

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE SECRETARY OF THE COMMONWEALTH

PROTHONOTARY  
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Department of State

Commonwealth of Pennsylvania,  
Bureau of Charitable Organizations,

vs.

The NAMES Project Foundation,  
Respondent

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Docket No.: 0009-98-02  
File No.: 02-98-02818

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and The NAMES Project Foundation ("Respondent") stipulate as follows in settlement of the above-captioned case:

JURISDICTION

1. This matter is before the Secretary of the Commonwealth ("Secretary") pursuant to the Solicitation of Funds for Charitable Purposes Act, Act of December 19, 1990, P.L. 1200, No. 202, as amended ("Act"), 10 P.S. §§ 162.1-162.24.

STIPULATED FACTS

2. The Respondent admits that the following allegations are true:
  - a. Respondent's last known business address, as on file with the Department of State is 101 Krog Street, Atlanta, GA 30337.
  - b. After receiving evidence that the Respondent was soliciting contributions from Pennsylvania residents without being properly registered, the Bureau sent a letter to the Respondent on September 21, 1998, informing the

Respondent of its registration obligations under the Act and providing the Respondent with an application packet to register as a charitable organization in the Commonwealth of Pennsylvania.

c. In 1998, the Bureau assessed an administrative fine of \$1000.00 against the Respondent for soliciting contributions in Pennsylvania during the fiscal year ending December 31, 1997 without being registered.

d. On October 23, 1998, the Respondent paid the \$1000.00 administrative fine, and as a result, its registration for the fiscal year ending December 31, 1997 was approved by the Bureau.

e. The Respondent was given two extensions to submit its registration materials for the fiscal year ending December 31, 1998. The Respondent's final extension ended on November 11, 1999, without the Respondent ever renewing its registration.

f. On June 8, 2000, the Bureau received evidence that the Respondent was continuing to solicit charitable contributions from Pennsylvania residents even though its registration had expired on November 11, 1999.

g. On July 19, 2000, the Bureau issued an Investigative Subpoena against the Respondent. A true and correct copy of the Investigative Subpoena is attached as **Exhibit "1"** and incorporated by reference.

h. The Respondent failed to comply with the Investigative Subpoena, so on December 13, 2000, the Secretary issued a Cease and Desist Order against the Respondent. A true and correct copy of the Cease and Desist Order is attached as

**Exhibit "2"** and incorporated by reference.

i. On June 11, 2001, the Respondent attempted to register with the Bureau for the fiscal year ending December 31, 2000, but was advised that its registration would not be approved until it complied with the Investigative Subpoena issued on July 19, 2000.

j. On February 28, 2002, the Bureau received the Respondent's answer to the Investigative Subpoena.

k. In response to the subpoena, Respondent indicated that it had been soliciting contributions from Pennsylvania residents since 1989 but was unable to provide an exact number of Pennsylvania residents solicited or the exact amount of contributions it received from Pennsylvania residents since 1989.

l. The Respondent was not registered with the Bureau to solicit contributions from Pennsylvania residents from 1990 to 1997 and from November 11, 1999 through the current date.

### **AGREED VIOLATIONS**

3. Respondent agrees that by engaging in the foregoing activities it committed multiple violations of the Act at 10 P.S. § 162.15(a)(1) by failing to register with the Bureau before soliciting charitable contributions in the Commonwealth of Pennsylvania from 1990 to 1997 and by continuing to solicit charitable contributions in the Commonwealth of Pennsylvania after its registration had expired on November 11, 1999.

