



The Postal Service's Financial Crisis: What It Means for Nonprofit Mailers

November 1st, 2012
1:00 p.m. – 2:00 p.m. EST

Venable LLP
575 7th Street, NW
Washington, DC 20004

Moderator:

Jeffrey S. Tenenbaum, Esq.

Panelists:

Jeffrey Post, Staff Director, House Subcommittee on Federal Workforce, U.S. Postal Service, and Labor Policy

Ann Fisher, Director of Public Affairs and Government Relations, Postal Regulatory Commission

Anthony W. Conway, Executive Director, Alliance of Nonprofit Mailers

David M. Levy, Esq., Partner, Venable LLP



Presentation

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The Postal Service's Financial Crisis: What It Means for Nonprofit Mailers

Friday, November 16, 2012
1:00 p.m. – 2:30 p.m. EST

Venable LLP
Nonprofit Organizations Practice
Washington, DC



VENABLE[®] LLP



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Regulatory Commission
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U.S. Postal Service, and Labor Policy



Upcoming Venable Nonprofit Legal Events

December 11, 2012 – [Exchanges under Health Care Reform and “Private” Exchanges: What Does My Nonprofit Need to Know?](#)

January 8, 2013 – [Exempt or Non-Exempt? The Ten Most Common Employee Classification Pitfalls Faced by Nonprofits](#)

March 12, 2013 - Preparing an Online Social Media Policy: The Top Ten Legal Considerations for Your Nonprofit (details coming soon)



The Postal Service's Financial Crisis: What It Means for Nonprofit Mailers

Anthony Conway
Executive Director, Alliance of Nonprofit Mailers
November 16, 2012



Anthony Conway
Executive Director
Alliance of Nonprofit Mailers
202-462-5132
tony@nonprofitmailers.org
www.nonprofitmailers.org

Postal Service Financial Crisis

- * Postal Service lost \$16 billion in Fiscal Year 2012
 - * \$5.1 billion in 2011
 - * \$8.5 billion in 2010
 - * and \$3.8 billion in 2009
- * Postal Service reached \$15 billion borrowing limit in Fiscal Year 2012



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Executive Director
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www.nonprofitmailers.org

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Postal Service Financial Crisis

- * Total Mail Volume peaked at **213 billion** pieces in 2006
- * Total Mail Volume declined every year since 2006
- * 2012 Total Mail Volume **160 billion** pieces



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Executive Director
Alliance of Nonprofit Mailers
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www.nonprofitmailers.org

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Postal Service Revenue Decline Outpacing Cost Reductions

- * 80% of Postal Service Costs labor related
- * Costs have increased despite revenue declines



Anthony Conway
Executive Director
Alliance of Nonprofit Mailers
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www.nonprofitmailers.org

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Postal Service Revenue Decline Outpacing Cost Reductions

- * 461 Mail Processing Facilities in 2011—223 excess capacity (GAO)
- * 154,325 employees in Mail Processing Facilities—35,000 excess employees (GAO)
- * 8,000 pieces mail processing equipment—3,000 pieces excess (GAO)
- * 31,509 Post Offices Nationally (USPS)
- * 53 Post Offices on Cape Cod



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www.nonprofitmailers.org

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Postal Service Plan to Address Crisis

- * Eliminate Saturday mail delivery
- * Close and consolidate excess mail processing facilities
- * Expand retail access at non-traditional locations
- * Modify current inflation-based price cap
- * Expand products and services



Anthony Conway
Executive Director
Alliance of Nonprofit Mailers
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www.nonprofitmailers.org

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Postal Service Plan to Address Crisis

- * Reduce retiree health benefit prefunding requirement
- * Return retirement system overpayment
- * Provide incentives to increase employee retirement



Anthony Conway
Executive Director
Alliance of Nonprofit Mailers
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Effectiveness of USPS Restructuring Efforts

- Controlling future costs
- Managing legacy costs
- Revenue enhancement



Controlling Future Costs

- Saturday mail delivery
- Mail processing facilities
- Retail post offices
- Employee head count
- Pay comparability



Managing Legacy Costs

- Retiree health benefit prefunding
- Retirement system overpayment



Effectiveness of USPS Revenue Enhancement Efforts

- New products and services
- Loosening CPI-based price cap



Risks of USPS Insolvency to Nonprofit Mailers

- Risks shared with all mailers
- Risks specific to nonprofit mail



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U.S. Postal Service, and Labor Policy



