

# Pennsylvania Landowners' Association, Inc.

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April 24, 1995

TO: ALL PROPERTY RIGHTS ORGANIZATIONS

FROM: RHONDA MCATEE, EXECUTIVE DIRECTOR  
PA LANDOWNERS' ASSN.

RE: **Brace v. United States**  
U.S. Supreme Court Docket No. 94-1699

Dear Property Rights Advocate:

Since 1990, when the federal government first sued Bob Brace on behalf of the United States Environmental Protection Agency, Brace v. United States has become a well-known case among property rights advocates and members of the agricultural community. It is a case that vividly illustrates our government's abuse of due process and civil rights, as well as its unconstitutional approach to regulating wetlands and land use in general, denying innocent, hard-working citizens use and control of their own land.

On April 10, 1995, Bob Brace filed a Petition for a Writ of Certiorari in the United States Supreme Court. A number of farming, ranching and other agricultural groups will be filing amicus briefs supporting Bob's petition particularly as it relates to the "normal farming activities" exemption from regulation and permitting under the Clean Water Act. The amici include the Pacific Legal Foundation, California Farm Bureau, National Cattlemen's Association, California Cattlemen's Association, the Pennsylvania Farm Bureau and the American Farm Bureau Federation.

The Brace appeal is essentially an attack on the Environmental Protection Agency (EPA) and the Army Corps of Engineers (COE) wetlands regulations promulgated in connection with those agencies' implementation of the "normal farming activities" exemption contained in Section 404 of the Clean Water Act. EPA and COE cited Bob for unpermitted discharge of fill into waters of the United States. The only "discharge" in the case was Brace's removing sediment from his drainage ditches and sidecasting it back onto the adjacent fields from whence it came.

In late 1993, Brace prevailed at his trial in federal district court. On appeal, the U.S. Court of Appeals for the Third Circuit reversed, deferring to COE regulations which strip away the farming exemption specifically intended by Congress to ease the regulatory burden on America's farmers.

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If the Supreme Court denies the petition for writ of certiorari, the case will return to the district court for entry of a remediation order and determination of civil penalties (up to 25,000 per day for each day in violation of the Clean Water Act). EPA is insisting that Bob plug his drainage system with concrete so that the 30 acre site which the government claims meets the technical definition of "wetland" will revert to its "natural state." However, the drainage system servicing the 30 acre site is integrated with the rest of the farm. Thus, EPA's remediation scheme is likely to ruin the entire farm.

Bob has over 55 years dedicated to his homestead farm. He was raised there as a child, working with his parents when it was a dairy farm and continuing to help them until their retirement in 1975 when he purchased the farm from them. His work on the farm continued with 10 years of his own time and financial resources dedicated to repairing and improving an integrated drainage system, designed with the assistance and approval of the United States Department of Agriculture, to improve crop productivity. Since 1987, he has been ensnarled in a regulatory nightmare which has devastated his family.

Nancy Marzulla of the Defenders of Property Rights is preparing to file a separate amicus brief which will focus on the takings and fundamental fairness issues involved in this case. PLA intends to join (sign onto) that brief and asks that other organizations which are interested in supporting Bob's position and wetland reform sign onto that brief as well. Can you help in this effort? If so, the deadline for signing on is May 2, 1995. Please inform either Nancy Marzulla of the Defenders of Property Rights (202-686-4197) or Lorraine Bucklin of our staff (814-796-3578) if your organization wishes to offer its support.

Thanks for your consideration in this matter.