

The HSUS Lobbygate Cover-Up and A Call to Action!

By Frank Losey

Once upon a time - November 22, 1954 to be precise - three individuals prepared articles of incorporation for an organization that was originally called the "National Humane Society." That organization later became known as the Humane Society of the U.S. (HSUS). In their infinite wisdom, those three original incorporators included the following language in their articles of incorporation:..."**no substantial part of the activities of the corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation or to participate in or intervene...in any political campaign on behalf of any candidate for public office.**"

Fast forward fifty years later to the year 2004 when Mr. Wayne Pacelle became the President and CEO of the HSUS. The articles of incorporation of the HSUS were the same as they were in 1954, but the **political focus** of the HSUS had dramatically changed and has continued to evolve into an extraordinarily sophisticated and highly prolific lobbying organization.

Onion Layers

As **everyone** knows, an onion consists of many layers. In this expose of the HSUS 'Lobbygate' cover-up, let us peel back a number of layers of a very deceitful and smelly 'HSUS lobbying onion.'

Under the very first layer one will discover that Mr. Pacelle, who had served as the "Chief Lobbyist" for the HSUS before becoming its President and CEO, had already created the 'Humane USA Political Action Committee' (PAC) - an 'affiliate organization' of the HSUS. Most significantly, this PAC has submitted over 2,300 pages of lobbying related documents to the Federal Election Commission! Such a volume of pages more than suggests that **'substantial'** lobbying activities are being generated from within the corporate structure of the HSUS.

Other illustrative examples of the lobbying activities of the Humane USA PAC may be derived from the fact that it, "*channeled more than \$400,000 to candidates through direct PAC contributions and through fundraising events that we hosted*" (in 2008), and "*gave direct contributions to 115 federal candidates who ran for election in 2008.*" (The details of the political/lobbying activities of the Humane USA PAC have yet to be reported for the most recent elections in 2010. However, the following Humane USA PAC statement is most revealing: "[We] will be involved in hundreds of races at the state and federal level during the primary and general elections.")

Thus, it is fair to say that the HSUS has participated in political campaigns, which are **contrary to the explicit prohibition in its articles of incorporation!** Here it is also noteworthy that Mr. Pacelle continues to serve on the Board of Directors of the Humane USA PAC, and that Mr. Michael Markarian, the HSUS Chief Operating Officer - the number two official of the HSUS - serves as the Chairperson of the Humane USA PAC, and that both Mr. Pacelle and Mr. Markarian participate in the decisions as to which political candidates receive HSUS Political PAC contributions.

To those who might suggest that the activities of the Humane USA PAC do not rise to the level of **"substantial part,"** consider also the fact that when Mr. Pacelle became President and CEO of the HSUS, he immediately 'founded' and orchestrated the creation of the 'Humane Society Legislative Fund' (HSLF), another 'affiliated organization' of the HSUS which has become the primary lobbying arm of the HSUS. Most significantly, Mr. Pacelle serves as its Vice President, and Mr. Markarian serves as its President. Tax returns filed by this organization reveal that Mr. Pacelle and Mr. Markarian each devote 10 hours a week to this organization - presumably 25% of a standard workweek for both of them, which by any measure would be considered a **'significant part'** of their activities! Furthermore, the HSLF publishes a "Scorecard," which tracks how all 535 members of Congress voted with respect to the HSUS' legislative agenda, and each year it hosts a Congressional reception to honor those members of

Congress who have been most supportive of their agenda. And oh by the way, the HSLF also contributed \$50,000 to the 2010 **YES! on Prop B** ballot initiative campaign in Missouri.

As the second layer of the 'HSUS lobbying onion' is peeled back, one will discover that Mr. Pacelle orchestrated the merger of the 'Fund for Animals' into the HSUS in 2004, and that he serves as its Executive Vice President. Additionally, Mr. Markarian serves as its President. Still further, this 'affiliated organization' has been used to 'launder' contributions to political campaigns, such as the \$110,000 that IT contributed to the **Yes! on Prop B** campaign in Missouri.

Under the third layer of the 'HSUS lobbying onion' one will discover that Mr. Pacelle orchestrated the merger of the 'Doris Day Animal League' (DDAL) into the HSUS in 2006 - yet another 'affiliated organization' of the HSUS. The DDAL is recognized by the IRS as a lobbying organization under the provisions of the U.S. Tax Code, and it 'launders' money as well, such as giving nearly \$600,000 to the Humane Society Legislative Fund in 2008, and \$80,000 to the **YES! on Prop B** campaign in Missouri. And more than coincidentally, Mr. Pacelle serves as its Executive Vice President.

