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Local Regulation of Charitable Solicitation

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Most discussions of the policy context for nonprofits in the United States focus on federal or state restrictions. Fundraising charities, however, must comply not only with myriad state requirements but an uncertain number of local requirements as well. Based on a survey of the largest cities in the United States, I find that all of these cities have some restrictions on charitable solicitation. Several of the cities also impose extensive registration requirements and other restrictions. These findings highlight the need for nonprofits to be aware of local regulation of their activities.

Keywords: Nonprofit Policy, Fundraising, Charitable Solicitation

Local Regulation of Charitable Solicitation

“Public fundraising is widely seen as a natural right of charitable organizations” (Hu & Guo, 2016, p. 213). From an organizational perspective, charitable solicitation—i.e., communication seeking a donation—is an important mechanism by which organizations that are reliant on voluntary action sustain themselves. At a macro level, charitable solicitation reflects a literal marketplace of ideas where organizations pitch their causes in order to receive support from the public. These pitches can include things such as applying for grants; mailing, emailing, or telephoning former or future donors; engaging in media marketing campaigns; or including a donation button on their website or social media platform.

Most states regulate charitable solicitation in some way, whether through point-of-solicitation disclosure requirements, registration mandates, or laws against fraud (Barber & Farwell, 2016a, b; Dietz, Barber, Lott, & Shelly, 2017; Sullivan, 2004). Although revenue generation can take many forms, charitable solicitation laws are usually limited to requests for donation rather than attempts to raise money through the sale of merchandise. Some efforts to regulate charitable solicitation have been controversial. These efforts have led to difficult questions about the enforceability, cost, and constitutionality of charitable solicitation regulation (Breen, 2009; Fishman, 2015; Inazu, 2009).

Although a great deal of literature has focused on state laws that regulate charitable solicitation, the local regulation of charitable solicitation has largely gone unstudied. In fact, the nonprofit sector itself has often turned a blind eye to local requirements. Yet, thousands of local governments impose restrictions on charitable solicitation activities. These restrictions range

from trivial to severe. Indeed, the findings in this article show that all of the surveyed cities regulate solicitation in some form. Many cities impose severe burdens on soliciting charities to apply for a permit, compile and make public detailed information about the organization, and pay fees. These laws often apply to solicitation that occurs by any means—including mail, telephone, email, and/or through the internet—even when the organization has no other presence in the city.

For example, Columbus (Ohio) requires all charitable organizations to apply for a permit at least 30 days before soliciting residents. Although this law has been on the books for years, the city amended the law in 2017 to make it explicit that the requirements apply to solicitation by any means—“by mail, email or any other written or electronically published article, or over radio, television, telephone or telegraph” (Columbus Ord. 525.15). Additionally, all organizations soliciting in the city must fill out a six-page application that is unique to Columbus. These organizations must also provide supporting documents and pay a filing fee. Over a recent 18-month period, more than 400 organizations obtained a permit to solicit donations in Columbus. Many of these organizations, however, were located in other states. Still, all of the organizations will be required to reapply for a soliciting permit each year. They will also be required to submit a yearly report describing the amount of funds that they raised.

Even though enforcement action against noncomplying charities is rare (Fishman, 2015), cautious or dutiful organizations may expend considerable effort to learn of their legal obligations in each locale. This could add up for organizations. For instance, a national campaign with a broad donor base that seeks to comply with all legal obligations would need to verify laws in thousands of cities and adhere to the regulations each city imposes. As a new wave of constitutional challenges to the regulation of charitable solicitation emerge and questions persist about the effectiveness of other forms of regulation, cities may start to take a fresh look at their role in regulating solicitation in the nonprofit sector.

Background

Layers of Regulation Regarding Nonprofit Activity

Most scholarship about the policy context in which nonprofits operate in the United States begins and ends at either the federal or the state level. At the federal level, the Internal Revenue Service’s (IRS) administration of tax-exempt status for organizations provides one of the most highly visible modes of control over the nonprofit sector. On the other hand, states supply the governing principles of incorporation and board duties.

Debates about the proper level of government to regulate the nonprofit sector, therefore, have usually been framed within the context of either federal or state governments (as well as appropriate types of enforcement agencies) (Freemont-Smith, 2004). For example, some scholars have called for more uniformity in how nonprofits are regulated by centralizing more functions, such as more coordination between states and the IRS or the establishment of an independent regulatory agency (Freemont-Smith, 2004; Mayer, 2016; Mayer & Wilson, 2010; Nave, 2004). Others have noted that there has been an unceasing march toward federalization of nonprofit regulation (Ascher, 2014; Fishman, 2009; Hopkins, 1980; Silber, 2005).

The bulk of this literature on nonprofit regulation offers little discussion of the local context. However, local government regulation of charities can significantly affect the day-to-day operations of many nonprofits. Some of the more common local regulations include payments in lieu of taxes (PILOTs) (Brody, 2010; Fei, Hines, & Horwitz, 2016; Grønbjerg, McGiverin-Bohan,

Dula, & Miller, 2016; McGiverin-Bohan, Grønbjerg, Dula, & Miller, 2016), programmatic choices or requirements for government funding or grants (Farrell, Fyffe, & Valero, 2015; Fyall, 2017; Pettijohn, Boris, & Farrell, 2016), and public-private partnerships (Mendel & Brudney, 2012). Less studied aspects of local regulation include nonprofit specific zoning codes or land use controls targeting charitable activities (Galvan, 2006).