**PROPOSED ORDER**

4. The parties consent to the issuance of the following Order in settlement of this matter:

a. Respondent committed multiple violations of the Act at 10 P.S. § 162.15(a)(1) by failing to register with the Bureau before soliciting charitable contributions in the Commonwealth of Pennsylvania from 1990 to 1997 and by continuing to solicit charitable contributions in the Commonwealth of Pennsylvania after its registration had expired on November 11, 1999.

b. Respondent shall register with the Bureau prior to the commencement of any charitable solicitations in Pennsylvania, and shall otherwise comply with the requirements of the Act.

c. Respondent shall not represent directly or indirectly that by this Consent Agreement the Attorney General or Bureau of Charitable Organizations has sanctioned, condoned or approved any part or aspect of Respondent's activities.

d. Respondent is permanently enjoined from directly or indirectly participating in any activities within the Commonwealth of Pennsylvania in violation of the Act.

**ADMINISTRATIVE FINE**

e. An **ADMINISTRATIVE FINE** of five thousand dollars (\$5,000) is levied upon Respondent. Respondent shall tender the full sum of five thousand dollars (\$5,000) with this executed Consent Agreement which shall be paid by **certified check, cashier's check, attorney's check, or U.S. Postal money order made payable to the "Commonwealth of Pennsylvania."**

## VIOLATION OF THE SECRETARY'S ORDER

f. Notification of a violation of the terms or conditions of this Consent Agreement and Order shall result in the imposition of additional penalties as follows:

(1) The prosecuting attorney for the Bureau shall file with the Secretary a Petition which indicates that Respondent has violated the terms or conditions of this Consent Agreement and Order.

(2) Upon a probable cause determination that Respondent has violated the terms and conditions of this Consent Agreement and Order, the Secretary, or his designee, shall, without holding a formal hearing, issue a Preliminary Order, effective thirty (30) days after its mailing, which imposes a sixty (60) day period of suspension on Respondent's registration to solicit charitable contributions.

(3) Respondent shall be notified of the Preliminary Order within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Bureau, together with a copy to Respondent's attorneys by facsimile or first class mail.

(4) Within fifteen (15) days of mailing of the notification of the Preliminary Order, Respondent may answer the Commonwealth's petition, request that a formal hearing be convened concerning Respondent's alleged violation of the conditions of probation, and move that the period of suspension be stayed until the

Secretary or his designee issues a final order. Respondent shall file all answers and subsequent filings with the Prothonotary for the Department of State, 124 Pine Street, Suite 200, Harrisburg, PA 17101. Respondent shall serve the prosecuting attorney for the Bureau with a copy of the answer and all subsequent filings in this matter.

(5) If the Respondent moves for a stay of the period of suspension, Respondent shall set forth properly verified facts and/or state concisely the matter of law which the Respondent believes justifies a stay of the period of suspension. The Secretary or his designee shall issue a ruling on the Respondent's motion within fifteen (15) days from the date of the mailing of the notification of the Preliminary Order. If the Secretary or his designee makes no ruling on the Respondent's motion within the fifteen (15) days from mailing of the notification of the Preliminary Order, the Respondent's motion shall be deemed denied.

(6) If a request for a formal hearing is received from Respondent, a formal hearing shall be convened within forty-five (45) days from the date of filing of Respondent's request for a formal hearing.

(7) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at this hearing.

(8) If the Secretary, or his designee, after such hearing makes a determination adverse to Respondent, the Secretary or his designee will issue a Final Order imposing any disciplinary measures she deems appropriate. The Secretary or her designee may, but is not required to, take into account any period of active suspension already served by the Respondent pursuant to the Preliminary Order.

(9) If a request for a formal hearing is not received from Respondent within the prescribed fifteen (15) day period, the Preliminary Order shall become a Final Order.

(10) If the period of probation is terminated, Respondent shall still comply with all terms and conditions of probation during any active period of suspension, other than those terms and conditions pertaining to the active solicitation of funds for charitable purposes. Continued failure by Respondent to comply with the unaffected terms and conditions of shall result in further disciplinary action against Respondent.

