STATEMENT OF COMMISSIONER ORSON SWINDLE
CONCURRING IN PART AND DISSENTING IN PART
in FTC v. Mitchell Gold, et al., File No. X990005

In a number of past cases, I have dissented from settlement agreements that imposed bans covering charitable solicitation.[1] Charitable solicitation is fully-protected speech under the First Amendment, *Riley v. Nat'l Federation of the Blind*, 487 U.S. 781, 801 (1988), and a prior restraint on fully-protected speech is constitutional only in "exceptional cases." *CBS Inc. v. Davis*, 510 U.S. 1315, 1317 (1994) (Blackmun, J., in chambers) (*citing Near v. Minnesota*, 283 U.S. 697, 716 (1931)). Instead of a broad ban on all charitable solicitation, the obvious less restrictive means to prevent potential harm is to prohibit false or misleading claims in the solicitation of charitable donations.

I find the present case against the Golds to be the rare and exceptional case in which a permanent ban on all charitable solicitation is warranted. The defendants' pattern of recidivism and their sheer disregard for the law are appalling. Mitchell Gold, Herbert Gold, and their fundraising companies have been subject to a series of law enforcement actions dating back to 1992.[2] Despite each law enforcement action and consent or litigated judgment containing injunctive relief, the Golds continued to make the same misrepresentations in soliciting charitable donations and to engage in the same egregious conduct (including, for example, continuing to fundraise in the name of a nonprofit after their contract was canceled, while not turning over donated funds to the nonprofit). Although only Mitchell or Herbert Gold and the corporations were named in the lawsuits prior to our complaint, Patricia and Celia Gold also participated in the fundraising business. In addition, after the numerous legal actions against their spouses, Patricia and Celia willingly took on the respective roles of president and sole proprietor of two fundraising firms and perpetuated the pattern of fraud.[3]

The repeated law violations by the defendants, both individually and collectively, and their subsequent efforts to evade the law provide compelling evidence that less restrictive forms of relief (*i.e.*, prohibitions on deception in the solicitation of charitable donations) will not prevent future harm -- and in fact have already failed repeatedly. Given their egregious conduct and blatant disregard for previous orders, I have no reservations about voting in favor of the stipulated final judgments against all four members of the Gold family.

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[1] *See, e.g.*, Statement of Commissioner Orson Swindle Concurring in Part and Dissenting in Part in *T.E.M.M. Marketing, Inc.*, File No. X990002, available at <www.ftc.gov/os/1999/9907/temm.517.dis.htm>.

[2] Six states filed separate, successive lawsuits prior to the Commission's complaint in November 1998. Subsequent to our complaint, three states filed lawsuits, and Mitchell Gold was also indicted for mail fraud, wire fraud, and money laundering in connection with the fundraising business as well as a telemarketing operation involving the sale of golf clubs.

[3] Patricia Gold also served as the president of the firm that Mitchell Gold used to engage in the alleged deceptive telemarketing of golf clubs.

On the other hand, I do not believe that the case against Steven Chinarian falls into the same category of exceptional cases. Although there is evidence that Chinarian engaged in deception in soliciting donations in the present case, there is no evidence that he previously violated any law or order while engaged in charitable solicitation or that he repeatedly attempted to evade the law to the contemptible degree exhibited by the Golds. Even though a defendant may waive the right to engage in fully-protected speech by entering into a consent agreement, I continue to believe that the Commission should not seek the extraordinary relief of a ban on all charitable solicitation absent evidence that the harm cannot be mitigated by less intrusive means. *See CBS Inc.*, 510 U.S. at 1317 (prior restraints on fully-protected speech are unconstitutional unless "the evil that would result from the [speech] is both great and certain and cannot be mitigated by less intrusive measures"). Given the lack of such evidence with respect to Steven Chinarian, I dissent from Part I of the stipulated judgment against him.