Of course, nonprofits *influence* policy as well and the effects of this influence can be most dramatic at the local level (Mosley & Grogan, 2013). Thus, the tendency for scholarship on nonprofit policy to focus exclusively on federal and state regulations leaves a gap in our understanding of local level impacts.

Federalism of Charitable Solicitation

Historically in the US regulation of individual solicitation (i.e., begging) has taken place in various forms for centuries (Quigley, 1996, 1997). However, regulation of organizational solicitation is a more recent occurrence given that this type of solicitation was far less common in the United States until the twentieth century (Barber, 2011, 2017; Cutlip, 1990; Hopkins, 1980). As professional fundraising became more common and concerns about fraud and excessive costs emerged, local restrictions were put in place (Cutlip, 1990). Following World War II, and prompted by concerns of fraudulent or inefficient charities, states began adopting laws to register and restrict charitable solicitation (Barber, 2011).

One approach that states adopted was placing caps on the amount of money that soliciting charities could spend on fundraising. These caps were common starting in the 1970s but were declared unconstitutional by the US Supreme Court in a trilogy of decisions in the 1980s (Harris, Holley, & McCaffrey, 1990; Inazu, 2009). In lieu of outright prohibitions on organizations soliciting donations, states sought to require that solicitors disclose certain information to the state and, upon request, to the individuals they were soliciting. States also started targeting particularly egregious cases of fraud by telemarketers under generic state consumer protection laws.

Since then, charitable solicitation laws have stood relatively unchanged. This is despite advances in technology and shifts in giving behavior (Child, 2016). Indeed, the rise of webpages, email, and social media have all changed the way that donations are now sought and received (Maloney & Rosenthal, 2017). Trends in crowdfunding and peer-to-peer donations, along with other changes to the charitable sector (including the rise of for-profit, hybrid, and social enterprise forms of charity), have left state charitable solicitation rules—some of which still regulate fundraising by telegraph—somewhat outdated.

Despite these few attempts to regulate charitable solicitation at the federal level, the federal government has mostly taken a hands-off approach to dealing with charitable solicitation (Fishman, 2015). For example, the pressures of World War II led to national regulation concerning charities that sought relief related to the war (Barber, 2017). And, in the 1990s, the IRS attempted to revoke the tax-exempt status of an organization that spent an excessive amount (in the IRS's view) on fundraising. On appeal, however, while sending the dispute back to the tax court the appellate court concluded that the tax code's prohibition on private inurement did "not...empower the IRS to monitor the terms of arm's length contracts made by charitable organizations with the firms that supply them with essential inputs, whether premises, paper, computers, legal advice, or fundraising services" (*United Cancer Council v. Comm'r*, 1999, p. 1176).

The Federal Trade Commission (FTC) has also made only a light foray into regulating charitable solicitation; and, these regulations have only focused on telemarketing by commercial entities. Specifically, commercial telemarketers must respect the national do-not-call registry and they are prohibited from engaging in fraud. These FTC regulations, though, do not pertain to charitable organizations at large (Cain, 2004). Several proposed bills that would have expanded federal oversight of charitable solicitation have died in Congress over the years (Hopkins & Kirkpatrick, 2013); and, other than these modest federal forays into the regulation of charitable solicitation, charitable solicitation has largely not been under federal regulation.

Limits to the Regulation of Charitable Solicitation

Aggressive and selective enforcement of charitable solicitation has prompted courts to intervene. The US Supreme Court, for example, has upheld the finding that charitable solicitation is protected free speech. Based on several decisions between 1940 and 1990, the Court somewhat limited the policy options available to any level of government seeking to regulate charitable solicitation. The Court did so by first establishing that governmental disagreement with an organization's mission or how it accomplishes that mission does not allow it to prevent that organization's solicitation of donations (although under some circumstances governments can modify the tax treatment of donations) (Bray, Hasey, & Hensley, 2017). The one possible exception to this rule allows government to outlaw solicitation by organizations that finance terrorism (Bell, 2007). Secondly, as noted above, the Supreme Court has also rejected statutory caps that prohibit organizations from seeking donations if they have excessive fundraising expenses (*Riley v. National Federation of the Blind*, 1988). Third, the Court has upheld limits to which types of disclosures government can require at the time of solicitation (Harris et al., 1990).

Every state has the power to prohibit misleading or fraudulent solicitation. However, uncovering and then prosecuting fraud is often difficult; and, staff capacity and political constraints tend to limit the effectiveness of this power (Lott et al., 2016; Sullivan, 2004). In response, state governments have enacted a mix of mandates on charities that solicit in their state. These mandates—such as registration, financial reports, and disclosures to donors—often fall along the outer edge of what the Constitution allows.

Rationales for Regulating Charitable Solicitation

As shown in Table 1, scholarship on government regulation of charitable solicitation can be grouped into three categories based on regulatory objective: 1) to empower donors to make more informed decisions with their donations, 2) to ensure that donated funds reach the intended beneficiary, and/or 3) to advance an interest of government or a government official rather than the charitable sector (Barber & Farwell, 2016a; Breen, 2009; Irvin, 2005).

