

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

Commonwealth of Pennsylvania,  
Bureau of Charitable Organizations,

vs.

Mountain States Legal Foundation,  
Respondent

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Docket No.: 00/2-98-02  
File No.: 02-98-00775

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, Bureau of Charitable Organizations ("Bureau") and Mountain States Legal 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.

2. Although the Respondent was previously registered as a charitable organization in Pennsylvania during the 1980's, at all relevant and material times to the Stipulated Facts contained herein, the Respondent did not hold a registration to solicit charitable contributions within the Commonwealth of Pennsylvania.

STIPULATED FACTS

3. 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 707 Seventeenth Street, Suite 3030, Denver, CO 80202-3408.

However, the Respondent's current business address is 2596 South Lewis Way, Lakewood, CO 80227.

b. On or about April 21, 1999, the Bureau received evidence that Respondent, via professional fundraising counsel, sent a test mailing soliciting charitable contributions from Pennsylvania residents. A true and correct copy of the solicitation material is attached as **Exhibit "1"** and incorporated by reference.

c. The solicitation material of the Respondent did not contain the disclosure statement required by Section 13 of the Act.

d. On May 5, 1999, the Bureau informed the Respondent of its registration obligations under the Act and provided the Respondent with an application packet to register as a charitable organization in the Commonwealth of Pennsylvania. A true and correct copy of the Bureau's May 5, 1999 letter is attached as **Exhibit "2"** and incorporated by reference.

e. The Respondent initially did not respond to the Bureau's May 5, 1999 letter.

f. On June 14, 1999, July 15, 1999, and August 20, 1999, the Bureau again informed the Respondent of its registration obligations under the Act and provided the Respondent with application packets to register as a charitable organization in the Commonwealth of Pennsylvania. True and correct copies of the Bureau's June 14, 1999, July 15, 1999, and August 20, 1999 letters are attached collectively as **Exhibit "3"** and incorporated by reference.

g. In July 1999, the Respondent employed the services of a professional fundraising counsel to handle its solicitation activity. To that end, the Respondent completed an addendum to its initial contract with its professional fundraising counsel and these documents were submitted to the Bureau for approval.

h. The Respondent mistakenly believed that submission of these documents was sufficient for registration purposes under the Act, due in large part to representations from its professional fundraising counsel that the Bureau would contact the Respondent about any additional registration requirements once the contract and addendum were approved.

i. The Bureau attempted to notify the Respondent of its registration requirements under the Act; however, all of the Bureau's attempts to notify the Respondent of its registration requirements under the Act were sent to the Respondent's cager rather than directly to the Respondent.

j. Throughout 2000 the Bureau received additional evidence that the Respondent was continuing to solicit charitable contributions from Pennsylvania residents.

k. On December 7, 2000, the Bureau issued an Investigative Subpoena against the Respondent. A true and correct copy of the Investigative Subpoena is attached as **Exhibit "4"** and incorporated by reference.

l. On January 15, 2001, the Bureau received Respondent's answer to the Investigative Subpoena. A true and correct copy of the January 15, 2001 response

from the Respondent's counsel is attached as **Exhibit "5"** and incorporated by reference.

m. In response to the subpoena, Respondent indicated that it had received contributions from Pennsylvania residents during 1999 and 2000 totaling \$92,065.65.

#### **AGREED VIOLATIONS**

4. Respondent agrees that by engaging in the foregoing activities it violated the following provisions of the Act:

a. 10 P.S. §162.15(a)(1) by soliciting charitable contributions in the Commonwealth of Pennsylvania in 1999 and 2000 without being properly registered under the Act.

b. 10 P.S. §162.13(c) by failing to include the required disclosure statement on all of its printed solicitation materials sent to Pennsylvania residents.

#### **PROPOSED ORDER**

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

a. Respondent violated the Act at 10 P.S. §§ 162.15(a)(1) and 162.13(c).

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 four thousand dollars (\$4,000) is levied upon Respondent. Respondent shall tender the full sum of four thousand dollars (\$4,000) 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 of the date of the filing of the motion. If the Secretary or his designee makes no ruling on the Respondent's

motion within the fifteen (15) days of the filing of the motion, 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) 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. 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**

6. 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**

7. 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**

8. 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**

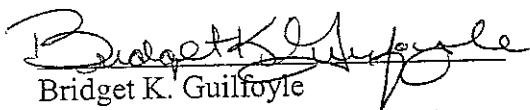
9. This agreement contains the whole agreement between the parties; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants,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

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

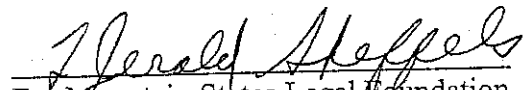
10. The parties acknowledge that other federal, state, and/or local agencies may have jurisdiction over the activities of, or representations made by, Respondent and its officers, directors, agents, employees or independent contractors. Nothing in this Consent Agreement or the Order based upon this Consent 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

