

New York Office

October 5, 2001

Re: New Requirements for Florida Solicitation Law

Dear Clients:

You may have recently received a notice from the Florida Department of Agriculture & Consumer Services informing you of changes to the Solicitation of Contributions Act. According to that notice, effective October 1, 2001, all charitable organizations and sponsors (i.e. professional solicitors) will be required to include certain additional information with future solicitations. Please be advised that the only modification that you must make at this time is to **include, on future printed materials only, your Florida registration number for each printed solicitation, written confirmation, receipt or reminder of a contribution sent to the public.**

Seth Perlman of this office has spoken with Mr. Rudy Hamrick, the Regulatory Program Administrator, to discuss our concerns with the other aspects of the new act, specifically the requirements that you include the following in future solicitations:

1. The percentage, if any, of each contribution that is retained by any professional solicitor that has contracted with your organization; and
2. The percentage of each contribution that is received by your organization.

In our view, the pre-solicitation disclosures of fundraising percentages violates the United States Supreme Court's 1988 decision in Riley v. National Federation of the Blind of North Carolina, Inc. In that case, the Supreme Court specifically disallowed a statute that required the same type of disclosures in North Carolina. In Riley, the Supreme Court stated that "the solicitation of charitable contributions is protected speech, and . . . using percentages to decide the legality of the fundraiser's fee is not narrowly tailored to the State's interest in preventing fraud." The Riley Court further proclaimed that "[i]n contrast to the prophylactic, imprecise, and unduly burdensome rule the State has adopted to reduce its alleged donor misperception, more benign and narrowly tailored options are available."

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We have learned that the legality of the above two sections of this new Florida statute is being challenged in a recently filed lawsuit against the State of Florida. Thus, we have been advised by Mr. Hamrick that the percentage based requirements listed above are not being enforced at this time.

If you have any questions or concerns regarding this issue, please feel free to contact this office. We will continue to monitor this situation and we will let you know if there are any changes of which you need to be made aware.

Very truly yours,

Seth Perlman