Empowering Donors. Requiring organizations to submit registration forms, in theory, provides donors with an opportunity to access accurate information from which they can base their donative decisions. Similarly, point-of-solicitation disclosure requirements provide potential donors with relevant information about soliciting charities and allows them to exercise judgment before writing a check (Barber & Farwell, 2016b).

One might question whether increased donor control over organizations is beneficial for the nonprofit sector (Ostrander, 2007) or whether donors even make wise giving choices at all (Steinberg & Morris, 2010). Even assuming the worthiness of the goal of increased donor control, there has been mixed empirical evidence that regulations or disclosure requirements actually

Table 1. Regulatory Objectives of Charitable Solicitation Regulations

Regulatory Objective	Problem	Policy Response	Assumptions/Limitations	Sources
Empowering Donors	Donors lack knowledge to make informed decision	Require disclosure of relevant info at the time of solicitation	<ul style="list-style-type: none"> Assumes disclosure is clear and relevant Assumes motives of donors First Amendment limits what can be required 	Barber & Farwell, 2016a, b; Breen, 2009; Steinberg, 1988
		Require central disclosure and make information publicly available	<ul style="list-style-type: none"> Assumes disclosed information will reach donors Assumes information is not more easily obtained elsewhere 	Barber, 2013; Barber & Farwell, 2016a, b; Breen, 2009
Empowering Regulators to Catch Fraud	False or faithless agent	Require disclosure to state on how money is spent	<ul style="list-style-type: none"> Assumes report provides sufficient information to assess whether solicited funds have reached the target 	Fishman, 2015
		Enforce laws against fraudulent statements and divert charitable resources	<ul style="list-style-type: none"> Difficult to uncover and prove 	Chisolm, 1995; Fishman, 2007; Helge, 2009
		Mandate organizational oversight over agents (e.g., contract terms, additional reporting, background checks)	<ul style="list-style-type: none"> Difficult to enforce Raises constitutional issues regarding free speech 	Koutoujian, 2012
Benefitting Government	Donations to out-of-state organizations reduce funds available for domestic causes	Impose onerous registration requirements	<ul style="list-style-type: none"> Assumes out of state organizations will be deterred Requirements cannot be more burdensome on out of state charities In-state organizations also suffer 	Barber & Farwell, 2016b; Irvin, 2005; Nave, 2004;
	Generate revenue for State Treasury	Charge and collect fees	<ul style="list-style-type: none"> Assumes fees will be paid and exceed costs of administering the program 	Irvin, 2005
	Many top state charity officials seek higher political office	High profile enforcement against unpopular target	<ul style="list-style-type: none"> Assumes that the target of enforcement will be unfairly/undeservedly selected over more culpable targets 	Brody, 2004; Irvin, 2005

lead to changes in donor behavior (Barber & Farwell, 2016a; Brown, Meer, & Williams, 2017; Cnaan, Jones, Dickin, & Salomon, 2011; Irvin, 2005; Portillo & Stinn, 2018; Sloan, 2009; Yörük 2016). Following a review of empirical literature, one author concluded, “It strains credulity that a preponderance of donors would do the necessary research on a charity’s cost structure before writing a check...Most persons probably trust their instincts because they know the organization or have heard about its work” (Bowman, 2006, p. 294). Nevertheless, disclosure of information may have an effect at the margins particularly when these disclosures occur prior to major gifts.

Empowering Regulators to Catch Fraud. A less common justification for solicitation registration requirements is that they provide information to regulators that facilitates enforcement against fraudulent organizations (Breen, 2013). The filed information either allows the regulator to uncover and spot fraud and illegal activity or it assists with additional investigations in the event that a complaint is brought to the regulator’s attention. Scholars have found little evidence, though, suggesting that registration aids enforcement of other laws; and, regulators have not articulated the precise way that the information disclosed aids detection of criminal activity. It is not even clear that the filings are read by anyone. As Fishman (2015) suggests, “Registration is not synonymous with enforcement of the law, oversight by the attorney general or prevention of fraud. Forms, once filed, are not reviewed in most jurisdictions until and unless there are complaints about a particular charity” (p. 16). Moreover, lax enforcement of charitable solicitation laws is not surprising given that there are only 355 full-time employee equivalent state level charity officials nationwide (Lott et al., 2016).

Benefitting Government. Another rationale for regulatory actions taken toward charities is to benefit government as an institution rather than the charitable sector. For example, there may be a benefit resulting from government fees. These fees could be collected with at least a partial goal of raising revenue. Indeed, although most annual fees for registration are relatively modest, some states charge a substantial amount. For instance, Massachusetts charges the largest nonprofits more than \$2,000 to register for a charitable solicitation permit (Harbor Compliance, 2016). It is unlikely, though, that this potential for revenue generation actually motivates any state to impose a registration requirement.

Another benefit might occur if government decides to limit solicitation by organizations whose efforts benefit residents from other states. This limit may be imposed under concerns that this type of solicitation may reduce the amount of charitable funds available for their own citizenry. However, expressly favoring in-state organizations to out-of-state organizations is likely illegal (Liazos, 2000). While some states impose minor residential requirements (such as having an in-state resident agent) and several states have refused to sign onto uniform multi-registration platforms that would make it easier for organizations from other jurisdictions to comply with the law, there is little direct evidence that solicitation laws are driven by an interest in protectionism.