11. 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: 11 | 22 | 02

  
For Mountain States Legal Foundation,  
Respondent

DATED: November 13, 2002

# "STOP EXECUTIVE ORDER 13061"

## Petition to the U.S. Court of Appeals

Whereas, the U.S. Constitution provides for a separation of powers whereby the Congress passes the laws and the President enforces the laws; and

Whereas, President Clinton's EXECUTIVE ORDER 13061 seeks to ignore the will of the Congress and the American people, concentrating all government power in the President's hands; and

Whereas, this action is a clear violation of the United States Constitution, therefore

Be It Resolved, that Bill Clinton is not above the law of the land, and therefore the U.S. Court of Appeals should find in favor of Representative Helen Chenoweth in this case, overturning Bill Clinton's un-Constitutional EXECUTIVE ORDER 13061.

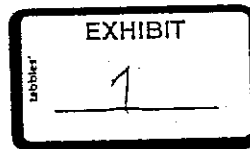
DO NOT WRITE IN THIS SPACE  
RECEIVED   
TABULATED   
DELIVERED

SIGNED: \_\_\_\_\_

.....DO NOT SEPARATE.....

## EMERGENCY REPLY

To: Hon. Helen Chenoweth  
Member of Congress  
c/o MOUNTAIN STATES LEGAL FOUNDATION  
951 20th Street  
P.O. Box 1560  
Denver, CO 80201-1560  
(303) 292-2021  
www.msllf.net



Dear Representative Chenoweth:

\_\_\_\_ YES, I am outraged by Bill Clinton's violation of the Constitution and his attempt to become "Dictator-In-Chief." Enclosed is my signed "STOP EXECUTIVE ORDER 13061" Petition.

\_\_\_\_ YES, I support your fight to stop Bill Clinton and have enclosed a tax-deductible gift to Mountain States Legal Foundation to help you win this historic case.

[ ]\$20 [ ]\$35 [ ]\$50 [ ]\$100 [ ]\$250

[ ]\$500 [ ]\$1000 [ ]Other \$ \_\_\_\_\_

Please make checks out to: Mountain States Legal Foundation  
Remember, Mountain States Legal Foundation is a non-profit organization, so your gift is tax-deductible.

Mr./Mrs./Miss \_\_\_\_\_

Street \_\_\_\_\_ Apt. # \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

\_\_\_\_ NO, I don't care that Bill Clinton is trying to become "Dictator-In-Chief," forcing his big-government programs on the taxpayers without Congressional approval. I think Bill Clinton should be able to pass any law he wants, regardless

Hon. Helen Chenoweth  
U.S. House of Representatives



Unofficial  
Business

Dear Fellow American,

Do you believe that Bill Clinton should have to obey the law and respect the United States Constitution?

If you do, please sign your crucial "STOP EXECUTIVE ORDER 13061" Petition today.

Make no mistake, if we allow Bill Clinton's EXECUTIVE ORDER 13061 to go unopposed, there may be no end to his lawbreaking in the future.

You see, through this dangerous Executive Order, Clinton is trying to make himself America's "Dictator-In-Chief."

Let me explain.

I have been a member of Congress since 1995. And I was elected by the American people to write, debate, and enact the laws that govern our great country.

The Constitution is crystal clear that it is the job of Congress -- the Legislative branch -- to enact the laws.

And it's the job of the President -- the Executive branch -- to enforce and uphold the law.

This "Separation of Powers" is critically important to our Constitutional government. That's why we teach it to our children as soon as they enter grade school.

But Bill Clinton has forgotten all about the United States Constitution he swore to uphold.

By forcing EXECUTIVE ORDER 13061 on the American people, Clinton is now claiming that he has the right to ignore Congress. He's trying to take over both the Executive and Legislative Branches!

This is an outrageous and UN-CONSTITUTIONAL power grab!

Bill Clinton is trying to enact his liberal agenda as a one-man dictator... accountable to no one.

And if his scheme succeeds, not even Congress will be able to stop his socialist programs and his shameful abuses of power.

Not printed or mailed at taxpayer expense.

That's why it is : important for you to send our signed "STOP EXECUTIVE ORDER 13061" Petition back to me today.

You see, it's not too late to stop Bill Clinton dead in his tracks.

I have filed an historic lawsuit -- that's right, I've taken Bill Clinton to court -- to try to stop him and his EXECUTIVE ORDER 13061.

You see, EXECUTIVE ORDER 13061 deals with Bill Clinton and Al Gore's controversial American Heritage Rivers Initiative (AHRI).

AHRI would take your hard-earned tax dollars and spend them on a new, expensive federal bureaucracy to control rivers and land across America.

Remember, thanks to our Constitution and it's Separation of Powers, the President can't spend ANY tax dollars unless Congress has approved the expense.

Wisely, my fellow Congressmen saw that AHRI was a bogus program.

It's designed to waste taxpayer's money and give radical environmentalists unlimited control over America's rivers.