Questions

Jeffrey S. Tenenbaum, Esq.
jstenenbaum@Venable.com
t 202.344.8138

Anthony Conway
tony@nonprofitmailers.org
t 202.462.5132

David M. Levy, Esq.
dlevy@Venable.com
t 202.344.4732

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Speaker Biographies



Jeffrey S. Tenenbaum

Partner

Washington, DC Office

T 202.344.8138 F 202.344.8300

jstenenbaum@Venable.com

AREAS OF PRACTICE

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 Financial Services
 Consumer Financial Protection Bureau Task Force

GOVERNMENT EXPERIENCE

Legislative Assistant, United States House of Representatives

BAR ADMISSIONS

District of Columbia

Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is an accomplished author, lecturer, and commentator on nonprofit legal matters. Based in the firm's Washington, DC office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting charities, foundations, trade and professional associations, think tanks, credit and housing counseling agencies, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, and was the inaugural (2004) recipient of the *Washington Business Journal's* Top Washington Lawyers Award. He was one of only seven "Leading Lawyers" in the Not-for-Profit category in the 2012 *Legal 500* rankings, and was the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. Mr. Tenenbaum was listed in *The Best Lawyers in America 2012* and *2013* for Non-Profit/Charities Law, and was named as one of Washington, DC's "Legal Elite" in 2011 by *SmartCEO Magazine*. He was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. Mr. Tenenbaum started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill as a legislative assistant.

REPRESENTATIVE CLIENTS

AARP
 American Academy of Physician Assistants
 American Alliance of Museums
 American Association for the Advancement of Science
 American Association for Marriage and Family Therapy
 American College of Radiology
 American Institute of Architects
 Air Conditioning Contractors of America
 American Society for Microbiology
 American Society for Training and Development
 American Society of Anesthesiologists
 American Society of Association Executives
 American Society of Civil Engineers
 American Society of Clinical Oncology
 American Staffing Association
 Associated General Contractors of America
 Association for Healthcare Philanthropy
 Association of Corporate Counsel

EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

B.A., Political Science, University of Pennsylvania, 1990

MEMBERSHIPS

American Society of Association Executives

California Society of Association Executives

New York Society of Association Executives

Association of Private Sector Colleges and Universities
Automotive Aftermarket Industry Association
Brookings Institution
The College Board
Council on Foundations
Cruise Lines International Association
Foundation for the Malcolm Baldrige National Quality Award
Goodwill Industries International
Homeownership Preservation Foundation
Independent Insurance Agents and Brokers of America
Institute of International Education
Jazz at Lincoln Center
The Joint Commission
LeadingAge
Lincoln Center for the Performing Arts
Lions Club International
Money Management International
National Association of Chain Drug Stores
National Athletic Trainers' Association
National Coalition for Cancer Survivorship
National Defense Industrial Association
National Fallen Firefighters Foundation
National Hot Rod Association
National Propane Gas Association
National Quality Forum
National Retail Federation
National Student Clearinghouse
National Telecommunications Cooperative Association
The Nature Conservancy
NeighborWorks America
Peterson Institute for International Economics Professional Liability Underwriting Society
Project Management Institute
Public Health Accreditation Board
Public Relations Society of America
Recording Industry Association of America
Romance Writers of America
Texas Association of School Boards
Trust for Architectural Easements
United Nations High Commissioner for Refugees Volunteers of America

HONORS

Recognized as "Leading Lawyer" in the 2012 edition of *Legal 500*, Not-For-Profit

Listed in *The Best Lawyers in America 2012* and *2013* for Non-Profit/Charities Law, Washington, DC (Woodward/White, Inc.)

Washington DC's Legal Elite, *SmartCEO Magazine*, 2011

Fellow, Bar Association of the District of Columbia, 2008-09

Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006

Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004

Recipient, The Center for Association Leadership Chairman's Award, 2004

Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997

Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95

AV® Peer-Review Rated by *Martindale-Hubbell*

Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, published by the American Society of Association Executives, and is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. He also is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. In addition, he is a frequent author for ASAE and many of the other principal nonprofit industry organizations and publications, having written more than 400 articles on nonprofit legal topics.

SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer for ASAE and many of the major nonprofit industry organizations, conducting over 40 speaking presentations each year, including many with top Internal Revenue Service, Federal Trade Commission, U.S. Department of Justice, Federal Communications Commission, and other federal and government officials. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *The New York Times*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine*, *The Chronicle of Philanthropy*, *The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal issues on Voice of America Business Radio and Nonprofit Spark Radio.