Costs of Regulating Charitable Solicitation

Against unproven benefits, scholars have noted that compliance with charitable solicitation regulations carries real costs (e.g., Freemont-Smith, 2004). These scholars have estimated that the annual financial burden placed on soliciting nonprofits that comply with state level solicitation laws could reach as high \$150,000 for some organizations (Irvin, 2005). This cost does not simply include registration fees, but it also includes staff time and other costs associated with learning the rules each city has and ensuring compliance by all board members, staff, and volunteers who might solicit donations.

Exacerbating the cost to charities are the nuances of laws between states. A charity soliciting donations nationally must comply with the laws in every state, which can include registration and reporting requirements and ensuring that the language that each state mandates is included in all solicitations. Although state laws have similar features, charities must carefully determine the distinct rules in every state to ensure compliance.

Methods

To determine the extent to which local regulation of charitable solicitation activity exists, I undertook a review of the laws of the 49 largest cities in the United States (drawn from the largest 50 cities in the country, but excluding San Juan, Puerto Rico). The cities were identified using the 2010 U.S. Census of the Population (see Table 2). Reviewing each city's codified ordinances, I identified all restrictions on charitable solicitation that existed in each city. I focused only on ordinances that targeted charitable solicitation directly. Laws that incidentally regulated charitable solicitation were not included in this review. For example, a law prohibiting standing on a sidewalk would prohibit standing and soliciting donations, but it would not be included in this review because it does not target soliciting directly.

Relevant laws were identified by conducting a full-text search of each sampled city's codified ordinances for the following truncated words: "solicit!", "donat!", "charit!", and "contribution!." The use of truncated words allows for the identification of all words made by adding letters to the end of it. Trained research assistants searched through the results to identify relevant sections. The author, an attorney with experience in municipal law, reviewed the findings of the research assistants. The attorney also conducted an independent search to ensure that all laws were properly coded and that no other relevant laws were missing. Information about when an ordinance was enacted was taken from the compiler's notes.

Findings

Local Regulation of Charitable Solicitation

All of the cities in this review regulate charitable solicitation in some way. Some impose strict or cumbersome regulations such as registration requirements or restrictions on where, when, and how solicitation can be conducted. Some of these mandates duplicate requirements that already exist at the state level, while others go far beyond state equivalents. For example, nearly 20% of the cities ($n=9$) require that organizations soliciting donations by any means (whether telephone, mail, advertisement, and/or electronically) register with the city beforehand. Nearly 20% of the cities also require that organizations soliciting by roadside or in public spaces register to solicit donations. All but two of the cities have location restrictions that limit soliciting donations in certain parts of the city.

Registration. A handful of the cities (see Table 3) require organizations to register with the city (typically the Chief of Police) before soliciting donations. These requirements largely echo those commonly found at the state level. Several cities also impose requirements before allowing solicitation in public places (e.g., New York, Chicago, Philadelphia, San Antonio, Jacksonville, San Francisco, Fort Worth, and Charlotte), door-to-door (e.g., Nashville), or near roadways (e.g., Jacksonville and San Antonio). Although excluded from Table 3, a few cities have additional nuances to their requirements. These nuances include things like requiring registration for solicitation in government buildings, airports, or transit systems (e.g., Miami) or requiring registration for solicitation raising funds for specific causes like law enforcement (e.g., New York).

Table 2. City Restrictions on Charitable Solicitation

City	State	Sidewalk Solicitation	Roadside Solicitation	Door-to-Door Solicitation	Donation Bins
New York	NY	X			
Los Angeles	CA	X			
Chicago	IL	X			
Houston	TX	X	X		
Philadelphia	PA	X			X
Phoenix	AZ	X	X		
San Antonio	TX	X	X		
San Diego	CA	X			X
Dallas	TX	X	X	X	
San Jose	CA		X		
Jacksonville	FL	X	X	X	
Indianapolis	IN	X	X		
San Francisco	CA	X			
Austin	TX	X	X		
Columbus	OH	X	X		
Fort Worth	TX	X	X		
Charlotte	NC	X	X		X
Detroit	MI	X			
El Paso	TX	X	X		
Memphis	TN	X			
Baltimore	MD		X		
Boston	MA	X			X
Seattle	WA	X			
Washington	DC	X	X		
Nashville	TN	X	X		
Denver	CO	X	X		
Louisville	KY	X	X		
Milwaukee	WI	X			
Portland	OR	X			
Las Vegas	NV	X	X		
Oklahoma City	OK	X	X		
Albuquerque	NM	X			
Tucson City	AZ	X	X		
Fresno City	CA	X	X		
Sacramento	CA	X	X	X	
Long Beach	CA	X	X		X
Kansas City	MO	X	X	X	
Mesa City	AZ				X
Virginia Beach	VA		X	X	
Atlanta	GA	X			
Colorado Springs	CO	X			
Omaha City	NE	X	X		
Raleigh	NC	X			
Miami	FL	X			X
Cleveland	OH				X
Tulsa	OK	X	X	X	
Oakland	CA	X	X		X
Minneapolis	MN	X	X		X
Wichita	KS	X			
Total		44	29	6	10