And Bill Clinton realized that AHRI was not going to get Congress' important "stamp of approval."

That's why Clinton decided to ignore Congress, ignore the Constitution, and ignore the American people.

He signed EXECUTIVE ORDER 13061 and effectively began stealing your tax dollars to support his liberal program!

Bluntly, there is no federal law allowing Clinton to create this program. Also, it is un-Constitutional in that he did it without Congressional approval.

I know what you're thinking:

"How can Bill Clinton get away with this?"

Well, he shouldn't be able to.

That's why I'm suing Bill Clinton in federal court.

Someone has to stop Clinton... and restore the Constitution!

The outcome of this case is very serious.

If I lose, there will be nothing stopping Bill Clinton -- or any other liberal President in the future -- from passing big-government programs without Congressional approval.

This could be a disaster!

Fortunately, I think I have a very strong case against Bill Clinton.

But he has Janet Reno's Justice Department on his side, fighting tooth-and-nail against me.

And I have run up against some liberal judges who support Clinton and his big-government plans.

One federal judge -- a Clinton appointee -- threw out my case, saying that Members of Congress don't have the right to sue the President...

... even when he is trashing the Constitution!

Now I have taken my historic case to the U.S. Court of Appeals in the District of Columbia.

For the sake of our country, we must win at this level.

Because if we lose, nothing can stop Bill Clinton.

That's why he's fighting me with everything he's got:

- \*\* his Attorney General, Janet Reno;
- \*\* his partisan Justice Department;
- \*\* and all of his liberal judicial appointees.

But thankfully, I have a courageous nonprofit, public interest law firm on my side: Mountain States Legal Foundation.

You see, as a Member of Congress, I couldn't afford to hire a team of high-priced lawyers to take on the hundreds of Justice Department attorneys Clinton has working for him.

If it weren't for Mountain States Legal Foundation (MSLF), I would have been all by myself against the President and his team of taxpayer-funded lawyers.

But MSLF agreed to help me with my historic case.

And they agreed to do it FREE OF CHARGE!

Don't be mistaken, this is going to be a very expensive case for MSLF to handle.

But helping the American people fight big government is what MSLF does best.

Still, in order to make sure we win against Bill Clinton and his army of lawyers, we need YOUR crucial help.

First, we need to show that the public will not stand for Bill

Clinton's un-Constitutional plot to make himself dictator.

And to be heard, we need to receive an outpouring of public support.

That is where your emergency "STOP EXECUTIVE ORDER 13061" Petition comes in.

Please sign your Petition immediately -- and rush it to me today in your special return envelope.

Second, will you please send your most generous gift possible to help Mountain States Legal Foundation pay for the many costs involved with this historic case?

Your crucial \$50, \$100, \$250, \$500 or even \$1000 shows that you believe that America is still a nation of laws. And that Bill Clinton is not above the Constitution.

Or if that is too much to ask right now, could you please help out with an urgent gift of \$20 or \$35?

It will certainly cost you more than \$35 if Bill Clinton wins and is allowed to pass any big-government plan he pleases!

And remember, Mountain States Legal Foundation is a nonprofit organization.

So your gift to help this vital project and all of MSLF's work is tax-deductible.

I'll be looking for your "STOP EXECUTIVE ORDER 13061" Petition in the mail.

And I hope you can include your tax-deductible gift of \$20, \$35 or more to help the great folks at Mountain States Legal Foundation stand by my side in this important battle.

Thanks for being someone I can count on!

For America,



Hon. Helen Chenoweth  
U.S. House of Representatives

HC:ms

Enclosed: "STOP EXECUTIVE ORDER 13061" Petition  
Emergency Reply  
Return Envelope

P.S. I need you to stand by my side in this historic fight against Bill Clinton. We need to stop EXECUTIVE ORDER 13061 and Clinton's all-out-assault on the Constitution. Will you help me? I need your response immediately.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE

OFFICE OF THE  
SECRETARY OF THE COMMONWEALTH

May 5, 1999

BUREAU OF CHARITABLE ORGANIZATIONS  
P.O. BOX 8723  
HARRISBURG, PA 17105  
or  
124 PINE STREET, 3RD FLOOR  
HARRISBURG, PA 17101  
717-783-1720  
1-800-732-0999

CERTIFIED MAIL #Z 233 141 535  
RETURN RECEIPT REQUESTED

Mountain States Legal Foundation  
951 20<sup>th</sup> Street  
PO Box 1560  
Denver, CO 80201-1560

RE: 99-128

Dear Sir or Madam:

The Pennsylvania Bureau of Charitable Organizations has received evidence that your organization is soliciting contributions in Pennsylvania. The Solicitation of Funds for Charitable Purposes Act, 10 P. S. § 162.1 *et. seq.*, requires organizations soliciting contributions in Pennsylvania to register with the Bureau unless they are specifically excluded or exempt from the Act's requirements.

Consequently, I am enclosing a registration packet so that your organization can become properly registered or provide the Bureau with evidence that it is either excluded or exempted from the Act's requirements.