(11) Nothing in this Order shall preclude the Prosecuting Attorney for the Bureau from filing charges or the Secretary from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement; provided, however, the Bureau agrees to not re-open its investigation as of the date of this Consent Agreement and Order unless the Bureau becomes aware of

material facts or omission of material facts which have previously not been disclosed to it and would give it probable cause that other violations existed during such period of time which it failed to uncover in its previous investigation.

g. Nothing in this Order shall preclude the Prosecuting Attorney for the Bureau from filing charges or the Secretary from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement; provided, however, the Bureau agrees not to reopen its investigation with regard to any Registration Statements on file with the Secretary as of the date of this Consent Agreement and Order unless the Bureau becomes aware of material facts or omissions of material facts which have previously not been disclosed to it and would give it probable cause that other violations existed during such period of time which it failed to uncover in its previous investigation.

h. This case shall be deemed settled and discontinued upon the Secretary issuing an Order adopting of this Consent Agreement and the Respondent's successful completion of any ordered discipline.

**ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING**

5. Respondent waives the filing of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; the right to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Bureau; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

**AGREEMENT NOT BINDING ON OTHER PARTIES**

6. This Consent Agreement is between the Bureau and Respondent only. It does not bind any other administrative entity of the Commonwealth of Pennsylvania, including any other bureau within the Department of State. Except as otherwise noted, this Agreement is to have no legal effect if *a)* the Office of General Counsel expresses an objection to the Agreement's form or legality and/or *b)* unless and until the Secretary issues the stipulated Order.

**EFFECT OF SECRETARY'S REJECTION**

7. Should the Secretary not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Secretary shall not prejudice the Secretary from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Secretary does not approve this Consent Agreement.

**ENTIRE AGREEMENT**

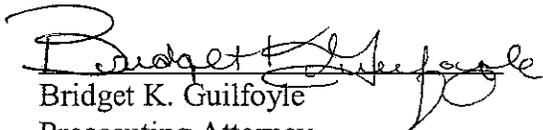
8. This agreement contains the whole agreement between the parties; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

**AGREEMENT DOES NOT PREVENT REFERRAL TO OTHER AGENCIES.**

9. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent Agreement shall preclude representatives of the Bureau from referring any information or data produced as a result of this matter to any federal, state, or local agency or governmental unit having jurisdiction over the activities of Respondent or any officer, director, agent, employee or independent contractor of the Respondent.

**VERIFICATION OF FACTS AND STATEMENTS**

10. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

  
Bridget K. Guilfoyle  
Prosecuting Attorney  
Bureau of Charitable Organizations

DATED: 08/21/02

  
For The NAMES Project Foundation,  
Respondent

DATED: 07/22/02



Commonwealth of Pennsylvania  
Department of State  
Bureau of Charitable Organizations  
P.O. Box 8723  
Harrisburg, Pennsylvania 17105-2649

## INVESTIGATIVE SUBPOENA

CERTIFIED MAIL 7099 3400 0002 2095 3490  
RETURN RECEIPT REQUESTED

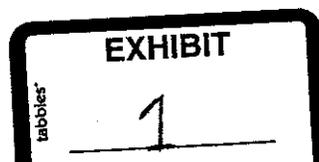
To: Mr. Andy Ilves, Executive Director  
The Names Project Foundation  
310 Townsend Street, Suite 310  
San Francisco, CA 94107

### GREETINGS:

In accordance with the Pennsylvania Solicitation of Funds for Charitable Purposes Act, 10 P.S. § 162.1 *et seq.*:

You are hereby commanded, setting aside all manner of business and excuses whatsoever, to produce and tender to Special Investigator Doreen A. Harr, by August 15, 2000 the identified documents which are relevant to the above matter presently under investigation and undetermined before the Bureau of Charitable Organizations:

1. A list of all Pennsylvania residents your organization has solicited, detailing the names, addresses, and dates solicited;
2. A list of all contributions your organization has received from Pennsylvania residents, detailing the names, addresses, amounts contributed, and dates the contributions were received;
3. A list of all contributions your organization has received from Pennsylvania businesses, corporations, and foundations, detailing the names, addresses, the amounts contributed, and dates the contributions were received; and
4. Copies of all contracts between your organization and any professional solicitor or professional fundraising counsel with respect to solicitations conducted in Pennsylvania.



