Order Code RL30340

CRS Report for Congress

Congressionally Chartered Nonprofit Organizations ("Title 36 Corporations"): What They Are and How Congress Treats Them

Updated April 8, 2004

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Prepared for Members and Committees of Congress

Congressionally Chartered Nonprofit Organizations ("Title 36 Corporations"): What They Are and How Congress Treats Them

Summary

The chartering by Congress of organizations with a patriotic, charitable, historical, or educational purpose is essentially a 20th century practice. There are currently some 91 nonprofit corporations listed in Title 36, Subtitle II, of the U.S. Code. These so-called "Title 36 corporations," such as the Girl Scouts of America and the National Academy of Public Administration, are typically incorporated first under state law, later requesting that Congress grant them a charter.

Chartered corporations listed in Title 36 are not agencies of the United States, and the charter does not assign the corporate bodies any governmental attributes. For instance, the corporation's debt is not guaranteed, explicitly or implicitly, by the full faith and credit of the United States. The attraction of Title 36 status for national organizations is that it tends to provide an "official" imprimatur to their activities, and to that extent it may provide them prestige and indirect financial benefit.

In recent years, some in Congress have expressed concern that the public may be misled by its chartering process into believing that somehow the U.S. government approves and supervises the corporations, when in fact this is not the case. As a consequence, in 1989 the House Judiciary Committee decided upon a moratorium on granting new charters. (The Senate generally defers to the House on chartering matters.) This moratorium has been reaffirmed by the Committee at the beginning of each Congress since. On several recent occasions, however, the full Congress has established Title 36 corporations on its own plenary authority.

In 1998, Congress approved, and the President signed, legislation recodifing Title 36 of the Code (P.L. 105-225). This revision did not substantively alter any of the provisions in Title 36; rather, the objective was to reorder and revise where necessary the wording of the provisions to better ensure consistency and readability.

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Current Context

This report discusses a category of congressionally chartered nonprofit organizations that have as their purpose the promotion of patriotic, charitable, educational, and other eleemosynary activities. Title 36 of the United States Code, where such corporate organizations are listed with their charters, was recodified by law in 1998 (P.L. 105-225).[1]

Although some 100 organizations are currently listed in Title 36 of the Code, nine of the organizations fall into two new categories in the title, thus leaving 91 organizations under Subtitle II, "Patriotic and National Organizations." It is this latter category of organization that receives the major part of our attention here. These chartered organizations have been collectively referred to under any of three terms: "Congressionally chartered organizations;" "Title 36 corporations;" and "patriotic societies." In this report, the term "Title 36 corporation" will be used, although it should be noted that even within this category of organizations, there are variations.

The United States Constitution, although not providing express power to Congress to charter corporations, is generally cited as the authority, under Article I,

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[1] H.R. 1085, introduced March 17, 1997, by the chairman of the House Judiciary Committee, Henry Hyde, had as its official title: "A bill to revise, codify, and enact without substantive change certain general and permanent laws, related to patriotic and national observance, ceremonies and organizations as Title 36, United States Code, 'Patriotic and National Observances, Ceremonies and Organizations.'" The House Judiciary Committee reported the bill on October 21, 1997 (H.Rept. 105-226). The House passed H.R. 1085 by a voice vote on February 3, 1998 (*Congressional Record*, daily edition, vol. 144, Feb. 3, 1998, H114). The Senate followed by a voice vote of approval, and the bill was sent to the President, who signed it on August 18, 1998 as Public Law 105-225.

The Office of Law Revision Counsel of the House of Representatives is under statutory mandate (2 U.S.C. 285b) to prepare, one title at a time, a restatement and revision of the general and permanent laws of the United States for enactment into positive law. The respective bills make certain changes in language. Some changes result form consolidating related provisions of law. Others are made to achieve uniformity within a title and to conform to contemporary usage. Although H.R. 1085 made changes in language, no substantive changes are made within the law.

Section 8, clause 18, by which Congress can pass all laws "necessary and proper" to implement the assigned expressed powers.[2] Congress has authority to establish organizations within both the governmental and private sectors. In the governmental sector, the authority and responsibility to establish all agencies and all offices to be filled by appointed officers of the United States is clear. The actions of all agencies and officers of the United States are determined by public law.

Congress also has authority to establish new for-profit and nonprofit organizations in the private sector. Congress, for instance, established the fully private, stockholder-owned Communications Satellite Corporation (ComSat) in 1962 (47 U.S.C. 701). Congressional authority with respect to organizations functioning essentially under state law, however, has not been free of controversy. The basis of the controversy often comes down to fundamental issues of managerial accountability, fiduciary responsibility, and rights that inhere to governmental organizations, but not to private organizations, such as the right to the full faith and credit of the United States treasury.[3]

The so-called Title 36 corporations, which this report specifically examines, constitute one of the categories of corporate organizations chartered by Congress. It should be noted at the outset, however, that since 1994 the House Judiciary Committee has placed a moratorium on the chartering of additional nonprofit corporate organizations, a position agreed to by the Senate Judiciary Committee. On four occasions since that time, however, the House and Senate have acted on their own plenary authority to charter such corporations. Additionally, in 1997, the Judiciary Committees, citing unusual and justifiable circumstances, chartered two veterans' organizations and then reasserted the moratorium.

