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GRAND LODGE FRATERNAL ORDER OF POLICE

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STATEMENT OF POSITION

ON THE

PROPOSED AMENDMENTS BY THE FTC TO THE TELEMARKETING SALES RULE

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STATEMENT OF POSITION

The Grand Lodge Fraternal Order of Police ("FOP") and its 300,000 members nationwide oppose the establishment of a national "do-not-call" law that will not be universally applied.

Government should not restrict the right of nonprofit organizations to deliver their message and seek public support based upon who compensates the caller.

The proposal will not cover all calls, and as a result will only act to the legal and economic detriment of those actually affected and, at the same time, will continue to allow calls to be made by classes of callers that generate the most complaints.

The FOP further believes the fact that certain callers are regulated, and therefore would be exempted from the national "do-not-call" list creates a series of constitutional issues.

ORGANIZATIONAL STATEMENT

The Grand Lodge Fraternal Order of Police was incorporated on November 15, 1915, and given tax-exempt status under § 501(c)(8) of the Internal Revenue Code. Currently, the organization has 300,000 members in 42 state lodges, and approximately 2,000 local lodges. The membership is composed of any regularly appointed or elected and full-time employed law enforcement officer of the United States, any state or political subdivision thereof, or any agency which may be eligible for membership.

The purpose of the FOP is to promote loyalty and allegiance to the United States, and to promote and foster the enforcement of law and order. The organization also works with its membership to improve proficiency of its members in the performance of their duties, and to encourage fraternal, educational, charitable and social activities among law enforcement officers.

A wide range of programs are sponsored through fundraising activities and membership dues. Included among the FOP's programs are life insurance for members, legal defense fund, legislative advocacy, children's scholarships, professional training programs, and community commitment to a wide range of charitable activities.

FUNDRAISING BACK GROUND

The National FOP and its local memberships depend upon grass roots fundraising to support the organization and enable it to create membership benefits, as well as sponsor community-wide program services. The organization mandates that telemarketing service bureaus hired by it maintain on a voluntary basis a "do-not-call" list, placing the names of those persons who ask on said list.

The use of an outside commercial telemarketing service bureau is a practical and economic necessity. Public policy dictates that it would be inappropriate for public safety personnel themselves to call residents of their community and seek financial support. Indeed, in some jurisdictions it is illegal to do so. Economically, the organization cannot afford to purchase, train and provide oversight on an in-house telemarketing effort; nor does the membership have the equipment or the skill necessary to conduct its own fundraising campaigns.

LEGAL ISSUES

There are a series of legal issues which mitigate against the adoption of the amendments to the Telemarketing Sales Rule as to extend it to calls made on behalf of nonprofit organizations. The purpose of creating a national "do-not-call" list is ostensibly to protect the privacy of individuals from unwanted telephone calls. The proposed amendments to the Rule will not accomplish that goal. The FTC has no jurisdiction over telephone calls made by long distance companies, FDIC regulated banks, nonprofits, and other non-regulated commercial callers. A strong body of law already exists holding that government is not allowed to favor one telephone call over another based upon the content of the message. *See Pearson v. Edgar*, 153 F.3d 397 (7th Cir. 1998).

Because the FTC does not regulate long distance companies and banks, for example, calls from commercial interests will be favored over calls made on behalf of nonprofit. Government is forbidden from favoring commercial speech over constitutionally protected speech. *See Metro Media, Inc. v City of San Diego*, 453 U.S. 490, 512 (1980).

The appeal for public support made by a nonprofit either directly or indirectly through a professional representative is a form of fully protected speech and is entitled to the full plenary protection of the First Amendment to the Constitution of the United States. *See Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988).

The fact that nonprofits using paid employees to make the same calls will not be subject to the "do-not-call" list creates a prohibited prior restraint on the nonprofit organizations that do not have the resources to use employees. *See Riley*);, *supra*.

STATE LAW CONFLICT

As forenoted, approximately twenty states have either passed or are in the process of passing some form of a "do-not-call" law. By the end of 2002 that number is expected to increase to thirty. With few exceptions, most of those laws exempt calls made on behalf of nonprofit organizations. The proposed revisions to the Telemarketing Sales Rule to establish a national "do-not-call" list would create a conflict with the laws of the various states.

UNINTENDED EFFECTS

The way the Telemarketing Sales Rule would now be applied to organizations like the FOP, working with professional representatives in their fully protected activity of seeking public support, would take regular supporters of the organization and place them out of reach. Individuals wishing to minimize or eliminate calls received from such popular annoyances as long distance companies, do so without recognizing the fact that they have placed themselves in a position whereby they cannot be called by organizations with which they have a prior existing relationship.

An added layer of "do-not-call" regulation will also have the unintended effect of raising the cost of fundraising by increasing compliance costs, thereby reducing the net amount of funds available for program services.

SOURCES OF TELEMARKETING COMPLAINTS

Because of the lack of jurisdiction over certain callers, the FTC's proposed national "do-not-call" law would only stop some - not all unwanted calls.

The National Association of Attorneys General, as well as the National Fraud Information Center and other watchdog agencies, publish on a regular basis a list of the top ten consumer complaints. Invariably, those complaints include work at home schemes, prizes and sweepstakes, telephone slamming, telephone cramming, credit card sales calls, home repair and services, and time shares. Never has the list ever included telephone calls made on behalf of nonprofit organizations.

REQUESTED AMENDMENT

The amendments to the Telemarketing Sales Rule proposed by the FTC should be revised so that they do not apply to calls made by or on behalf of nonprofit organizations that are not selling goods or services.

Many of the issues raised by the proposed amendments are the subject matter of a federal declaratory judgment action brought by a number of nonprofit organizations in Indiana. The lawsuit challenges the constitutionality of a state-imposed "do-not-call" law that provides no exceptions for calls to former supporters of nonprofit organizations or calls made on their behalf, but does provide

exceptions for calls by newspapers of general circulation, insurance agencies, debt collectors and politicians seeking financial support for political campaigns. The Telemarketing Sales Rule, which does not currently apply to calls made by or on behalf of nonprofit organizations not selling goods or services, should not be amended to include those calls until the constitutional validity of such action has been determined.