Because Section 17 (b)(3) of the Act, 10 P. S. § 162.17 (b)(3), authorizes the Bureau to impose fines of up to \$1,000 per violation and additional penalties of up to \$100 per day. I urge you to give this matter your immediate attention. By doing so, you can avoid having this matter forwarded to the Office of Attorney General for appropriate legal action.

Please contact Connie Martin if you have any questions or need assistance completing the registration materials. If you have any questions concerning the evidence the Bureau has received regarding your organization, please contact me.

I look forward to your prompt cooperation and thank you in advance for your time and attention.

Sincerely,

Christopher A. Lupp  
Special Investigator

Enclosure

cc: Mary Beth O'Hara Osborne, Chief Deputy Attorney General

EXHIBIT

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2,





COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE

June 14, 1999

OFFICE OF THE  
SECRETARY OF THE COMMONWEALTH

BUREAU OF CHARITABLE ORGANIZATIONS  
P.O. BOX 8723  
HARRISBURG, PA 17105  
or  
124 PINE STREET, 3RD FLOOR  
HARRISBURG, PA 17101  
717-783-1720  
1-800-732-0999

**CERTIFIED MAIL Z 233 141 598**  
**RETURN RECEIPT REQUESTED**

Mountain States Legal Foundation  
951 20<sup>th</sup> Street  
PO Box 1560  
Denver, CO 80201-1560

RE: 99-128

Dear Sir or Madam:

On May 5, 1999 Special Investigator Christopher Lupp sent you the attached letter and a registration packet so that your organization could become properly registered to solicit contributions in Pennsylvania or provide evidence that it is either excluded or exempt from the Act's requirements.

To date, I have not received your organization's registration information.

Consequently, please call me at one of the above-listed numbers at your earliest convenience to discuss this matter. If you do not contact me within the next seven days, a Cease and Desist Order will be issued prohibiting your organization from soliciting contributions in Pennsylvania. In addition, this matter will be referred to the Office of Attorney General for appropriate follow-up action.

Thank you for your prompt attention to this request.

Sincerely,

Karl E. Emerson  
Director

Attachment

cc: Linda J. Williams, Acting Chief Deputy Attorney General

EXHIBIT



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE

July 15, 1999

OFFICE OF THE  
SECRETARY OF THE COMMONWEALTH

BUREAU OF CHARITABLE ORGANIZATIONS  
P.O. BOX 8723  
HARRISBURG, PA 17105  
or  
124 PINE STREET, 3RD FLOOR  
HARRISBURG, PA 17101  
717-783-1720  
1-800-732-0999

CERTIFIED MAIL Z 233 141 582  
RETURN RECEIPT REQUESTED

Mountain States Legal Foundation  
951 20<sup>th</sup> Street  
PO Box 1560  
Denver, CO 80201-1560

RE: 99-128

Dear Sir or Madam:

On May 5, 1999 Special Investigator Christopher Lupp sent you the attached letter and a registration packet so that your organization could become properly registered to solicit contributions in Pennsylvania or provide evidence that it is either excluded or exempt from the Act's requirements.

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Thank you for your prompt attention to this request.

Sincerely,

Karl E. Emerson  
Director

Attachment

cc: Linda J. Williams, Acting Chief Deputy Attorney General



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE

August 20, 1999

OFFICE OF THE  
SECRETARY OF THE COMMONWEALTH

BUREAU OF CHARITABLE ORGANIZATIONS  
P.O. BOX 8723  
HARRISBURG, PA 17105  
or  
124 PINE STREET, 3RD FLOOR  
HARRISBURG, PA 17101  
717-783-1720  
1-800-732-0999

**CERTIFIED MAIL Z 233 141 882**  
**RETURN RECEIPT REQUESTED**

Mountain States Legal Foundation  
951 20<sup>th</sup> Street  
PO Box 1560  
Denver, CO 80201-1560

RE: 99-128


Dear Sir or Madam:

On May 5<sup>th</sup>, 1999, Special Investigator Christopher Lupp sent you the attached letter and a registration packet so that your organization could become properly registered to solicit contributions in Pennsylvania or provide evidence that it is either excluded or exempt from the Act's requirements. The letter was sent certified mail and was accepted by your organization. On June 14, 1999 and July 15, 1999, the attached letters were also sent to your organization but never claimed.

Consequently, please call me at one of the above-listed numbers at your earliest convenience to discuss this matter. If you do not contact me within the next seven days, a Cease and Desist Order will be issued prohibiting your organization from soliciting contributions in Pennsylvania. In addition, this matter will be referred to the Office of Attorney General for appropriate follow-up action.

Thank you for your prompt attention to this request.