Historical Context

There is no general law of incorporation at the federal level as there is in the states and the District of Columbia. If Congress wishes to establish or charter a corporation, it does so by enacting a law, and it is this specific legislation that provides for the mission, authorities, and restrictions that will apply to the chartered corporation.

The general practice has been for each state and the District of Columbia to exercise jurisdictional authority over the incorporation of for profit and nonprofit organizations within their boundaries. This exercise of authority by states devolved

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[2] U.S., *The Constitution of the United States of America: Analysis and Interpretation* (Washington: GPO, 1992), pp. 165-66.

[3] See discussion of the earlier status of the defunct Federal Asset Disposition Association (FADA) established by the Federal Home Loan Bank Board in 1985 under the incorporation act of the state of Colorado in: U.S. General Accounting Office, *Failed Thrifts: No Compelling Evidence of a Need for the Federal Asset Disposition Association,* FFO/FFD-89-26 (Washington: GAO, 1989). U.S. Congress, Senate, Committee on Governmental Affairs, *Managing the Public's Business: Federal Government Corporations,* by Ronald C. Moe, Comm. Print 104-18, 104th Cong.,, 1st sess. (Washington: GPO, 1995), pp. 22-26.

from the concept that states had authority at common law to create artificial bodies for the purpose of engaging in various enterprises and carrying on certain activities. Historically, state legislatures chartered each organization seeking corporate status on a situation-specific basis, in much the same way as the federal government does today. As time passed, states moved to provide for the creation of corporations pursuant to statutory procedures.

Today, states have general incorporation laws, and often separate laws for profit and nonprofit entities, which stipulate procedures, information, and standards to be met for the issuance of a charter ("articles of incorporation"). A fee is typically associated with the process.

Corporations operating in the District of Columbia are subject to the constitutional delegation of authority over the District of Columbia as provided in Article I, Section 8 of the United States Constitution. It was the practice of Congress in the early years of the republic to grant franchises to District of Columbia corporations on a case-by-case basis. For example, Congress incorporated the Trustees of the Presbyterian Congregation in Georgetown in 1806 (2 Stat. 356). In 1901, Congress enacted a general statutory procedure allowing incorporation in the District of Columbia by means of filing information rather than by special action of Congress. This procedure, analogous to that now used by the states, is found in Title 29 of the District of Columbia Code.

Given that Congress has never passed a general body of law applicable to the operation and powers of the for-profit and nonprofit corporations it charters, it is necessary for Congress to include such provisions in each act granting a charter. There is considerable similarity between powers granted to federal corporations and those granted by states to their corporations. Among the powers typically provided are:

(1) to sue and be sued;
(2) to contract and be contracted with;
(3) to acquire, hold and convey property;
(4) to enact by-laws;
(5) to have a seal;
(6) to appoint officers; and
(7) to borrow money for the purposes of the corporation.

There are also differences between a federal charter and a typical state charters. One feature peculiar to federal charters is that, in most instances, statutes granting federal charters require the submission of periodic financial statements to Congress on certain activities of the corporation. On the other hand, states often permit actions that are not permitted federally chartered corporations. For instance, under the District of Columbia Nonprofit Act, a corporation is permitted "to lend money to and otherwise assist its employees other than its officers and directors." (*D.C. Code, 29-505(6)).*

Title 36 corporations can, and generally do, function simultaneously under both federal and state charters. Indeed, in most instances, organizations were chartered and functioned under state law before, often long before, receiving federal charters.

Patriotic and National Organizations: Subtitle II

The chartering by Congress of organizations with a patriotic, charitable, historical, educational, or other eleemosynary purpose is essentially a 20th century practice. Title 36 of the U.S. Code, where such corporate organizations are listed with their charters, was revised in 1998 (P.L. 105-225), and in the process three subtitles of nonprofit corporate organizations were listed:

(Subtitle I) *Patriotic and National Observances and Ceremonies.*

Under Part A, *Observances and Ceremonies,* one entry is to be found: (1) Wright Brothers Day: The Centennial of Flight Commission (P.L. 105-889);[4] (2) Abraham Lincoln Bicentennial Commission Act (P.L. 106-173); (3) James Madison Commemoration Commission Act (P.L. 106-550); and (4) Brown v. Board of Education 50th Anniversary Commission (P.L. 107-41).