Table 3. Local Charitable Solicitation Registration Requirements

City	Means Covered	Exemptions	Registration Requirements	First Enacted	Recently Amended
New York, NY Admin. Code 21-111	In public or house-to-house	Religious organizations	Names of all directors and officers; cost of fundraising.	1925	1999
Los Angeles, CA Ord. 44.04	Any means however exempts individuals soliciting for themselves	Soliciting from existing members	Must be filed 15 days before start; must contain information about purpose of funds, activities used, and costs.	*	2003
Chicago, IL Ord. 10-8-080	Roadside	None	Must be filed 30 days in advance; prohibits individuals soliciting for themselves.	1984	2010
Houston, TX Ord. 36-71	Face-to-face or telephone	Soliciting from existing members	Must be filed 10 days in advance.	2005	2008
San Antonio, TX Ord. 19-8	Roadside	None	Requires insurance, knowledge of first aid, and \$200 filing fee; limited to 2 days per year.	1990	2005
Jacksonville, FL §804.807	Roadside	None	Only allowed twice per year; requires insurance; all funds must go to a state licensed nonprofit.	2002	2016
San Francisco, CA Police Code Art. 9.6	Public spaces	Individuals, soliciting members, on personal property, for political purposes	Must file statement of registration with extensive financials; each solicitor must carry a registration card.	1987	1990
Columbus, OH Ord. 525.02	Any means however exempts individuals soliciting for themselves	Religious organizations and schools, to members, for less than \$500 per year	Must be filed 30 days in advance; separate permitting for roadside.	1959	2017
Columbus, OH Ord. 525.21	Professional fundraisers	None	Information about the solicitor and the plan of solicitation; a bond.	1959	2017
Fort Worth, TX Ord. 30-7	Roadside	None	Only two days per year; must have approved signs and an insurance policy; all solicitors must be 18 years old.	1964	2011
Memphis, TN 6-64-3	Any means	Houses of worship	“...all such information...as may be of assistance to the board in determining whether the permit shall be given;” requires a “proper proportion” of money go to cause.	1967	1985

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District of Columbia Code 44-1701 et seq.	Any means	Religious organizations, soliciting from members, American Red Cross	Registration form; solicitors must carry cards.	1957	2017
Louisville, KY Chapter 117	Any means	Houses of worship, soliciting only from members, certain educational solicitations	Registration form with detailed info (including social security numbers) on solicitors as well as time and location of solicitation.	1991	2003
Las Vegas, NV Chapter 11.62	Roadside	None	Five business days in advance; street address of organization; proof that organization has 501(c)(3) tax exempt status; agreement to indemnify city.	1991	1991
Las Vegas, NV Chapter 6.78	Event promotion by professional	None	Information about all events promoted; descriptions of events; payment of all inspection costs at hourly rate.	1984	2015
Oklahoma City, OK Ord. Ch. 13, Art. II	Any means	Soliciting from members	Registration form every three months.	1980	1993
Albuquerque, NM Ch. 13, Art. X	Professional fundraiser	None	Plan to solicit; information about criminal records of employees; filing a bond; must disclose amount spent on fundraiser to potential donors.	1970	2007
Fresno City, CA Ch. 9, Art. 7	Professional fundraiser	None	Terms of compensation; period of soliciting.	1983	1983
Long Beach, CA Ch. 5.28	Any means except on personal property and exempts individuals soliciting for themselves	Religious organizations	File authorization for each solicitor with police dept; requires permit with fingerprints of paid solicitors.	1986	2010
Virginia Beach, VA 26-50	Any means	Organizations registered with state, several other categories	Names and addresses of directors; address information for organization.	1965	2017
Oakland, CA 5.18.050	Any means	Soliciting members	Statement that costs will not exceed 16% of direct gifts; statement that no one will be paid to conduct telephone solicitation; detailed financial information; statement of need for donations.	1956	1974

Means Covered. The broadest solicitation laws require any organization soliciting donations from a city resident to register—without specifying method of contact. Los Angeles, for example, requires registration for “[a]ny oral or written request for a charitable contribution made, transmitted, or distributed by any means,” except that it exempts emails and websites in some instances (Ord. § 44.01). Similarly, Columbus registers charitable solicitation by any means “either directly or indirectly” (Ord. § 525.01). In 2017, the city added language to clarify explicitly that its registration requirements apply to email, social media, and mass media solicitations (while continuing to cover telephone and telegraph) (Ord. § 525.15). Houston in contrast limits the scope of its charitable solicitation registration requirements to in-person and telephone requests that take place within city limits (Ord. § 36-71). Other cities (e.g., New York) only require registration when solicitation takes place in person.

Although state laws imposing extensive regulations on professional fundraisers are common, a few cities (e.g., Columbus, Fresno, and Albuquerque) have similar laws. With these exceptions, cities do not mimic state laws that impose heightened burdens on professional fundraising firms.

Exemptions. Like their state counterparts, city registration rules often exempt religious organizations and those that solicit exclusively from members. Although, specific requirements can vary. However, unlike state level registration requirements that often exempt smaller organizations, the cities in the present review have no such exemption for organizations with small amounts of revenue.

Notably, most of the cities that impose broad registration requirements are located in states that have similar state level requirements. These requirements may have been established without considering the state level mandates. Only one city exempts organizations that are registered at the state level (Virginia Beach), while another (Louisville) requires organizations registered with the state to re-sign and submit the state registration form to the city. Many of the other cities impose extensive registration and regulatory requirements on organizations—even when those same organizations are regulated at the state level.