Sincerely,

  
Karl E. Emerson  
Director

Attachment

cc: Linda J. Williams, Acting Chief Deputy Attorney General



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

## INVESTIGATIVE SUBPOENA

To: Mountain States Legal Fund  
707 Seventeenth Street, 3030  
Denver, CO 80202-3408

### 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 Drew A. Koser by December 29, 2000 the identified documents, which are relevant to the above matter presently under investigation and undetermined before the Bureau of Charitable Organizations:

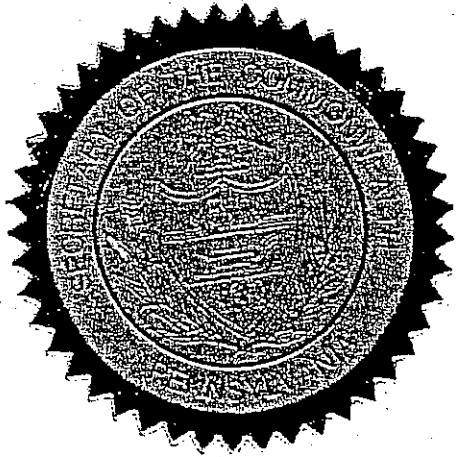
1. The date your organization first solicited contributions in Pennsylvania;
2. A list of all Pennsylvania residents your organization has solicited, detailing the names, addresses, and dates solicited;
3. A list of all contributions your organization has received from Pennsylvania residents, detailing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

And this you are not to omit under penalty which may ensue.

EXHIBIT

11

WITNESS my hand and the official seal of the Secretary of the Commonwealth  
this 7th day of December, 2000.



Director, Bureau of Charitable  
Organizations

Counsel

LAW OFFICES  
WEBSTER, CHAMBERLAIN & BEAN

1747 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006

(202) 785-9500

FAX: (202) 835-0243

ARTHUR L. HEROLD  
ALAN P. DYE  
EDWARD D. COLEMAN  
FRANK M. NORTHAM  
JOHN W. HAZARD, JR.  
HUGH K. WEBSTER  
DAVID P. GOCH  
CHARLES M. WATKINS  
JAMES A. POLFER  
DOUGLAS W. MACDONALD

RECEIVED  
01 JAN 19 PM 1:18  
BUREAU OF CHARITABLE ORGANIZATIONS

GEORGE D. WEBSTER (1921-1996)  
OF COUNSEL  
CHARLES E. CHAMBERLAIN  
J. COLEMAN BEAN  
KENT MASTERTON BROWN  
JAMES BOPP, JR.  
NOT ADMITTED TO D.C. BAR

1/22  
Drew

January 15, 2001

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

Re: Mountain States Legal Foundation

Dear Mr. Emerson:

In response to your letter of December 7<sup>th</sup>, our office has been asked to respond on behalf of the Mountain States Legal Foundation. Per our prior conversation, it was agreed that the organization's deadline to submit the requested information would be extended until January 12, 2001.

1. The organization first conducted direct mail solicitation (the organization does not conduct any telephone solicitations) in the state of Pennsylvania in 1999.

Although the organization was previously registered with your department, in the early 1980s, the organization ceased fundraising activities into the State of Pennsylvania until 1999. At that time, the organization began working with a direct mail fundraising entity in 1999 (see enclosed contract). As you will also see from the enclosed correspondence of August 1999, the organization attempted to register with the state in 1999 when it, working with its direct mail fundraising entity, filled out the Pennsylvania addendum and submitted it for filing. MSLF incorrectly assumed that completion of this document was sufficient for registration. As can also be seen from the August 27, 1999 letter, it is indicated that the State would notify MSLF regarding registration. It is our understanding that this subsequent registration packet was sent to MSLF's cager and not directly to the organization. This resulted in a time delay of several months. Consequently, the organization did make an attempt in 1999 to register and no further correspondence about registration or "renewal" were received until MSLF was recently contacted by your office.

EXHIBIT

WEBSTER, CHAMBERLAIN & BEAN

2. As we discussed on the phone, we are unable to provide you a list of all Pennsylvania residents who have been solicited since the organization rents mailing lists that are proprietary and change from time to time.

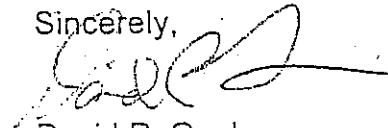
3. The total amount of all contributions the organization has received from Pennsylvania residents for the years 1999 and 2000 is \$92,065.65.

The organization, relying on NAACP vs. Alabama, does not wish to disclose the names and private information of its contributors who contribute to the organization with the expectation of confidentiality. Providing the total amount raised is consistent with the information registered organizations have to provide.

4. See above.

I hope that this document is sufficiently responsive to your questions. I do appreciate your patience in this matter and look forward to speaking with you in the future. If you have any questions, please feel free to contact me.

Sincerely,



David P. Goch

DPG/saw

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BUREAU OF CHARITABLE  
ORGANIZATIONS

COPY

August 27, 1999

Mr. William Perry Pendley, President  
Mountain States Legal Foundation  
707 17<sup>th</sup> Street, Suite 3030  
Denver, CO 80202

Dear Mr. Pendley:

Thank you so much for returning the Addenda recently sent. They will be filed with the respective states.