Under Part B, *United States Government Organizations Involved with Observances and Ceremonies,* four entries are included: (1) American Battlefield Monuments Commission; (2) U.S. Holocaust Memorial Council; (3) President's Commission on Employment of People With Disabilities; and (4) White House Millenium Council.

(Subtitle II) *Patriotic and National Organizations.* The vast majority, that is 91 of the corporate entries, are included under Subtitle II: (1) Agricultural Hall of Fame ... (16) Big Brothers — Big Sisters of America ... and (90) Women's Army Corps Veterans' Association. It is this Subtitle that will receive most of our attention.

(Subtitle III) *Treaty Obligation Organizations.* This is an organizational category with one entry, the American Red Cross. The American Red Cross, formally established (chartered) in 1905, has long been unusual among

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[4] In 1998, Congress assigned an agency of the United States, the Centennial of Flight Commission, to Title 36. The Commission is not included among the Subtitle II, *Patriotic and National Organizations*, rather, it is attached to an entry in Subtitle I, Part A, §143, Wright Brothers Day. Among the provisions of the Act establishing the Commission are: Sec. 7(a) *Executive Director* — There shall be an Executive Director appointed by the Commission and chosen among detailees from the agencies and organizations represented on the Commission. The Executive Director may be paid at a rate not to exceed the maximum rate of basic pay payable to the Senior Executive Service; Sec. 8(c) *Remaining Funds* — Any funds (including funds received from licensing royalties) remaining with the Commission on the date of the termination of the Commission may be sued to ensure proper disposition, as specified in the final report required under Section 10(b), of historically significant property which was donated to or acquired by the Commission. Any funds remaining after such disposition shall be transferred to the Secretary of the Treasury for deposit in the general fund of the Treasury of the United States. The Commission is to cease its existence before the close of 20004.

organizations included in Title 36 because the federal government has charged it with fulfilling U.S. treaty obligations under the Geneva Conventions.[5]

The attraction of Title 36 status for national organizations is that it tends to provide an "official" imprimatur to their activities and, to that extent, it may provide them prestige and indirect financial benefit.

Congress, in chartering patriotic, charitable, professional and educational organizations under Subtitle II, such as the National Academy of Public Administration (36 U.S.C. 1501), does not make these organizations "agencies of the United States" or confer any powers of a governmental character or assign any benefits.[6] These organization generally do not receive direct appropriations, they exercise no federal powers, their debts are not covered by the full faith and credit of the United States, and they do not enjoy original jurisdiction in the federal courts.

In effect, the federal chartering process is honorific in character. This honorific character may be misleading to the public, however, when such organizations feature statements or display logos that they are "chartered by Congress," thus implying a direct relationship to the federal government that does not in fact exist. In addition, there may be an implication that Congress approves of the organizations and is somehow overseeing its activities, which is not the case.

As with nearly all generalizations about congressionally chartered nonprofit organizations, there are exceptions. At least one of these nonprofits receives much congressional attention of its management, the U.S. Olympic Committee (36 U.S.C. 2005). In early 2003, the Senate Commerce Committee held hearings on reorganizing the USOC.[7]

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[5] The legal status of the American Red Cross is periodically raised in the course of lawsuits to which it is a party. The American Red Cross has generally been viewed as an *instrumentality* of the United States, a status that permits selective coverage by federal laws. For instance, the Red Cross is deemed an instrumentality of the United States for purposes of enjoying immunity from state and local taxation on lawfully conducted gambling activities, yet is not considered an *agency* for purposes of the Freedom of Information Act (*United States v. Spokane*, C.A. 9(Wash.) 1990, 918 F.2d 84, certiorari denied 111 S.Ct. 2888, 501 U.S. 1250; 115 L.Ed 2d 1053).

[6] There was an exception to the rule that congressional charters do not confer any governmental power upon or assign benefits to title 36 corporations. The Department of Veterans Affairs formerly had a departmental rule that any veterans organization seeking free space and telephones in its facilities had to have a congressional charter. That requirement was removed in 1992.

[7] Amy Shipley, "Senators Scold USOC Leaders: Congressional Oversight Urged as Part of Restructuring," *Washington Post*, January 29, 2003, p. D-1. A case could be made that the U.S. Olympic Committee is misplaced being in Subtitle II. Its legal status and international responsibilities, arguably, make it similar to the American Red Cross, a Subtitle III nonprofit organization.

Variations on a Theme

While it is correct to state that the congressionally chartered nonprofit organizations in Title 36 are not agencies of the United States, there are instances when the boundary between the private and governmental sectors are blurred at best. It is possible to argue that at least in a few instances the private character of the Title 36 corporation is reasonably in question.