Scope of Requirements. Of the cities that require registration, most mandate that nonprofits file information about organizational finances, particularly how much revenue is anticipated and how much will be spent on the solicitation. This often must be done 10 to 30 days in advance of the solicitation. Some of the cities require the intended use of the funds to be specified. A few of the cities require detailed information about the people affiliated with the organization. Some, for example, require names and addresses of directors. Others require disclosure of criminal history of anyone involved with the solicitation. Additionally, some of the cities require nonprofits to submit the text of their solicitations. A few of the cities even request more specific information. Oakland, for example, requires an assurance that the costs of the solicitation will not exceed 16%. Cities that also restrict roadside solicitation often have insurance requirements and require disclosure of the exact day(s), time(s), and location(s) of the solicitation.

Enforcement and Use. Scholars have found little evidence of vigorous enforcement of charitable solicitation laws at the state level (Fishman, 2015). The same is likely true at the local level. Columbus, for example, has a Charitable Solicitation Board as well as at least one staff member devoted to charitable solicitation. Yet, the city indicated in response to a public record request that it had undertaken no enforcement actions in the prior two years despite hundreds of organizations registering with the city. Indeed, from January 1, 2015 to July 12, 2017 there were 402 organizations that received a charitable solicitation permit from the City of Columbus. No organization that applied during this time was denied a permit. Interestingly, since this time there has been no organization prosecuted for failure to comply.

A review of the webpages of the cities in this article shows that Washington, DC is the only locale that provides electronic access to registration forms (for prior use of this methodology, see Barber, 2013). For most of the cities, information filed by charities must be requested via a written public records request along with payment of copying and processing fees. These burdens associated with accessing information make it unlikely that potential donors will benefit from the information provided.

Regulating Public Solicitations

Only a handful of the cities in this review have broad registration requirements, but almost every city has some spatial restrictions on solicitation. Ordinances that restrict charitable solicitation activities according to space or location typically fall into three categories. First, nearly all of the cities regulate solicitation in public places such as sidewalks or parks, restricting or even banning solicitation in some areas. Second, some laws restrict standing on roadways with the intent to communicate with passing motorists. Although the present review captures only cities that regulate solicitation expressly, some of the cities also rely on laws intended to prohibit loitering on public medians to limit roadside solicitation (*Cutting v. Portland Maine*, 2015). Finally, many local governments have laws regulating door-to-door “peddlers,” which is a term that has sometimes been defined to include solicitation. These laws require solicitor registration and they also limit the hours of solicitation activities. As the number of solicitors traveling house-to-house has decreased, though, these laws have become somewhat archaic and are rarely invoked.

Sidewalks and Solicitation Free Zones. Almost every city in this review has some restrictions on in-person solicitation on sidewalks. Two exceptions are Cleveland (which repealed its sidewalk solicitation ordinance in mid-2017 following a lawsuit) and Virginia Beach (which repealed its ordinance in early 2018 out of concerns that it was unconstitutional). These laws are often titled “panhandling” or “aggressive solicitation” laws. They typically work by establishing 10, 20, or even 50-foot buffer zones around certain places such as the entrances to buildings, parking structures, intersections, bus stops, and parks.

Other cities create “solicitation free zones.” These zones are usually in downtown business districts (e.g., Atlanta Ord. 106-85 and Memphis Ord. 6-56-3). Memphis also prohibits sitting on a bench while soliciting (Ord. 6-56-5); and, both Memphis and Seattle outlaw soliciting anywhere in a public park (Memphis Ord. 12-84-10 and Seattle Ord. 18.12.150).

Laws against soliciting on transit systems and on airport property are also common. Although no city in this review followed a total ban approach, an earlier survey found that several smaller cities nationwide have banned face-to-face solicitations (National Law Center on Homelessness & Poverty, 2014). Such a citywide ban, though, has never survived a judicial challenge (*Speet v. Schuette*, 2013).

Many solicitation laws that focus on sidewalks and the creation of solicitation free zones also often contain restrictions on the manner in which solicitations can be conducted. Common prohibitions include bans on “abusive” comments (e.g., Boston Ord. 16-41), bans on asking someone to reconsider a “no” response (e.g., San Antonio Ord. Art. I, 21-29), and restrictions on the time of day that solicitations can occur. Some prohibit children from soliciting (e.g., Detroit Ord. 33-4-5), while others prohibit groups of two or more from soliciting (e.g., Denver Ord. 38-132 and Minneapolis Ord. 385.60). Solicitation in these laws is usually defined as a request for an immediate donation by any means. There are some exempt nonverbal solicitations (e.g., when solicitors merely hold a sign).