5. Samples of all solicitation materials sent to Pennsylvania residents from May 16, 1999 to the present.

WITNESS my hand and the official seal of the Secretary of the Commonwealth this 19th day of July, 2000.



Paul CP  
Director, Bureau of Charitable  
Organizations

[Signature]  
Counsel



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
HARRISBURG, PENNSYLVANIA  
17120

SECRETARY OF THE COMMONWEALTH

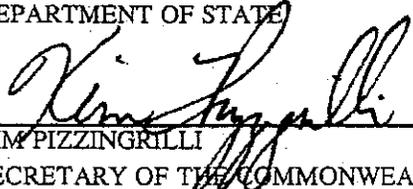
**CERTIFIED MAIL # 7000 0600 0024 5115 5714**  
**RETURN RECEIPT REQUESTED**

IN THE MATTER OF: **THE NAMES PROJECT FOUNDATION**

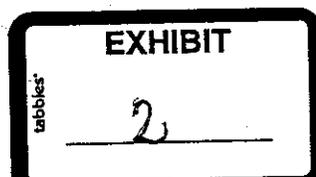
**ORDER**

AND NOW, THIS 13<sup>TH</sup> DAY OF DECEMBER, 2000, THE SECRETARY OF THE COMMONWEALTH HAVING FOUND THAT THE NAMES PROJECT FOUNDATION IS NOT REGISTERED WITH THE DEPARTMENT'S BUREAU OF CHARITABLE ORGANIZATIONS, HAS FAILED TO RESPOND TO THE BUREAU'S SUBPOENA FOR INFORMATION, AND HAS SOLICITED CONTRIBUTIONS IN PENNSYLVANIA WHILE IT WAS NOT REGISTERED; IN ACCORDANCE WITH THE PENNSYLVANIA SOLICITATION OF FUNDS FOR CHARITABLE PURPOSES ACT, 10 P.S. § 162.1 *ET SEQ.*, HEREBY ORDERS THE NAMES PROJECT FOUNDATION TO CEASE AND DESIST FROM SOLICITING CONTRIBUTIONS IN PENNSYLVANIA UNTIL SUCH TIME AS THE NAMES PROJECT FOUNDATION HAS DULY REGISTERED OR PROVIDED THE BUREAU WITH EVIDENCE THAT IT IS EXEMPT FROM REGISTRATION OR EXCLUDED FROM THE ACT. THIS ORDER SHALL TAKE EFFECT IMMEDIATELY.

BY ORDER:  
DEPARTMENT OF STATE

  
KIM PIZZINGRILLI  
SECRETARY OF THE COMMONWEALTH

THIS ORDER MAY BE APPEALED BY REQUESTING A HEARING, IN WRITING, WITHIN TEN DAYS OF THE DATE OF THIS ORDER IN ACCORDANCE WITH 2 PA. C. S. § 501 *ET SEQ.* THE REQUEST MUST BE SENT TO: THE BUREAU OF CHARITABLE ORGANIZATIONS, 3RD FLOOR, 124 PINE STREET, HARRISBURG, PA 17101.





IN THE MATTER OF THE SOLICITATION OF  
FUNDS FOR CHARITABLE PURPOSES BY  
THE NAMES PROJECT FOUNDATION  
FILE NO.: 02-98-02818

ORDER

AND NOW, to wit, on this 26<sup>th</sup> day of August 2002, the terms of Paragraph 4 of the foregoing Consent Agreement are hereby adopted and incorporated as the Order of the Secretary of the Commonwealth in resolution of this matter. This Order shall take effect immediately.

BY ORDER

A handwritten signature in black ink that reads "C. Michael Weaver". The signature is written in a cursive style with a large, stylized initial "C".

C. Michael Weaver  
Secretary of the Commonwealth