For many years the Department of Defense administered the Civilian Marksmanship Program. The program came under political pressures for various reasons and the Department decided to request Congress to "privatize" the program, which Congress agreed to in creating a federally chartered corporation titled Corporation for the Promotion of Rifle Practice and Firearms Safety (36 U.S.C. 40701). This "privatization" exercise raises questions about the limits, if any, to Congress' authority to assign a "private" label to functions of a governmental character. While the Corporation has some admittedly governmental attributes (*e.g.*, upon dissolution of the Corporation, its assets are to be sold and revert to the U.S. Treasury), Congress has declared in its enabling statute that "the corporation is a private corporation, not a department, agency, or instrumentality of the U.S. Government." Furthermore, the law provides that "an officer or employee of the corporation is not an officer or employee of the Government." Whether Congress has the constitutional authority to assign an entity "private" status when in fact it has substantial "governmental" attributes has been subject to debate and judicial opinion.[8]

In the 106th Congress, a new entry was included in Part B of subtitle II of Title 36, the National Recording Preservation Foundation (Foundation). The background for this Foundation requires some explanation. A National Recording Registry (established under Public Law 106-474; 2 U.S.C. 1701; November 9, 2000) is to be housed in the Library of Congress and managed by the Librarian of Congress through an adjunct organization of the Library titled the National Recording Preservation

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[8] The Supreme Court in a 1995 case (*Michael Lebron v. National Railway Passenger Corporation*; 513 U.S. 374) addressed the question of whether Congress can declare, by statutory language, that a corporation created by Congress and assigned attributes of the state, is a "private corporation." The National Railway Passenger Corporation (AMTRAK), established by Congress (45 U.S.C. 451) and enumerated as a "mixed-ownership corporation" under 31 U.S.C. 9101(2), was sued by Michael Lebron for rejecting on political grounds an advertising sign he had contracted with them to display. Lebron claimed that his First Amendment rights had been abridged by AMTRAK because it is a government corporation, and therefore an agency of the United States. AMTRAK argued, on the other hand, that its legislation provides that it "will not be an agency or establishment of the United States government" and thus is not subject to constitutional provisions governing freedom of speech. The Court decided that while Congress can determine AMTRAK's governmental status for purposes within Congress' control (*e.g.*, whether it is subject to statutes such as the Administrative Procedure Act), Congress cannot make the final determination of AMTRAK's status as a government entity for purposes of determining constitutional rights of citizens affected by its actions. To do so, in the Court's opinion, would mean that the government could evade its most solemn constitutional obligations by simply resorting to the corporate form of organization.

Board (Board). This Board consists of 17 members, selected by the Librarian from the organizations listed in the statute. Personnel working for the Board are appointed by the Librarian and are employees of the United States.

Additionally, the statute provides for the establishment of a National Recording Preservation Foundation (Foundation) as a Title 36 nonprofit corporation (chapter 1524), not to be considered as an agency or establishment of the United States. The purpose of the Foundation is to accept and administer private gifts to the Board. The board of the Foundation is to consist of 9 members, to be selected by the Librarian with the latter serving in an ex-officio capacity. The Foundation shall be governed by its own by-laws. The Librarian shall appoint a Secretary of the Board who shall be the executive director. Officers of the Foundation are to be appointed and removed by the board of directors while the Secretary shall appoint and remove employees. The Foundation shall have "the usual powers of a corporation acting as a trustee in the District of Columbia." The U.S. government "is not liable for any debts, defaults, acts, or omissions of the corporation," yet the Foundation is authorized to directly receive appropriated funds. The Foundation and its relationship to the Board and to the Librarian of Congress may raise questions as to how "private" the Foundation actually is. At a minimum, the Foundation represents something of a departure from the usual Title 36 nonprofit corporation.

Another departure from the usual Title 36 nonprofit corporation model was forthcoming in the 107th Congress with its approval of the National Help America Vote Foundation. The Foundation is "a charitable and nonprofit corporation and is not an agency or establishment of the U.S. Government." (36 U.S.C. 1526; 116 Stat. 1717). The Foundation, which carries out its statutory mandate in consultation with the chief election officials of the several states, receives its funding through direct appropriations. Although it must follow provisions of a number of federal laws, it is nonetheless to act as a trustee under District of Columbia law which permits it, among other things, "to borrow money and issue instruments of indebtedness." All of which suggests questions regarding who is ultimately responsible for the indebtedness. Is the National Help America Vote Foundation really private with the right to declare bankruptcy?

Those private, nonprofit organizations seeking federal charters under Title 36 presumably perceive value behind such charters, and indeed, such may be the case. Less recognizable, however, are the risks to private, nonprofit organizations of having a charter. A chartered private organization may lose some of its private rights and be made subject to management laws and regulations generally applicable only to agencies of the United States. Such a situation came about in 1997 when Congress amended the Federal Advisory Committee Act (5 U.S.C. Appendix; 86 Stat. 700) so as to include two Title 36 corporations, the National Academy of Public Administration and the National Academy of Sciences, under specific provisions involving the appointment, permissible activities, and reports of corporation committees doing work for executive agencies (P.L. 105-153).

