in the Committee's report:

1. Improve and expand the information reported by charities and foundations in their annual Form 990 or 990-PF tax returns, before imposing any new, costly filing burdens. In other words, make better use of the Forms 990/990-PF already being filed.
2. Increase penalty taxes for improper behavior by foundations, charities, and their officials. But allow abatement for inadvertent violations, and encourage—don't restrict—the use of internal review processes such as the "rebuttable presumption" procedure.
3. Redirect the proceeds from the tax on private foundations' net investment income to the IRS's enforcement of existing laws.
4. Continue to allow charitable donors to deduct the fair market value of non-cash contributions such as land, artwork, and stock in family companies. Make sure the IRS has the resources to enforce appraisal requirements for non-cash donations.

PHILANTHROPY: What's the legislative outlook in this area?

SWIRSKI: In Washington, there's an old saying that it's easier to stop legislation than it is to advance legislation. That said, Senator Grassley, the chairman of the Senate Finance Committee, is in exactly the right position to advance his charitable reform proposals, many of which will have strong appeal in the current deficit environment because they raise revenue. It's possible Grassley's proposals could be added onto the CARE Act, a very popular bill focused on increasing charitable incentives and championed by Senators Rick Santorum and Joseph Lieberman. Or they could be added to other compelling legislation that does not necessarily have anything to do with charity. A potential vehicle for any of these harmful provisions could be considered by Congress as early as this April.

For more information on the Alliance for Charitable Reform, visit www.ACReform.com or call Sandra Swirski at 202.466.8700.