I'm a little embarrassed about the enclosure that was inadvertently clipped to other materials from Pennsylvania in my files and just recently discovered. This notice was received from the caging vendor and should have been forwarded to you immediately. My apologies.

The state of Pennsylvania is being omitted from all processing until such time that they (Pennsylvania) approve the contract between Eberle and Mountain States Legal Foundation. Of course, once we have filed the Addendum and the contract is approved, they will notify you regarding registration in the state.

While on this topic, I would certainly appreciate receiving the list of states that Mountain States Legal Foundation is or will be registering in.

Again, my sincere apology for the delay in getting the enclosed information to you and thanks for returning the Addenda so promptly.

Sincerely,

Sandra J. Redhage  
Vice President/Administration



PENNSYLVANIA ADDENDUM

ADDENDUM dated July 27, 1999, to AGREEMENT dated July 2, 1999 by and between Bruce W. Eberle & Associates, Inc. and Mountain States Legal Foundation which by reference is made a part thereof. It is understood and agreed that this Pennsylvania Addendum is a part of said Agreement and shall apply only to mailings conducted by the client into the Commonwealth of Pennsylvania.

1. The charitable purposes of Client are:  
Mountain States Legal Foundation by seeking the proper application of the Constitution and the interpretation of the law in the courts, administrative agencies and other forums: 1) provides a strong and effective voice for freedom of enterprise, the rights of private property ownership, and the multiple use of federal and state resources, and 2) champions the rights and liberties guaranteed by the Constitution in support of individual and business enterprises against unwarranted government intrusion.
2. The contract between the Client and Eberle is effective on the 2nd day of July 1999, and shall continue in force for a period of two (2) years unless sooner terminated as provided therein. Unless terminated as therein provided, this Agreement shall be automatically renewed and extended under the same terms and conditions for successive two year periods. However, despite the foregoing, the final termination date for mailings into the Commonwealth of Pennsylvania shall be December 31, 2005.
3. Eberle will not at any time have custody or control of the contributions.
4. The Client exercises control and approval over the content and volume of solicitations.
5. Solicitation and activity will begin in Pennsylvania upon approval of the contract by the Pennsylvania Bureau of Charitable Organizations.

BRUCE W. EBERLE & ASSOCIATES, INC.

By: 

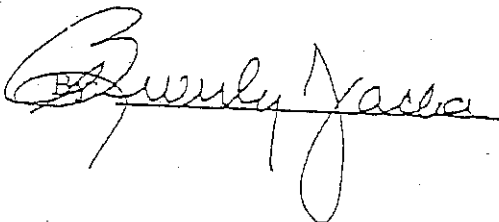
By: 

Bruce W. Eberle  
Chairman, Board of Directors

MOUNTAIN STATES LEGAL FOUNDATION

By: 

William Perry Pendley, President



# DIRECT MAIL FUND RAISING COUNSEL AGREEMENT

AGREEMENT made this 2<sup>nd</sup> day of June, 1999, between Bruce W. Eberle & Associates, Inc., 1420 Spring Hill Road, Suite 490, McLean, Virginia 22102, hereinafter called Eberle, and Mountain States Legal Foundation, 707 17<sup>th</sup> Street, Suite 3030, Denver, CO 80202, hereinafter called the Client.

WHEREAS, the Client is desirous of engaging the services of Eberle, it is agreed as follows:

1. **Appointment and Authorization.** Eberle is hereby retained and appointed as the Client's exclusive fund raising counsel for its direct mail fund raising program and list rentals, subject to the terms and conditions of this Agreement. The Client, however, retains the right and authority to continue to engage in in-house direct mail fund raising, including fund raising to those donors on its Eberle generated donor list. The retention of the services of outside contractors to perform logistical support with regard to those in-house mailings shall not constitute a breach of the Client's acknowledgement that Eberle is the Client's exclusive out-of-house direct mail fund raiser.
2. **Services.** Eberle shall provide the following services to the extent necessary to meet the Client's needs:
  - a. **Issues and Copy.** Counsel and advise the Client on issues and copy the Client wishes to use in its direct mail fund raising program. At the direction of the Client, Eberle will prepare draft copy for the Client's review and approval. The Client retains the authority to review, and to approve or disapprove the contents of any mailing undertaken on behalf of the Client to the Eberle generated Client donor list or to any rental list used for the Client.
  - b. **Mailings.** Counsel and advise the client on timing of mailings and list usage as well as promotion.
  - c. **Vendors.** Eberle will counsel and advise the Client on negotiating, arranging, and entering into agreements. At the direction of the Client, Eberle will negotiate, arrange and enter into agreements on behalf of the Client for any materials and services to be used in the direct mail fund raising program.
  - d. **List Rental Promotion.** At the direction of the Client, Eberle will promote the rental of all Client owned mailing lists.
3. **Compensation.**
  - a. **Creative/Coordination Fee.** Eberle shall receive compensation in the sum of eighty dollars (\$80) per one thousand (1000) fund raising packages processed by the mailing house for mailing under the