This is the first instance in which Congress has made Title 36, Subtitle II corporations subject to the provisions of a general management law, and while the action may be supportable on public policy grounds, it does, to the extent of the

applicable provisions, diminish the private character of the affected organizations. As such, it constitutes a precedent with implications.

Congressional Procedures

Corporate charters are granted in law by act of Congress. The procedure for the grant begins like any other act of Congress, with the introduction of a bill by a member of either the House of Representatives or the Senate. Bills proposing Title 36 corporate bodies are generally referred to the judiciary committees of each house. If the measure is reported out of committee and approved by that house, it is sent to the other house for approval, and then on to the President for signature, whereupon it becomes law.

Prior to 1965, requests for congressional charters were considered on a case-by-case basis without standards or criteria for incorporation. That year President Lyndon Johnson vetoed H.R. 339 (89th Congress), a bill that would have granted a corporate charter to the Youth Councils on Civil Affairs. In his veto message President Johnson raised several questions about the wisdom of continuing to grant charters on a case-by-case basis "without the benefit of clearly established criteria as to eligibility." In the President's veto message to Congress, he noted:

> For some time I have been concerned with the question of whether we are granting Federal charters to private organizations on a case-by-case basis without the benefit of clearly established standards and criteria as to eligibility. Worthy civic, patriotic, and philanthropic organizations can and do incorporate their activities under state law. It seems obvious that Federal charters should be granted, if at all, only on a selective basis and that they should meet some national interest standard.[9]

The President requested in his veto message that the two judiciary committees conduct a comprehensive study on the entire matter. Various proposals had been made over the years to adopt federal statutory procedures for chartering nonprofit organizations, but Congress remained unpersuaded.

In 1969, in response to the President's request, subcommittees of both the House and Senate Judiciary Committees jointly agreed to a statement of policy, "Standards for Granting of Federal Charters." This statement set forth five "minimum standards" to be met by a private organization seeking a federal charter from Congress:

> Any private organization petitioning Congress for the purpose of obtaining the status of a Federal corporation shall be required to demonstrate to the satisfaction of Congress that it is an organization which is —

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[9] A copy of the veto message is printed as H.Doc. 292, 89th Cong., 1st sess. (Washington: GPO, 1965), p. 1.

(1) operating under a charter granted by a State or the District of Columbia and that it has so operated for a sufficient period of time to demonstrate its permanence and that its activities are clearly in the public interest;
(2) of such unique character that chartering by the Congress as a Federal corporation is the only appropriate form of incorporation;
(3) organized and operated solely for charitable, literary, educational, scientific, patriotic, and civil improvement purposes;
(4) organized and operated as a nonpartisan and nonprofit organization; and
(5) organized and operated for the primary purpose of conducting activities which are of national scope and responsive to a national need, which need cannot be met except upon the issuance of a Federal charter.[10]

The status of a private, nonprofit organization receiving a federal charter does not appear to be substantially different from that of a similar organization incorporated under state law. Under the congressional standards agreed to in 1969, it became a "minimum requirement" that organizations seeking a federal charter demonstrate that they have been functioning properly under a state charter and that their activities are clearly in the public interest. However, there are two elements of a federal charter that appear to create some legal differences between federally chartered corporations and similar corporate bodies functioning solely under state charters.

First, there is a matter of the "citizenship" of the corporation. Generally, corporations chartered by states are deemed to have "citizenship" in the state of establishment. A corporate body created by Congress, however, may be designated as a citizen of the United states for judicial purposes.[11] The latter rule has been supported in at least one instance involving a Title 36 corporation. In that case the American Legion was held not to be a citizen of any state for the purposes of invoking diversity of citizenship jurisdiction under 28 U.S.C. 1332(a)(1).[12] Further, Congress can itself provide for federal judicial jurisdiction in the charter .[13]

Second, because federal charters are laws of the United States, they may only be amended by another law of the United States. If an organization seeks to alter its primary purpose or change a provision in its charter, even a minor provision, it must return to Congress and subject its request to the full legislative process. While the process is generally routine, there are occasions when making even minor legislative changes in the charter may open the organizations to challenge from the outside.

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[10] U.S. Congress, House, Committee on the Judiciary, *Standards for Granting of Federal Charters to Non-Profit Corporations*, Committee print, 91st Cong.,, 1st sess. (Washington: GPO, 1969).

[11] *Bankers Trust Company v. Texas and Pacific Railroad Company*, 241 U.S. 295; 36 S.Ct. 569; 60 L.Ed. 1010 (1916).

[12] *Harris v. American Legion*, 163 F.Supp. 700 (S.D. Ind. 1958), aff'd 261 F.2d. 594.

[13] *Patterson v. American National Red Cross*, 101 F.Supp. 655 (S.D. Fla. 1951), aff'd 261 F.2d 594.

