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April 4, 2011

Senator Ginny Burdick
Chair
Senate Finance and Revenue Committee
900 Court St. NE, S-213
Salem, OR 97301

Dear Senator Burdick:

We are writing on behalf of the more than 400 nonprofits represented in the Direct Marketing Association's Nonprofit Federation (DMANF). The DMANF is an advocacy group for nonprofit organizations that educate the public, advance their charitable missions, and raise money through direct response marketing, particularly through direct mail.

The DMANF is writing to respectfully inform you of our opposition to SB 40, which would allow the Oregon Attorney General to disqualify charitable organizations from receiving charitable contributions that are deductible for Oregon state income tax purposes if the organizations do not expend at least 30% annually on program services. The DMANF opposes this legislation because:

- It is fundamentally unconstitutional. The Supreme Court has repeatedly ruled that government discrimination against charities and/or charitable appeals based solely upon spending formulas are unconstitutional. See, e.g., Village of Schaumberg v. Citizens for a Better Environment, 444 U.S. 620 (1980); Secretary of State of Maryland v. Joseph Munson Company, Inc., 467 U.S. 947 (1984); Riley v. National Fed'n of the Blind of NC, 487 U.S. 781 (1988); and Illinois ex rel. Madigan v. Telemarketing Associates, Inc., 538 U.S. 600 (2003). The fact that a nonprofit's spending on program services is above or below an arbitrary benchmark cannot be a legitimate, constitutional basis for deciding whether the nonprofit is "legitimate," "fraudulent," or truly "charitable." Such benchmarks are necessarily overbroad and judgments based upon them are necessarily undermined by "a fundamentally mistaken premise." See, e.g., Munson at 966.

- It unconstitutionally compels speech. The bill's requirements that disqualified charitable organizations disclose their disqualification to potential donors is a content-based regulation of speech that is unduly burdensome and not narrowly tailored to achieve a legitimate state goal. See, e.g., Riley at 798.

- It unconstitutionally vests broad discretion in the Attorney General. The bill allows the Attorney General to waive disqualification if an appealing nonprofit establishes "such other mitigating circumstances as may be identified by the Attorney General." But "placing discretion in the

hands of an official to grant or deny a license [or exemption] ... creates a threat of censorship that by its very existence chills free speech." See Munson at 964 n. 12.

- It will leave Oregon vulnerable to a § 1983 civil rights action because it would deprive nonprofits of their constitutional rights under color of state law.

- Studies show that spending benchmarks do not provide useful information to donors. An organization's effectiveness cannot be properly or meaningfully assessed by merely looking at funds devoted to program services. Each nonprofit must be assessed in its totality with reference to each donor's specific values and goals. Thus, while a spending benchmark may be useful information to some donors, it cannot be the foundation of an entire assessment by any thoughtful donor. Worse, premising state law tax policy upon this single metric disserves the public by putting more emphasis on the benchmark than it merits and by disadvantaging worthy organizations that do not meet the standard.

More importantly, this bill would do nothing to prevent the fraud that the Oregon War Veterans Association and the Military Family Support Foundation are alleged to have committed. The bill does not prevent charities from lying to donors, lying to the IRS, or misusing funds (all of which are already illegal, of course). Donors need to know that the promises made to them will be kept. Donors need to know that the charities that solicit donations from them are being held accountable. Rather than freeing up Department of Justice staff time to allow for proper, exacting supervision of charitable activities, the bill would misappropriate Department of Justice and nonprofits' resources with pointless disputes over the proper characterization of financial data and whether it satisfies an arbitrary benchmark. The bill would actually punish responsible charities with extra compliance work while the malfeasants, who will likely just make up data that "looks good," would be able to continue defrauding the public.

Thank you for your time and consideration. If you have any questions regarding this matter, please do not hesitate to contact Charlie Nave at 540-345-8848 or our local counsel, Ted Hughes.

Sincerely,

Senny Boone, Esq.
SVP, Corporate & Social Responsibility
DMA Nonprofit Federation

Charles Nave, Esq.
State Regulatory Counsel
DMA Nonprofit Federation

cc: Members of the Senate Finance and Revenue Committee