RECEIVED  
MOUNTAIN STATES LEGAL FOUNDATION  
DENVER, CO

terms of this Agreement. A package shall include solicitation letter and other enclosures.

b. *CPI Adjustment.* Eberle compensation as enumerated in paragraph 3.a. shall be subject to an adjustment at the beginning of each calendar year in an amount equal to the increase in the United States nationwide Consumer Price Index prepared by the United States Bureau of Labor Statistics, but shall in no event be less than the amounts set forth in paragraph 3.a.

c. *List Rental Approval and Commissions.* Eberle or its agent shall receive a commission of 20% of the standard list rental charge and/or exchanges made directly to organizations and a 40% commission on list rentals placed to other brokers or agencies, out of which Eberle will pay the other brokers' fees. It is further understood and agreed that Omega List Company may at times serve as Agent for Eberle. The Client retains authority to approve or disapprove the rental of its Eberle generated donor list. If the Client approves the rental of its Eberle generated donor list, it shall retain the right to review, and approve or disapprove the contents of any mailing to its Eberle generated donor list.

4. **Billing and Payment.**

a. *Billings.* Eberle shall render billings from time to time as necessary on its standard forms and they shall be paid no later than on the due date stated therein.

b. *List Rental Application.* If during the term of this Agreement invoices due Eberle, Omega List Company and/or the ECG Data Center are at any time sixty (60) days or more past due, Eberle shall have the unrestricted right to apply list rental income received to payment of their invoice(s) and to rent the list created under this Agreement and apply the list revenue income from such rentals to payment of their invoice(s) subject to the provisions of 2.a.

c. *Advances.* It is understood and agreed that any funds advanced by Eberle or third parties for postage and other direct mail fund raising services or materials shall be reimbursed before any other returns are disbursed to others.

5. **Confidentiality and Registrations.**

a. All financial information relating to these accounts, and this contract, shall be held in confidence by Eberle. Further, the Client shall hold in confidence all financial matters in connection with this contract, specifically including Eberle's compensation. It is agreed, however, that financial information may be provided by the Client and/or Eberle to governmental agencies upon receipt of a formal request from a governmental entity. The Client shall immediately notify and provide Eberle a copy of any such formal request and the information provided by the Client. Eberle shall likewise advise the Client of such requests and of Eberle's response thereto.

- d. A number of jurisdictions request some form of registration by organizations such as the Client. It is understood and agreed that it is the responsibility of the Client to register in such jurisdictions.
6. **Receipt and Disbursement of Funds.** All funds generated through the direct mail fund raising program under this Agreement shall be received and disbursed directly by the Client or its designated agent. Eberle shall not serve as agent for this purpose.
7. **Duration and Termination.**
- a. *Effective Date.* This Agreement shall become effective on the 2<sup>nd</sup> day of June, 1999, and shall continue in force until terminated as provided herein.
- b. *Termination.* Either party may terminate this Agreement by giving the other party written notice of termination at least ninety (90) days prior to the effective date of termination. Upon receipt of notice of termination, Eberle shall not commence any new work, but it shall complete its consultation work (as described herein) and place all list rentals previously approved by the Client. All other rights and duties of the parties shall continue until the date of termination. In the event the Client or Eberle desires to terminate all work commenced before the receipt of notice of termination, it may be so agreed upon the parties' mutual consent. Compensation to be received by Eberle for partially completed work shall be mutually determined.
- c. *Billings.* Upon termination of this Agreement, Eberle shall submit its billing for all amounts not previously billed and due Eberle at that time. Eberle shall not be entitled to payment for any new work commenced after the date the written notice of termination of this Agreement was received by Eberle. Eberle shall, however, be entitled to payment for work commenced and approved prior to receipt of such notice, or, with express written consent prior to the effective date of termination.
8. **Disposition of Lists, Property and Materials.**
- a. *List Security.* The list generated and developed during the term of this Agreement shall be kept in a secure manner by Eberle.
- b. *List Usage.* Any rentals, exchanges or other use of any lists created under this Agreement shall be to the sole benefit of the Client during the course of this Agreement, except as provided in paragraph 4.b. of this Agreement. Upon termination, Eberle shall be entitled to unlimited use of said list(s) without any payment to the Client. The Client, its officers, and/or representatives shall not during the term of this Agreement, or at any time subsequent thereto, rent, exchange, donate, sell, or otherwise provide any list(s) created under this Agreement to any third party for any reason whatsoever without the prior written approval of Eberle. After the expiration of the terms of this agreement, and upon payment in full of all outstanding invoices,

the Client shall retain the authority to approve or disapprove the rental of its Eberle generated donor list.