Oversight of Chartered Corporations

At present, federal supervision of congressionally chartered nonprofit organizations is limited. All "private corporations established under federal law," as defined and listed in Subtitle II, are required to have independent audits annually, and to have the reports of the audits submitted to Congress (36 U.S.C. 10101).[14] In addition, corporate bodies are required to make annual reports of their activities to the Congress. As exceptions, however, the American Red Cross is required to report annually to the Department of Defense (36 U.S.C. 300110); and the Daughters of the American Revolution (36 U.S.C. 153107) and the American Historical Association report annually to the Smithsonian Institution (36 U.S.C. 153107).

In practice, the Subcommittee on Immigration, Border Security, and Claims[15] receives the audit reports of all listed corporations and, where corporations have not submitted reports in a timely manner, makes every effort to communicate with said organizations and remind them of their legal responsibility. Most of the corporations take this responsibility seriously and submit the necessary reports. The House Judiciary Committee refers all received audits to the General Accounting Office for review.[16] The committee's role is strictly ministerial. As for the Senate Judiciary Committee, it has traditionally deferred to the House committee on these matters.

A General Accounting Office official testified on its review procedures in 1975:

> Our reviews of the reports are generally restricted to desk review unless serious questions or problems arise. When this occurs, we contact the independent public accountant or the organization for clarification. The purpose of our review is to determine whether in our professional judgement, the reports meet the standards for reporting set forth in law.
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> The major problems noted by us to date have been: (1) lack of timely submission of reports; (2) lack of sufficient explanations in the report; (3) financial statements which do not meet the stipulated requirements of law; (4)

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[14] The Corporation for the Promotion of Rifle Practice and Firearms Safety, created in 1996 by Congress, and not incorporated first in a state, is exempted (§40707) from the audit requirements otherwise applicable to all but twelve Subtitle II corporate organizations (36 U.S.C. 10101).

[15] In the 104th Congress, the Subcommittee on Immigration and Claims became responsible for congressionally chartered organizations, taking jurisdiction from the former Subcommittee on Administrative Law and Government Relations. In the 108th Congress, the title of this subcommittee was changed to Subcommittee on Immigration, Border Security, and Claims.

[16] See, for instance, U.S. General Accounting Office, *Federally Chartered Corporation: Review of the Financial Statement Audit Report for the United States Capitol Historical Society for Fiscal Year 1997,* B-280210, directed to the Chairman of the House Judiciary Committee, Henry Hyde, June 16, 1998.

audits not conducted by independent certified public accountants; and (5) in some few cases failure to follow generally accepted auditing standards.[17]

It is not the intention of the Judiciary committees of Congress or the General Accounting Office to "look over the shoulder" of these organizations, or to conduct audits on their own authority. Congress is understandably ambivalent with respect to these chartered organizations; on the one hand it attempts to protect the public interest against abuse by those corporate bodies while simultaneously seeking to limit its involvement in the internal affairs of these private organizations. Thus far, in no instance has the charter of a Title 36 corporations been revoked although there have been several controversies in recent years involving chartered organizations[18] and the chartering process generally.

In the 106th Congress, there was a controversy involving the Boys Scouts of America with legislation introduced to revoke its congressional charter. The Supreme Court in *Boy Scouts of America v. Dale* (120 S.Ct. 2446 (2000)) ruled that the Boy Scouts of America were within their First Amendment rights as a private organization to exclude from a leadership position a person who was in fundamental disagreement with its purposes as an organization. In this case, the facts were that the Boy Scouts of America removed from an assistant scout master position a young man who professed and practiced a homosexual lifestyle. The national organization argued that this individual, whatever his personal merits, had no "right" to hold a leadership position in an organization which disavowed that lifestyle. The individual involved, James Dale, and some supporting organizations, argued that as assistant scout master, Dale had performed his assigned responsibilities well and that his lifestyle, irrespective of being contrary to one of the purposes of the organization, was not a legitimate grounds to deny him a position of leadership. To do so denied Dale his rights under New Jersey's public accommodations law. The issue, Dale's attorneys argued, was not a constitutional, First Amendment question.

Several members of Congress introduced legislation (H.R. 4892) to repeal the federal charter of the Boy Scouts. Against the wishes of its sponsors, however, a motion was brought to suspend the rules, an action that would pave the way for a vote in the House. The tactic intended to put members on record as favoring or opposing the bill without having to vote directly. The motion failed; 12-362, thereby supporting the Supreme Court decision and, presumably, the chartering of the Boy

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[17] U.S. Congress, House, Committee on the Judiciary, Subcommittee on Administrative Law and Government Relations, *Oversight of Federal Incorporations*, Hearings, 94th Cong., 1st sess. (Washington: GPO, 1975), p. 18.