Beneath the fourth layer of the 'HSUS lobbying onion' one will discover that the '**Humane Society of Missouri**' (HSMO) became so involved as a 'surrogate' organization for the HSUS for the purpose of lobbying in support of the **YES! on Prop B** initiative that it is now in jeopardy of losing its tax-exempt, public charity status. In this regard, the IRS has assigned a Tax Fraud Case File Number for its investigation of the Humane Society of Missouri (Case File No. 2010-003995). Significantly, the IRS has yet to consider the fact that the HSMO contributed nearly \$197,000 - according to documents filed with the Missouri Ethics Committee - to the **YES! on Prop B** Campaign. This fact leaves one to wonder whether that nearly \$197,000 would have been better spent in support of animal shelters in Missouri. And, under this same onion layer, one will discover that the HSUS contributed over \$4.1 million dollars - according to documents filed with the Missouri Ethics Commission - to the **YES! on Prop B** Campaign. Again, one is left to wonder why the HSUS would spend over \$4.1 million dollars on a lobbying effort in Missouri, but **apparently not a single penny in direct support of any animal shelter in the State of Missouri.**

Under the fifth layer of the 'HSUS lobbying onion' one will discover that the BIO of Ms. Nancy Perry, the HSUS Vice President for Government Affairs, reveals that ***"She oversees lobbying efforts in state legislatures, including ballot measure campaigns, and Congress and directs grassroots activities nationwide. She also lobbies directly for federal animal protection legislation; and that the HSUS has lobbied in all 50 states for animal protection legislation and secured felony cruelty provisions in 41 states (including Washington, D.C.)."*** This conclusively establishes that Ms. Perry also devotes a '**substantial part**' of her activities to lobbying!

While on the topic of BIO's, Mr. Pacelle's BIO contains the statement that he ***"helped to defeat some of the strong anti-animal welfare politicians in the United States, including Rep Richard Pombo of California (2006) and Rep. Chris John of Louisiana (2004)."*** Not only was such action contrary to the prohibitions contained in the original articles of incorporation for the HSUS, but it was contrary to an explicit IRS prohibition that reads as follows: ***"Under the Internal Revenue Code, all section 501 (c) (3) organizations...are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for political office....Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes."***

Beneath the sixth layer of our 'HSUS lobbying onion' one will discover that the HSUS repeatedly boasts that it is responsible for the passage of more than 550 - that's 550! - Federal and State statutes and ballot initiatives. This too reinforces the fact that a '**substantial part**' of the activities of the HSUS are lobby-related.

Under the seventh layer of the 'HSUS lobbying onion' one will discover that up until the filing of its 2009 Tax Return, the HSUS repeatedly included on its Returns detailed comments as to its lobbying

activities for the year. Comments included: ***“With staff of our Government Affairs Section in Washington DC, Regional Staff in our Field Services Section across the country, and a network of volunteers, we are active in ALL 50 State Capitols across the country.... Also at the State level, the HSUS is active in citizen-initiated ballot measures.... HSUS training is offered to citizens...who wish to participate in the legislative process.... In 2008, the HSUS organized and taught ‘Lobbying 101’ workshops in more than 40 States.... We also communicate with online advocates and provide information and training remotely.... The HSUS sent electronic updates to nationwide volunteers, members, and other interested parties. In addition, the HSUS assisted in sending constituent E-mails and Faxes to lawmakers through a functionality on the Society’s website.... Lobbying on these issues included direct contact with legislators and their staff.”*** Perhaps the most compelling evidence of a ‘cover-up’ of the magnitude of the lobbying activities of the HSUS may be derived from the fact that when the HSUS filed its 2009 Tax Return, all such references as quoted above were omitted, even though they had appeared in prior year Tax Returns. **Why the ‘omissions,’ if not for the purpose of a COVER-UP?!**

And yet there is more that may be found under the next few layers of the ‘HSUS lobbying onion.’ For example, the HSUS has sent hundreds of millions of lobby-related E-Mails each year to its millions of members, volunteers and lawmakers. If one does the math, the total number of lobby-related E-Mails for the last 4-5 years could very well exceed over a billion! If over a billion E-Mails were stacked on top of one another, the stack would be over 69 miles high! That 69 mile high stack would also reinforce the fact that a **‘substantial part’** of the lobbying activities of the HSUS was lobby related.

Under yet another layer of the ‘HSUS lobbying onion.’ one will also discover that tens of thousand of HSUS volunteers have lobbied on behalf of the HSUS Legislative Agenda. And according to IRS Regulations, the lobbying time expended by ‘volunteers’ must be attributed to the public charity in order to determine if it has engaged in **TOO MUCH LOBBYING**, and has exceeded the **“substantial part”** threshold of the IRS.

