

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

PUBLIC CITIZEN, INC., *et al.*,)
)
 Plaintiffs,)
)
 v.) Civil Action No. 8:01-CV-943-T-23TGW
)
 PINELLAS COUNTY, *et al.*,)
)
 Defendants.)
 _____)

SECOND DECLARATION OF LEE M. CASSIDY

I, Lee M. Cassidy, state the following facts, under oath, of my own personal knowledge and am competent to testify to the following:

1. I am the Executive Director of the Nonprofit Federation of the Direct Marketing Association and am authorized to speak on its behalf.

2. The Direct Marketing Association (DMA) is an organization exempt from federal income taxation as a trade association under Section 501(c)(6) of the Internal Revenue Code. The Nonprofit Federation is an unincorporated division of the DMA dedicated to serving the needs of the nonprofit and fundraising community. The Nonprofit Federation works on behalf of approximately 550 nonprofit organizations to, among other things, achieve fair regulation for its constituency. The Nonprofit Federation does not conduct business in Pinellas County, Florida or maintain an office or any other physical presence in Pinellas County.

3. The Nonprofit Federation appears in this case as a representative of its charitable organization members. Charities make up the majority of the organizations that are members of the Nonprofit Federation. Many of these charities conduct direct mail public education and

solicitation campaigns throughout the United States, including in Pinellas County, solicit charitable contributions by telephone or on their Internet websites, and receive contributions from Pinellas County residents via the Internet, over the telephone, and through the United States mails. Many of our member charities have received letters from Pinellas County threatening prosecution if they fail to comply with its redundant, burdensome, and onerous registration and reporting requirements.

4. Our member charities have responded in different ways to the County's threats of sanctions and other enforcement action. Some of these charities have never registered to solicit charitable contributions in the County. Others registered at some point, but then decided not to renew their permits. Other groups have registered in the face of threatened sanctions by the County and the risk of injury to their reputations in the community if they failed to register, but believe that the County's registration process and reporting requirements are unlawful, coercive, and wrong. Other charities have attempted to register but have been denied either initial permits or renewal permits by the County. Still others have decided to limit or suppress altogether their solicitation activity in the County to avoid the requirement of registration. Those charities that have chosen to register in the County have incurred significant additional burdens and expenses. Those that have been denied a permit by the County or that have curtailed or suppressed their solicitation activity there have lost opportunities to engage both in protected speech and interstate commerce as a direct result of the Ordinance.

5. During the discovery process in this case, defendants produced to plaintiffs a list of forty-five organizations that, as of March 2002, have had their applications for initial or renewal permits denied by the Pinellas County Department of Consumer Protection. I have reviewed that list and checked it against the Nonprofit Federation's list of charity members. Three organizations that are members of the Nonprofit Federation have had permits denied by the County. One of these organizations, the National Wildlife Federation, is providing a separate declaration discussing that permit denial.

6. I have reviewed the Declaration of Robert Tigner and adopt its description of the respects in which the Pinellas County registration and reporting requirements, as stated in the County's charitable solicitation ordinance ("Ordinance") and accompanying forms, are redundant, exceptionally burdensome, and, because of the complexity of the questions on the forms and the lack of clarity regarding what is required, increase the transaction costs and uncertainties of compliance. To that I would add a few points.

7. It is deeply troubling that Pinellas County is very aggressive in its threats of enforcement action and sanctions, undertaking an ambitious letter-writing campaign to pressure national charitable organizations to register in the County. This effort by the County has largely been successful because, as Mr. Tigner rightly points out, charities are highly risk-averse entities that are reluctant to ignore or flout regulations or to do anything that might damage their reputations, no matter how coercive, burdensome, or overreaching these regulations may be. See Declaration of Robert Tigner ¶ 6. Yet like many a bully, the County threatens aggressive action, intimidating charities to comply, but then does little to back up its threats. To the best of my knowledge, this County engages in little meaningful regulatory activity except to coerce

registration and collect registration fees. For example, to the best of my knowledge, the County has taken no enforcement action (other than writing threatening letters) against those few groups, mostly religious organizations, that I am aware openly have refused to register. I also know of no instances where the County has investigated charities for fraud or misuse of funds or prosecuted any charity on such grounds.

8. For fifteen years, the charitable community has worked with state regulators and others to minimize the paperwork involved in registration and reporting in states across the country. As Robert Tigner correctly reports, the vast majority of states have accepted the Unified Registration Statement (URS), which aggregates the registration requirements for all thirty-seven participating states into a format accepted by all. The participating states are as eager as charities to reduce paperwork because excessive and redundant filing requirements can overwhelm regulators and ultimately create more work, take up more file space, and lead to a less thorough and effective analysis of data. The charitable community and state regulators have been working in concert toward the common goal of easing and streamlining these requirements. In addition to the URS, this community has been working toward moving to a system of electronic filing and toward improving the IRS Form 990, the annual informational tax filing that charities are required to file with the IRS, to make it a better and more effective tool in understanding charitable organizations and rooting out fraud.

9. Pinellas County, however, has moved in the exact opposite direction, imposing registration and reporting requirements that not only duplicate in substantial part what charities already must provide to the State of Florida, but also add a substantial number of onerous, invasive, and often unclear items on top of it. In so doing, the County compels charities to

simply churn more paper, all without apparent purpose, because the filing of this voluminous documentation results in nothing except the flow of income into the County.

10. That this one County lies far outside the mainstream of regulators became particularly evident when it amended its Ordinance two years ago to adopt a requirement that every charitable organization, not only in this country, but in the world, that receives even a single donation from a Pinellas County resident via the Internet, register and pay a filing fee. See Pinellas County Code § 42-310. When the County announced its intention to adopt this amendment, the National Association of State Charity Officials (NASCO), regulators from several individual states, and representatives from the charitable community and trade associations, including me, strongly recommended that the County not undertake this action. We wrote numerous letters to the County requesting restraint, but these were ignored; indeed, I know of no one that even received a response before the County acted.

11. State regulators, by contrast, strongly believe that the only legitimate way to regulate Internet solicitation both from a policy and a constitutional standpoint is embodied in the Charleston Principles, the voluntary guidelines adopted by NASCO. Unlike the County's tack, which is to assert extra-territorial jurisdiction without limit over every organization that solicits on the Internet, the Charleston Principles reflect a considered judgment regarding when an organization's contacts with a jurisdiction's residents are sufficient to merit regulation on the basis of Internet solicitation alone. To the best of my knowledge, these Principles are being honored by all state charitable solicitation law administrators.

12. Lastly, I would like to emphasize the obvious. It would be impossible for even the largest charities to communicate with current and prospective members and to raise funds

nationally if even a small percentage of local governments enacted legislation imposing registration and reporting requirements of the nature demanded by Pinellas County, Florida.

13. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on _____.

Lee M. Cassidy
Executive Director
DMA-Nonprofit Federation