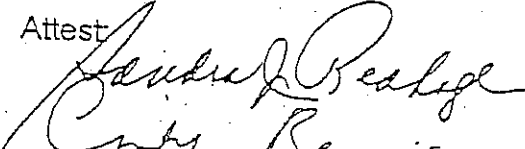
- c. *Final Payment.* Upon termination of this Agreement, all lists produced and used under this Agreement shall be considered the exclusive property of Eberle until final payment of all invoices has been made by the Client. A copy of the list shall be provided to the Client upon repayment of all postage advances and upon the final payment of all invoices from Eberle and direct mail vendors.
  - d. *Property and Materials.* It is understood and agreed that upon termination of this Agreement, any property and material provided under this Agreement by Eberle shall be the sole and exclusive property of Eberle. The Client shall have no right to use this property and material. Nor shall the Client use any direct mail package, or any portion thereof, created under this Agreement subsequent to its termination unless agreed to by Eberle.
9. *Conversion of List Exchange to Rental.*
- a. *List Owners Option.* It is understood and agreed that whenever the Client receives donor names and addresses to mail on an exchange basis, the organization which owns the donor names and addresses or its agent has the right to convert the exchange to a list rental at fifty percent (50%) of the current list rental price.
  - b. *Eberle Option.* If sums are due and owing Eberle, or the direct mail vendors on the date notice of termination is given, Eberle or its agent shall have the right to convert any donor names owed to the Client on an exchange basis to list rentals at fifty percent (50%) or less of the current list rental rates subject to the provisions of paragraph 2.a. Sums generated from such conversions, less commissions, shall be applied to the bills of Eberle and the direct mail vendors.
10. *Work In Progress.* Once mailing lists have been scheduled and/or purchase orders issued for a mailing(s), the Client may not cancel or suspend such mailing(s) except by mutual consent of the parties.
11. *Modification.* This writing contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth. No agent, employee, or other representative of either party is empowered to alter any of the terms hereof, unless done in writing and signed by an executive officer of the respective parties.
12. *Controlling Law.* The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Virginia. The Client further agrees that any and all legal proceedings concerning this Agreement and its interpretation shall be before a court in Northern Virginia and that such court shall have jurisdiction over the parties hereto.
13. *Waiver.* The failure of either party to this Agreement to object or to take affirmative action with respect to any conduct by the other which is in

violation of the terms of this Agreement shall not be construed as a waiver thereof, or of any future breach or subsequent wrongful conduct.

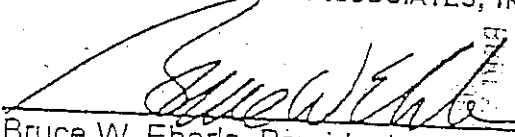
14. **Class.** The Client specifically agrees to hold Eberle, Omega List Company, their officers, directors, and employees harmless from any and all claims of third parties, of any nature whatsoever, arising out of materials, including copy, or direct mail fund raising projects, letters and/or packages reviewed and approved by the Client. In the event any payment due Eberle and/or direct mail fund raising creditors is not made in accord with the terms of this Agreement and the obligation(s) is referred to any attorney for collection, the Client agrees to pay all costs of collection, including an attorney's fee of twenty percent of the sum due.
15. **Certification.** The Client does hereby certify to Eberle that there is no agreement with other fund raising counsel or with a direct mail fund raiser or list broker currently in existence as of the effective date of this Agreement which conflicts with the terms hereof. The Client further agrees not to enter into any subsequent agreement which conflicts with the terms of this Agreement.
16. **Notices.** All notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery, through the facilities of the United States Postal Service or by facsimile transmission. The addresses set forth above for the respective parties shall be the places where notices shall be sent, unless written notice of a change of address is given.

The undersigned do hereby personally warrant and affirm that they are authorized to execute and bind the parties hereto.

Attest:

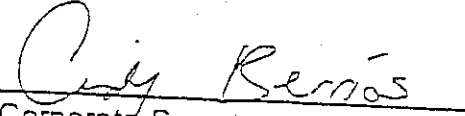
  
Cindy Berrios  
Sandra Redhage, Corp. Secretary

BRUCE W. EBERLE & ASSOCIATES, INC. (Eberle)

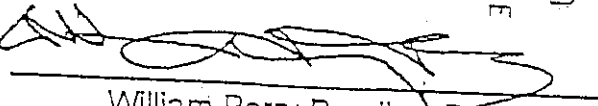
  
Bruce W. Eberle, President

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BUREAU OF ORGANIZATION

Attest:

  
Cindy Berrios  
Corporate Secretary

Mountain States Legal Foundation (Client)

  
William Perry Pendley, President



IN THE MATTER OF THE SOLICITATION OF  
FUNDS FOR CHARITABLE PURPOSES BY  
MOUNTAIN STATES LEGAL FOUNDATION  
FILE NO.: 02-98-00775

ORDER

AND NOW, to wit, on this 3<sup>rd</sup> day of December 2002, the terms of Paragraph 5 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, appearing to read "C. Michael Weaver".

C. Michael Weaver  
Secretary of the Commonwealth