So when the cumulative effects of the above described lobbying activities of the HSUS are added to over 100 other examples of HSUS lobbying activities that are included in over 1,400 pages of incriminating documents that have been provided to the IRS, it becomes an inescapable fact that the HSUS devotes at least 40% or more of its monetary expenditures and the time of its paid staff, members, and volunteers to direct or indirect lobbying activities. **That is twice the amount of allowable lobbying activities for a tax-exempt, public charity!** Consequently, one is left to wonder why the IRS has tolerated such lobbying abuses by the HSUS, especially in light of the fact that its own Regulations provide that ***“No organization may qualify for 501 (c) (3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying.... The IRS considers a variety of factors, including the time devoted by both compensated and volunteer workers and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.... Under the substantial part test, an organization that conducts excessive lobbying in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax.”***

As if the above evidence of excessive lobbying is not enough to call into question the need for the IRS to crack down on the HSUS in order to maintain the integrity of the IRS Compliance Program for tax-exempt, public charities, there is another **‘bombshell’** of monumental proportions - **the omission of significant revenue on its Tax Returns.** In this regard, it is shocking and incredulous that, even though the HSUS claims to have over 11 million Members, and its Annual Dues are \$10 per year, the HSUS claimed on its Tax Returns for the last five years (2005-2009) that it received ZERO - that’s right ZERO - revenue from Membership Dues. **What happened to the potentially missing \$500 plus million dollars!?**

Call for Expedious IRS Action

So **WHY** hasn't the IRS done something about the fact that the HSUS may be a **TAX CHEAT**, and **WHY** has the IRS permitted the HSUS to engage in excessive, prohibited, under-reported and non-reported lobbying activities?

Well, the IRS has assigned a **Tax Fraud Case Number (29-92012)** to its **"on-going"** investigation of the **HSUS**. However, its **"on-going"** investigation has been on-going for over two years, and there does not appear to be any sense of urgency to hold the HSUS to a strict and timely standard of accountability. That is why the issue has been elevated to the Department of the Treasury's Office of the Inspector General for Tax Administration, which has also assigned a **Case File Number (55-1005-0025-C)**. This office has oversight over the IRS, and if this office were to receive thousands of E-Mails from concerned citizens who believe that the HSUS should be held to a strict standard of accountability, that may create the compelling 'critical mass' of pressure that will result in the IRS being directed to expedite the completion of its **"on-going"** investigation of the excessive lobbying activities of the HSUS, as well as for the IRS to be directed to ask the HSUS to account for its failure to report any revenue from Membership dues - up to \$500 Million!

If anyone wishes to help create the critical mass of pressure on the IRS to expedite its investigation of the HSUS by sending an E-Mail to the Treasury's Office of the Inspector General for Tax Administration, the following is suggested for your consideration:

1. Address your E-Mail to: Complaints@tigta.treas.gov.
2. Use for the Subject line of your E-Mail: **OIG Case File Number 55-1005-0025-C**.
3. For the text of your message, you may wish to use language such as: "Now that the IRS has received over 1,400 pages that document the excessive lobbying activities of the HSUS, which may amount to an HSUS LOBBYGATE COVER-UP; and that the HSUS may have under-reported its revenue from Membership Dues on its 2005-2009 Tax Returns by as much as \$500 million dollars or more, would you please urge the IRS to complete its investigation of the HSUS in an expeditious manner in order to ensure that the integrity of the IRS Compliance Program for tax-exempt, public charities is maintained." (Note: You do not need to include your name or address if you do not wish to do so.)

If you do send an E-Mail to the OIG Hotline, please blind copy me on the bcc line of the E-Mail so that I may keep track of how many E-Mails are sent to the OIG. Use f.losey@insightbb.com for my bcc E-Mail address.

And, if anyone prefers to call the OIG HOTLINE, the number is 1-800-366-4484. The FAX Number is 202-927-7018; and the Mailing Address is Treasury Inspector General for Tax Administration, HOTLINE, P.O. Box 589, Ben Franklin Station, Washington DC 20044-0589.

End note..."The Shadow knows what evil lurks" in the heart of the HSUS, and he too will be whispering in the ear of the IRS!

Franklin W. Losey is an attorney licensed to practice law in the States of Ohio and Kentucky and also licensed to appear before the U.S. Supreme Court who has submitted written legal briefs that have been considered by the U.S. Supreme Court. He has served as a United States Air Force Judge Advocate; was assigned to the Pentagon as the Director of Civil Law, where he supervised over 100 military and civilian attorneys; provided legal guidance to the Air Force Chief of Staff and other General Officers assigned to the Pentagon. Since 1990 Mr. Losey has interfaced with Presidents of multi-billion dollar corporations, Members of Congress and their key staff, and senior members of the Executive Branch of our Government. During this period he successfully orchestrated actual statutory changes to Title 10 (Armed Forces), Title 18 (Crimes and Criminal Procedure - Animal Enterprise Terrorism Act), Title 26 (Internal Revenue Code), and Title 41 (Public Contracts) of the U.S. Code. He was also successful in effecting changes to regulations promulgated by the Department of Defense, U.S. Coast Guard, Department of Agriculture, OSHA, EPA and the International Maritime Organization and has spoken on behalf of the U.S. Government at an Organization of Economic Cooperation and Development (OECD). Mr. Losey's passion for representing responsible dog breeders is based on his commitment to repay Chaucer, his beloved Yorkie, who he treasured for over 18 years who came from a breeder in Missouri. Mr. Losey may be contacted via email at f.losey@insightbb.com.