

From: Greco, Gino V.
To: [SoS Rulemaking](#)
Subject: American Red Cross of Colorado - Comments - working draft charity rules
Date: Wednesday, June 27, 2018 4:35:08 PM

Wayne W. Williams
Colorado Secretary of State
Department of State
1700 Broadway
Suite 200
Denver, CO 80290

Re: Proposed Rules for the Administration of the Colorado Charitable Solicitations Act

Dear Secretary Williams:

As the CEO of the American Red Cross of Colorado & Wyoming, a chapter of the American National Red Cross (“Red Cross”), I respectfully submit the following comments on the Proposed Rules for the Administration of the Colorado Charitable Solicitations Act. The Red Cross shares the goals of transparency, accountability, and educated consumer decision-making that inform the Colorado Charitable Solicitations Act. In keeping with its commitment to transparency, accountability, and consumer information, the Red Cross seeks to participate in the Colorado online registration system as an exempt entity, as we do in other states. Our comments will focus on the limitations of the current e-filing system administered by the Colorado Secretary of State’s Office, which does not currently have an exempt category that would enable the Red Cross to participate in the state’s charitable registry.

The Red Cross is a federal instrumentality chartered by a Special Act of Congress on January 5, 1905. 36 U.S.C. §§ 300101-300111 (“Charter”). Our mission is to prevent and alleviate human suffering in the face of emergencies by mobilizing the power of volunteers and the generosity of donors. The Red Cross focuses on responding to, on average, more than a disaster a day including single-and-multi-family home fires as well as helping provide support through the generous volunteer spirit of Coloradans in large-scale emergencies. This was most recently exemplified by the several hundred Coloradans who deployed in response to hurricanes Harvey, Maria, and Irma in late 2017. Additionally, the Red Cross has been there for our community in response to natural and man-made disasters in Colorado such as the wildfires of 2012 and 2013, the Aurora Theater shooting and the 2013 Colorado floods. As a leader in preparedness, health and safety training, we provide everyday support, including serving our men and women in uniform on a nearly daily basis and training tens of thousands in lifesaving skills.

Across Colorado and Wyoming from July 1, 2016 to June 30, 2017, we provided 8,572 services to military members, veterans, and their families; helped 933 households recover from disasters, including home fires; enrolled 55,293 people in first aid/CPR/AED classes; installed 6,158 free smoke alarms for the Home Fire Campaign; enrolled 37,197 people in water safety/aquatics training; and completed 1,293 Restoring Family Links activities.

The Red Cross is unique among federal instrumentalities because its crucial activities are financed, in large part, by voluntary public donations. Without these contributions, the work of the Red Cross on behalf of the people of the United States could not be accomplished. In recognition of the need for public donations, Congress included in the Red Cross' Charter the requirements that, each year, a full, complete and itemized report of Red Cross' annual revenues and expenditures be audited by the Department of Defense and a copy of the audited report be submitted to Congress. 36 U.S.C. § 300110. In addition to these federally-mandated requirements, the Red Cross voluntarily publishes its Annual Report—including its duly-audited financial statement, IRS Form 990, and tax return—on its website, www.redcross.org.

Congress so values the work of the Red Cross that it has established criminal penalties to prevent fraudulent solicitation in the name of the Red Cross, 18 U.S.C. § 917, and to prevent the misuse of the Red Cross emblem. 18 U.S.C. § 706. These auditing requirements and criminal penalties for fraud are intended to instill public confidence in the financial integrity of the Red Cross and thus to ensure continued public financial support for the Red Cross' important, statutorily-mandated mission.

The Red Cross, like all other federal instrumentalities, is legally immune from state taxation, fees, and regulations. This immunity is reflected in the following statutes and court decisions: 36 U.S.C. § 300101(a) (recognizing that the Red Cross is a federally-chartered "instrumentality of the United States"); *Dept. of Employment v. U.S.*, 385 U.S. 355 (1966) (holding that the state of Colorado could not collect an unemployment tax from the Red Cross because of its status as a federal instrumentality); *Mayo v. U.S.*, 319 U.S. 441 (1943) (holding that states cannot impose fees on federal instrumentalities).

Forty states and the District of Columbia have charitable registries similar to that administered by your office under the Colorado Charitable Solicitations Act. Of these 41 jurisdictions, only a handful have registries that do not apply to the Red Cross' fundraising activities. Of those that do have requirements which appear on their face to apply to the Red Cross' fundraising, more than 30 have either issued legal opinions recognizing that the Red Cross is not required to register, enacted registration exemptions that apply expressly to the Red Cross, or both.

By way of example, the charitable registration requirements in effect in states such as Mississippi (*Miss. Code Ann. § 79-11-501 et seq.*) and Ohio (*Ohio Rev. Code Ann. § 1716.01 et seq.*) do not explicitly exempt the Red Cross from registering. Despite not being required to register, the Red Cross status is current-exempt in the Mississippi online registration system (Filing Number 100006911), and in Ohio, the online registration system indicates that the Red Cross is exempted from registration as a government entity, and our status is current (EIN 53-0196605). Similarly, right next door in Utah, Utah's system enables the Red Cross and other non-profits to interact with the registry as an exempt charity (License No. 7161895-CHE0). The Red Cross is thus able to cooperate with each of these states while remaining exempt from direct registration and regulation due to our status as an immune federal instrumentality.

Unlike in Mississippi, Ohio, and Utah, however, the e-filing system administered by the Colorado Secretary of State's Office does not currently enable the Red Cross to be correctly identified as an

exempt or immune entity. Instead, the Red Cross is required to register in accordance with the state's registration requirements applicable to non-exempt charitable and non-profit entities. This compels the Red Cross to undertake the very activity from which it is legally immune and from which Colorado should exempt it at the risk of otherwise being categorized by the Secretary of State as "delinquent." The e-filing system has no category that applies to the Red Cross' unique legal status. This dilemma severely impacts the Red Cross by yearly requiring it to comply with burdensome reporting requirements from which it should be immune, and—still worse—by subjecting the Red Cross to the risk of consumers being told it is not in good standing, which jeopardizes its ability to raise much-needed funds to support its activities.

We appreciate the opportunity to provide input, but because the current draft Proposed Rules do not appear to resolve the Red Cross' administrative predicament, we submit these comments to express our opposition to the proposed rules as currently drafted. We urge your office to join the majority of states in addressing the needs of an immune federal instrumentality that for over a century has performed crucial humanitarian services in Colorado, across the United States, and throughout the world. We look forward to working with your office to balance the need for transparency with the distinct needs of our organization and its mission of alleviating suffering in the face of emergencies.

Sincerely,

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