[18] Conflicts involving Title 36 corporations arise from time to time. In September 1998, for instance, press accounts described a decision by the Pentagon to ban for three years agents of Academy Life Insurance Company from selling insurance on military bases. The Pentagon charged that Academy Life agents routinely presented themselves as impartial financial counselors with the non-profit, congressionally chartered Non Commissioned Officers Association (NCOA), not as salesmen. The company paid more than $1 million a year for the endorsement of NCOA. Bradley Graham, "Pentagon Bars Life Insurance Firm Because of 'Deceptive' Practices," *Washington Post*, Sept. 18, 1998, p. A8.

Scouts of America.[19] During this debate the character and utility of the chartering process was discussed.

In some cases the chartered corporation has ceased to exist according to provisions of its chartering statute. The Grand Army of the Republic (43 Stat. 458), for instance, ceased to exist once its last member died and is no longer listed. More recently, the last member of the United Spanish War Veterans (54 Stat. 152) died and that organization also ceased to exist. With respect to the Veterans of World War I of the United States, there remain members, but the organization has become inactive and has voluntarily agreed to discontinue operations; its charter status cannot be assigned to any associated organization now that the parent organization is scheduled for dissolution.

Ending the Chartering Process — Maybe

Hearings held by subcommittees of the respective judiciary committees of the House and Senate in the early 1970s indicated an increasing level of dissatisfaction by members of Congress respecting the intent and practice of congressional chartering of private, nonprofit organizations. More organizations, through sympathetic members of Congress, were requesting charters, and the requesting organizations were often extending the definition of congressionally chartered corporations beyond that typically associated with patriotic and service organizations.[20]

In April 1992, subcommittee chairman, Barney Frank, announced that the Subcommittee on Administrative Law and Government Relations would no longer consider requests for charters. The reason, Frank said, was that the charters were "a nuisance," a meaningless act; granting charters implied that Congress was exercising some sort of supervision over the groups and it was not. "When I first raised the issue, 'What is a federal charter?' The answer was, a federal charter is a federal charter is a federal charter.... You could make up an organization for the preservation of Albert DeSalvo, the Boston Strangler. We'd have no way of checking into it."[21]

Continuing to review applications on the basis of merit with the possibility of rejection, it was asserted, was subjecting the subcommittee to pressures and the potential for embarrassment to both the requester and Congress. By indicating an end altogether of the practice of chartering, it was hoped the subcommittee would be

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[19] U.S. *Congressional Record*, daily edition, Sept. 12, 2000, H7448-H7455. Sean Scully, "House Rejects Effort to Punish Boy Scouts Over Gay Ban," *Washington Times*, Sept. 14, 2000, p. A-3.

[20] U.S. Congress, Senate, Committee on the Judiciary, Subcommittee on Federal Charters, Holidays and Celebrations, *Federal Charters for Nonprofit Corporations*, Hearings, 92nd Congress, 1st session (Washington: GPO, 1971); U.S. Congress, House, Committee on the Judiciary, Subcommittee on Administrative Law and Government Relations, *Oversight on Federal Incorporations*, Hearings, 94th Cong., 1st sess. (Washington: GPO, 1975).

[21] Bill McAllister, "Congressional Charters Abolished: Laws Recognizing Organizations Seen as Meaningless Nuisance," *Washington Post,* Apr. 9, 1992, p. 25.

"leveling the playing field" among worthy organizations. This view was formalized in the 104th Congress when the subcommittee issued an internal policy directive that it would no longer consider any legislation to grant new federal charters because such charters were unnecessary for the operations of any charitable, nonprofit organization and falsely implied to the public that a chartered organization and its activities somehow carried a congressional "seal of approval."

This subcommittee moratorium did not, however, stop all requests for, or consideration of, charter requests. Notably, it remains possible for another committee, or for the full Congress in its plenary capacity, to "charter" nonprofit organizations and have them listed in Title 36. Indeed, this has been the case in several instances in recent years. In 1996, the Fleet Reserve Association was chartered (110 Stat. 2760) without the legislation being referred to the Judiciary committees of the respective chambers. Also in recent years, corporate bodies (*e.g.*, Corporation for Promotion of Rifle Practice and Firearms Safety, 36 U.S.C. 40701; National Recording Preservation Foundation, 36 U.S.C. 153401) have been created by Congress and listed by the House Office of Law Revision Counsel under Title 36.

In the 105th Congress, the moratorium notwithstanding, two additional nonprofit organizations were chartered. Each case represented a specific and unusual set of circumstances. In the first session, the Senate Committee on Armed Forces approved a bill, one provision of which chartered the Air Force Sergeants Association (AFSA). This charter proposal had not been referred to the judiciary committees for their review and approval. When the bill reached conference, the jurisdictional issues were raised and a negotiated settlement reached. AFSA would receive its charter in this instance (P.L. 105-85; 36 U.S.C. 20201), but the jurisdictional authority of the judiciary committees, and thus the moratorium, was reaffirmed.[22]

In the second session of the 105th Congress, a bill to award a charter to the American GI Forum was approved, this time with the approval of the judiciary committees. In this instance, the circumstances involved an act of discouragement by the committee toward a would-be charter applicant under the rules followed prior to 1989. The organization believed that it had been improperly informed and unfairly evaluated during its earlier application and deserved to be reconsidered for chartering. The committee permitted the organization to make its case and concluded that due to exceptional circumstances, an exemption from the moratorium was warranted in this instance and thus a charter was granted (P.L. 105-231; 36 U.S.C. 21001).