Although these laws lack an explicit exemption for nonprofit solicitation, it is possible that law enforcement officials may target individual solicitors (i.e., panhandlers) rather than individuals working on behalf of an organized charity. In fact, many solicitation laws are labelled as ordinances targeting “panhandling,” which is behavior typically associated with individual solicitation rather than nonprofits. However, as one court noted:

While the plaintiff here has focused the inquiry on the effects of the ordinance on the poor and homeless, the ordinance itself is not so limited. It applies with equal force to anyone who would solicit a charitable contribution, whether for a recognized charity, a religious group, a political candidate or organization, or for an individual. It would punish street people as well as Salvation Army bell ringers outside stores at Christmas, so long as the appeal involved a vocal request for an immediate donation. (*Gresham v. Peterson*, 2000, p. 903)

Over the years, there have been legal challenges to restrictions on sidewalk solicitation (*Loper v. New York*, 1993). In the 20 years from 1995 to 2015, federal courts across the country reached differing conclusions about the constitutionality of soliciting on sidewalks. However, after Supreme Court decisions in 2014 and 2015 clarified the legal standard in First Amendment cases, courts began striking down restrictions on sidewalk solicitations consistently whenever they were challenged (Barmore, 2016; Lauriello, 2016; Mead, 2015). Still, as seen in Table 3, restrictions on sidewalk solicitations remain common (44 of the 49 cities in this review place restrictions on sidewalk solicitations).

Roadside Solicitations. Although not as common as restrictions on sidewalk solicitations, many of the cities (29 out of the 49) restrict or ban roadside solicitations. Complete bans are a common approach (e.g., Indianapolis Ord. 407-102 and Charlotte 14-282). However, some of the cities, like San Jose, prohibit roadside solicitations only in certain high traffic areas designated as no solicitation zones.

A few of the cities allow roadside solicitations but impose extensive limits. Jacksonville, for example, prohibits roadside solicitations without a permit. Moreover, the city will only issue such a permit to a nonprofit organization registered with the state (Ord. 804.807). In addition to this prohibition, the organization must provide proof of a million dollar insurance policy and may not solicit more than two days at a time (or two times in a year). Individuals under 21 years of age are not allowed to participate in roadside solicitations in the city; and, all roadside solicitations in Jacksonville must take place during the day.

Kansas City has similar restrictions but also requires signs to be placed around the solicitation as well as the presence of a police officer at all times (Ord. 50-8.5). Las Vegas also has similar requirements but will only issue a permit to an organization that is federally tax-exempt (Ord. § 11.62.020). In the past few years, there have been a few successful legal challenges to roadside solicitation restrictions, particularly when the ban is complete rather than tailored (Barmore, 2016). Still, these ordinances remain common.

Door-to-Door Solicitations. Somewhat narrower are laws that restrict or regulate door-to-door solicitations. These laws are justified on the basis of privacy interests in one’s residence, safety concerns that someone might use a door-to-door solicitation as a cover for investigating a criminal target, and the desire that people have to be left alone in their own homes (e.g., Dallas Ord. 42-1). Although regulation of door-to-door solicitations is common, only a fraction of the ordinances

that regulate door-to-door solicitations are specifically intended for charitable purposes. More common regulations apply to commercial solicitors seeking to sell a product; and, these regulations often expressly exempt charitable solicitations (e.g., Nashville Ord. 6.64.010).

Ordinances that do include door-to-door charitable solicitations usually limit the time of day a solicitation can take place. These ordinances also often prohibit solicitors from visiting a residence that has a “no solicitation” sign displayed. A few cities require solicitors to obtain permits prior to starting a door-to-door campaign (e.g., Jacksonville Ord. 250.701). A registration requirement prior to door-to-door canvassing (such as “get-out-the-vote” efforts) was struck down by the Supreme Court in 2002. The Court however left open the possibility that door-to-door charitable solicitors could be required to register, provided that the registration was prompt and ministerial (*Watchtower v. Village of Straton*, 2002).

Donation Boxes. In recent years, cities have begun regulating unattended donation receptacles that allow people to donate used clothes and/or other items (Gasseling, 2017). These regulations, however, are relatively rare compared to the regulation of solicitations conducted by individuals. Only a few cities in this review (10 out of 49) placed restrictions on where donation receptacles could be located or imposed permitting requirements. San Antonio, for example, requires permits for all unattended containers, prohibits placing a container within 200 feet of a residential property, and limits the size of containers used for donations to four cubic feet (Ord. § 16-913). Miami prohibits the use of donation bins throughout the city (Ord. § 22-161); and, at least one city, Charlotte, regulates donation facilities (not just the containers). This city also imposes size limits on donation bins and requires that bins be monitored while donations are being accepted (Charlotte Ord. § 12.532.1).

Because donation bins invariably display signage signifying that they are being used for the purpose of soliciting a donation, organizations that utilize these bins are able to rely on First Amendment rights. Courts have reached different views, though, regarding the lawfulness of restrictions on donation receptacles. Some courts have struck down total or overly restrictive bans but have upheld more limited regulations on receptacle location (*Recycle for Change v. City of Oakland*, 2017). In 2014, the Kentucky Attorney General issued a memorandum urging cities to proceed cautiously when regulating donation receptacles. The Secondary Materials and Recycled Textiles Association drafted a model ordinance for cities that encourages a permitting system rather than an outright ban on these receptacles (“For Communities,” n.d.).

Discussion

Comparing Local Interests to State

Although some cities have adopted solicitation registration requirements that mirror state requirements, the bulk of local level regulation of charitable solicitation is driven by spatial concerns. Indeed, rather than focusing on empowering donors, preventing fraud, or the diversion of resources, which have been the dominant purposes behind state level charitable solicitation laws as discussed by others (see Table 1), most city regulations are related much more closely to traffic flow, avoiding annoyances at people’s homes, or concerns about in-person solicitation in certain areas. This suggests, then, that although most cities are concerned about charitable solicitation enough to regulate it, they regulate it differently than states; and, they regulate it for different reasons than states.