David M. Levy

Partner

Washington, DC Office

T 202.344.4732 F 202.344.8300

dml Levy@Venable.com

AREAS OF PRACTICE

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U.S. Court of Appeals for the Third Circuit
 U.S. Court of Appeals for the Fourth Circuit
 U.S. Court of Appeals for the Sixth Circuit
 U.S. Court of Appeals for the Ninth Circuit
 U.S. Court of Appeals for the Tenth Circuit

David Levy is a postal regulatory and appellate lawyer in Venable's Washington office. He works with mailers – from Fortune 100 companies to small nonprofit organizations – to help them minimize their cost of postage and mailing and navigate the complex postal rate and eligibility rules.

Over the past 25 years, Mr. Levy has represented many of the nation's largest mailers and their trade associations, including the Alliance of Nonprofit Mailers, the Magazine Publishers of America, and the Association for Postal Commerce. He has served as first-chair counsel for one or more association of mailers in every major postal rate case before the Postal Regulatory Commission since 1983. In 2010, he was lead counsel to an industry coalition of nonprofit and business mailers and trade associations that successfully opposed an above-inflation “exigent” rate increase proposed by the USPS.

Mr. Levy also has represented individual mailers, both nonprofit and for-profit, in USPS revenue deficiency proceedings and appeals and False Claims Act investigations involving rates, classifications, mailability, and organizational eligibility. These clients have included nonprofit organizations, credit card issuers, magazine publishers and catalog mailers.

He negotiated and won regulatory approval for three of the five largest rate contracts struck by the Postal Service with individual mailers.

He has testified before Congress and drafted amendments to the postal laws that preserved nonprofit rates.

He has been counsel of record in 26 reported cases in the federal courts, including seven cases that he argued in the U.S. Courts of Appeals.

Mr. Levy also has substantial experience in telecom, railroad and petroleum pipeline regulation.

HONORS

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PUBLICATIONS

- November 13, 2012, Nonprofit Postal Rates: How to Get Them, How to Use Them
- 2011, “The United States Postal Service Business Model: Lessons from the American Railroad Industry,” in M.A. Crew and P.R. Kleindorfer, eds., *Reinventing the Postal Sector in an Electronic Age*
- July 2010, Neither Rain, Nor Sleet, Nor Gloom of Night Justify Irrational Solutions for Fixing USPS, *Marketing AdVents*
- May 23, 2010, “Closing Some Post Offices Makes Sense,” *Federal Times*

U.S. Court of Appeals for the D.C. Circuit

U.S. Supreme Court

EDUCATION

J.D., *cum laude*, University of Michigan Law School, 1979

B.A., Cornell University, 1975

MEMBERSHIPS

American Bar Association, Section of Administrative Law and Regulatory Practice, Postal Matters Committee: Chair, 1992-1995; Vice-Chair, 1991-1992

- May 8, 2009, U.S. Postal Service Launches National Enforcement Initiative Against Business Mailers, Client Alerts
- 2006, "Benefit-Cost Regulation of Negotiated Service Agreements," in M.A. Crew and P.R. Kleindorfer, eds., *Progress Toward Liberalization of the Postal and Delivery Sector*, Springer
- 2004, "Selective Discounts to Preserve First-Class Mail Volume" in M.A. Crew and P.R. Kleindorfer, eds., *Regulatory and Economic Challenges in the Postal and Delivery Sector*, Kluwer
- 2000, *Scientific Evidence After Daubert*, American Bar Association, The Litigation Manual (3rd ed.)
- Fall 1995, *Scientific Evidence After Daubert*, 22 Litigation 48
- December 1993, *Living With The Third-Class Eligibility Rules*, The NonProfit Times 16
- 1981, *Recent Developments in Railroad Rate Regulation*, 1981 Eastern Transportation Law Seminar 49-61

SPEAKING ENGAGEMENTS

Presenter or discussant, Rutgers University Center for Research in Regulated Industries, Conference on Postal and Delivery Economics: 2003, 2004, 2005, 2006, 2007 and 2008.

Speaker at public educational conferences sponsored by Alliance of Nonprofit Mailers, American Bar Association Section of Taxation, Association for Continuing Legal Education ("ACLEA"), and the National Postal Forum.

- November 16, 2012, The Postal Service's Financial Crisis: What It Means for Nonprofit Mailers
- November 13, 2012, Legal Quick Hit: "Nonprofit Postal Rates: How to Get Them, How to Use Them" for the Association of Corporate Counsel's Nonprofit Organizations Committee