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[22] The agreement between the committees read: "The leaders of the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives recognize the current moratorium on granting federal charters and agree that, in the future, amendments to the National Defense Authorization Bill that would grant a federal charter should not be included in a conference agreement unless favorably recommended by the committees of jurisdiction."

Conclusion

The congressional practice of chartering selected private, nonprofit organizations that engage in patriotic, charitable, historical, and educational activities is essentially a 20th century phenomenon. The chartering process itself tends to send mixed signals to the public. Although the charter does *not* award any material governmental status to the nonprofit corporation (*e.g.*, right of eminent domain) there is an understandable assumption on the part of the public that somehow the charter signifies U.S. government approval of the corporation's activities and that the corporation is being supervised. Neither assumption is merited.

The House Judiciary Committee, the key committee in the process, after some years of experience and several hearings, concluded that the chartering process served no useful public purpose and issued a formal moratorium on requests for charters in 1992. It remains possible, however, for another committee or the full Congress to bypass the judiciary committees and initiate on their own the approval process for chartering a nonprofit organization. This bypass strategy for chartering Title 36 corporations has been successfully pursued (concluding with a presidential public law signature) on several occasions in recent years. Partly in response to these actions, the House Judiciary Committee has reaffirmed, most recently in the 108th Congress, its moratorium on approval of charters. It remains to be seen, however, how effective this moratorium will be against the many attractions of the chartering practice.

Title 36, Subtitle II: Patriotic and National Organizations

Part B — Organizations

901.	[Reserved]	
1001.	Italian American War Veterans of the United States	100101
1101.	Jewish War Veterans of the United States of America	110101
1201.	[Reserved}	
1301.	Ladies of the Grand Army of the Republic	130101
1303.	Legion of Valor of the United States, Inc.	130301
1305.	Little League Baseball, Inc.	130501
1401.	Marine Corps League	140101
1403.	The Military Chaplains Association of the United States of America	140301
1405.	Military Order of the Purple Heart of the United State of America, Inc.	140501
1407.	Military Order of the World Wars	140701
1501.	National Academy of Public Administration	150101
1503.	National Academy of Sciences	150301
1505.	National Conference of State Societies, Washington, District of Columbia	150501
1507.	National Conference on Citizenship	150701
1509.	National Council on Radiation Protection and Measurements	150901
1511.	National Education Association of the United States	151101
1513.	National Fallen Firefighters Foundation	151301
1515.	National Federation of Music Clubs	151501
1517.	National Film Preservation Foundation	151701
1519.	National Fund for Medical Education	151901
1521.	National Mining Hall of Fame and Museum	152101
1523.	National Music Council	152301
1524.	National Recording Preservation Foundation	152401
1525.	National Safety Council	152501
1526.	Help America Vote Foundation	152601
1527.	National Ski Patrol System, Inc.	152701
1529.	National Society, Daughters of the American Colonists	152901
1531.	The National Society of the Daughters of the American Revolution	153101
1533.	National Society of the Sons of the American Revolution	153301
1535.	National Tropical Botanical Garden	153501
1537.	National Woman's Relief Corps, Auxiliary to the Grand Army of the Republic	153701
1539.	The National Yoemen F	153901
1541.	Naval Sea Cadet Corps	154101
1543.	Navy Club of the United States of America	154301
1545.	Navy Wives Clubs of America	154501
1547.	Non Commissioned Officers Association of the United States of America, Inc.	154701
1601.	[Reserved]	
1701.	Paralyzed Veterans of America	170101
1703.	Pearl Harbor Survivors Association	170301
1705.	Polish Legion of American Veterans, U.S.A.	170501
1801.	[Reserved]	
1901	Reserve Officers Association of the United States	190101

1903.	Retired Enlisted Association, Inc.	190301
2001.	Society of American Florists and Ornamental Horticulturists	200101
2003.	Sons of Union Veterans of the Civil War	200301
2101.	Theodore Roosevelt Association	210301
2103.	369th Veterans' Association	220301
2201.	United Service Organizations, Inc.	220101
2203.	United States Capital Historical Society	220301
2205.	United States Olympic Committee	220501
2207	United States Submarine Veterans of World War II	220701
2301.	Veterans of Foreign Wars of the United States	230101
2303.	Veterans of World War I of the United States of American, Inc.	230301
2305.	Vietnam Veterans of America, Inc.	230501
2401.	Women's Army Corps Veterans' Association	240101