Interjurisdictional (Non-)Cooperation

It is perhaps a bit surprising that more cities do not coordinate with overlapping state laws when specifying their regulatory requirements. If the purpose of cities occupying this regulatory space is to fill a void left by states, then we would expect to see rules that supplement rather than simply replicate state laws. Instead, we find city ordinances requiring registration are, on their face, indifferent to the existence of similar state laws. In fact, only a single city in this review explicitly exempted local filing requirements for organizations that had already registered with the state (Virginia Beach Chapter 26, Article III). That city's decision to do so is likely because state law expressly preempts this type of ordinance (Virginia Code § 57-63).

Instead of coordinating with state law, a few of the cities in this review provide exemptions for organizations that are federally tax-exempt. For example, federal tax laws have nothing to say about roadway safety, yet some city laws permit federally tax-exempt organizations to solicit near roadways due to their federal tax status alone (e.g., Las Vegas Ord. § 11.62.020). It is unclear, though, why federal tax status is relevant for soliciting donations near roadways. There is also no obvious explanation as to why a city would rely on federal tax-exempt status to exempt charitable organizations from solicitation filing requirements rather than an organization's compliance with state charitable solicitation registration rules.

Because city registration requirements predate state laws (Freemont-Smith, 2004, p.370), one explanation could possibly be that cities simply have not undertaken the effort to consider the role that their laws continue to play in light of similar state requirements. Indeed, local governments were an early innovator in the regulation of charitable solicitation. Although many charitable solicitation ordinances for the cities in this review date back to 1980 or earlier, as shown in Table 3, nearly all of the cities have enacted amendments to their ordinances in recent years. For example, Columbus undertook major revisions to its registration requirements in 2017. These revisions included amending the approval process and clarifying that the requirements applied to electronic forms of solicitation. Despite this revision, the city did not deduplicate or streamline registration requirements that overlapped with state law. It is possible, then, that cities may be willing to update their laws but not rethink the major policy choices that led to developing the regulation in the first place. It is also possible that cities may not be willing to revisit how their laws fit into the broader regulatory environment. The local legislative processes involved warrant further exploration beyond the scope of this article. For present purposes, it suffices to observe that at least some cities maintain and update local registration requirements for charities without considering the duplication of the requirement.

Indifference to Constitutional Rights of Charities

Although a full analysis of the nuanced constitutional limits to charitable solicitation are beyond the scope of this article, some of the cities in this review have laws that directly conflict with court rulings. This finding of constitutional issues is consistent with Hopkins and Kirkpatrick's (2013, p. 74) observation that governments continue to enforce many unconstitutional laws against charities realizing that charities are unlikely to invest the time or money necessary to bring a successful court challenge. Oakland, for example, refuses to allow any organization to solicit donations if it spends more than a set percentage (16% of direct gifts) on the solicitation. The city does so even though the Supreme Court has repeatedly struck down similar provisions (*Riley v. National Federation for the Blind of North Carolina*, 1988). Notably, Oakland also has not amended its solicitation law in nearly forty years.

Other cities allow officials wide discretion to decide what information must be supplied by organizations and whether a permit should be granted (e.g., Memphis and Columbus). These allowances run afoul of decades of Supreme Court cases (*Cox v. Louisiana*, 1965; *City of Lakewood v. Plain Dealer Pub. Co.*, 1988). Finally, city restrictions for soliciting on sidewalks have not survived a court challenge in several years, yet these laws remain on the books in nearly every city. However, some cities have begun to repeal laws regulating charitable solicitation. In 2017, Wichita repealed its law requiring a permit before allowing roadside soliciting.

By maintaining laws that are susceptible to court challenge, it may seem that cities are disinterested in ensuring the constitutional integrity of their laws or taking proactive steps to respect constitutional rights of charities in their cities (Vogelsang-Coombs, 2012). However, in light of the increasing amount of constitutional litigation over solicitation laws at the local level, cities may want to consider whether the benefits of their registration requirements and other regulations are warranted when compared to the potential costs imposed on nonprofits and on city officials. A closer examination of constitutional rules is a fruitful topic for future study.

Conclusion

This article adds to the literature by revealing the existence and extent of local regulation of charitable solicitation. Much of the existing scholarly literature has overlooked the local dimension of regulating charitable solicitation. However, a law overlooked by scholars is still a law and nonprofits are expected to follow it.

Because enforcement of laws regulating the nonprofit sector is notoriously lax at the federal and state levels (Fishman, 2015), the potential oversight exercised by local governments could fill a gap left by these other entities. With overlapping regulation, though, comes new costs for charities. Indeed, compliance with innumerable local regulations (in addition to similar state laws) could pose a significant barrier to nonprofits when attempting to communicate their mission to potential supporters.

For cities, then, this article highlights the need for officials to think carefully about the benefits and costs associated with different forms of charitable solicitation regulation at the local level, particularly when considering regulatory efforts conducted by other levels of government. As cities continue to update and amend their charitable solicitation laws—and as a new wave of constitutional challenges to charitable solicitation laws emerge—my hope is that future research will continue to grow our understanding of the local regulation of charities.

Disclosure Statement

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