

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 ELLEN H. MCPEAKE**

I, Ellen H. McPeake, state the following facts under oath of my own personal knowledge and am competent to testify to the following:

**I. Background**

1. I am the Chief Operating Officer (“COO”) of Plaintiffs Greenpeace, Inc. and Greenpeace Fund, Inc. Greenpeace Fund, Inc. is an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code. Greenpeace, Inc. is a nonprofit corporation exempt from federal income taxation under Section 501(c)(4) of the Internal Revenue Code. Both are incorporated under the laws of the State of California and are headquartered in Washington, D.C. Unless otherwise expressly provided, references herein to Greenpeace shall refer to both organizations.

2. I have worked for Greenpeace since October 1998, first as Finance Director, then as Director of Finance and Development, and finally, beginning in February 2001, as COO. I have spent much of my career in the nonprofit sector. From 1991 to 1997, I was the Director of Finance and Administration at Public Citizen, and in 1997 to 1998, I served in the same position

for the Center for Public Integrity.

3. Greenpeace's mission is to raise public awareness of issues concerning the environment. Greenpeace, Inc. is composed of six main campaigns, focusing on the substantive issues of toxics, disarmament, genetically modified foods, oceans, climate, and forests. The organization has approximately 260,000 members nationwide. Greenpeace Fund, Inc. supports the education, research, and public information activities of Greenpeace, Inc.

4. As COO of Greenpeace, I am personally responsible for properly maintaining its books and records and assuring that they comply with generally accepted accounting principles so that our outside auditors can approve our annual financial statements. I also coordinate Greenpeace's compliance with IRS regulations governing our tax-exempt status, which requires both Greenpeace Fund, Inc. and Greenpeace, Inc. to file an annual IRS Form 990 "Return of Organization Exempt from Income Tax."

5. Greenpeace is in compliance with IRS regulations requiring that tax-exempt organizations provide public access to copies of their tax-exempt applications and their last three IRS Form 990s. See 26 C.F.R. ' ' 301.6104(d)-1(a). The most recent IRS Form 990s for Greenpeace Fund, Inc. and Greenpeace, Inc., for calendar year 2000, are attached hereto as Exhibit A.

6. As COO of Greenpeace, I also oversee Greenpeace's compliance with the charitable solicitation registration and reporting requirements of the jurisdictions in which Greenpeace solicits charitable contributions. Both Greenpeace Fund, Inc. and Greenpeace, Inc. are registered with the State of Florida, pursuant to Florida's Solicitation of Contributions Act, Fla. Stat. ch. 496. Each organization is also registered in 34 other States and the District of

Columbia. Greenpeace has retained the services of a firm, Labyrinth, Inc., to handle its state registrations, but I am responsible for overseeing that process.

## **II. Greenpeace's Charitable Solicitation Activity in Pinellas County**

7. Greenpeace does not conduct business in Pinellas County (except to the extent that soliciting charitable contributions constitutes conducting business), or maintain an office or any other physical presence in Pinellas County. Both Greenpeace Fund, Inc. and Greenpeace, Inc. currently solicit charitable contributions from residents in Pinellas County who are existing members of these organizations as part of national direct mail campaigns, as well as by telephone. Because of the Pinellas County charitable solicitations ordinance ("Ordinance"), Pinellas County Code ' 42-266 et seq., Greenpeace does not attempt to recruit new members residing in the County.

8. As described below, Greenpeace, Inc. previously registered and obtained a permit to solicit contributions in Pinellas County, but has no current permit. Greenpeace Fund, Inc. has never registered to solicit charitable contributions in Pinellas County. The following is a chronology of events regarding Greenpeace's registration status in Pinellas County, which I base on a review of Greenpeace's records. Unfortunately, there are some gaps in our files; Greenpeace's files contain correspondence from the County, but are missing some return correspondence from Greenpeace.

9. Greenpeace received two identical letters from the Pinellas County ("County") Department of Consumer Protection ("Department") dated June 26, 1998 and September 10, 1998. Both stated that the Department had received information that Greenpeace may be soliciting donations in the County and that the County's charitable solicitations ordinance

requires that any organization soliciting for charitable purposes “must first obtain a permit from this office if they are soliciting in Pinellas County.” Both letters warned: “Failure to comply with Pinellas County Code, Section 42-292, within fifteen (15) days may subject you to a fine and civil penalties.” Attached to the letters was a copy of the Ordinance and a New Permit Application. These letters are attached hereto as Exhibit B.

10. Because of the County’s threat of legal action and sanctions, in August or September 1998, Greenpeace, Inc. completed and filed the New Permit Application and paid a \$120 filing fee. Pinellas County is the only local jurisdiction in which either Greenpeace organization has registered. At the time of its registration, Greenpeace, Inc. was soliciting charitable contributions from Pinellas County residents as part of its national direct mail campaigns and was also engaged in telephone solicitation directed at County residents. Greenpeace Fund, Inc., a Section 501(c)(3) organization, focuses on obtaining larger donations from fewer donors than does Greenpeace, Inc., and had limited its solicitation activities to current members of the Greenpeace organizations residing in the County. Therefore, Greenpeace Fund, Inc. did not register. See Pinellas County Code ' 42-272(a) (Ordinance does not apply to the solicitation of current members of a charitable organization).

11. Greenpeace, Inc. received a letter dated September 29, 1998 from the Department stating that it could not issue a permit because of four missing items. In my view, two of the items the County identified as missing, “Sample of Mail Solicitation Material(s)” and “Telephone Scripts from Professional Solicitor,” are particularly objectionable, in that they permit the County to review Greenpeace’s communications with County residents in advance and subject Greenpeace to the risk of censorship by County officials. The Department letter

threatened that unless the requested information was received within fifteen days, “the application will be denied.” The September 29, 1998 letter is attached hereto as Exhibit C.

12. Although I am unable to determine from Greenpeace’s records how Greenpeace responded to the September 29, 1998 letter, the Department ultimately approved Greenpeace, Inc.’s application and issued a permit. The November 20, 1998 approval letter stated that Greenpeace, Inc. was required to file a financial report within six months of the permit issue date, by May 20, 1999, and that its permit expired on November 20, 1999. Attached to the letter were the permit, a Charity Report of Results Form, and a Renewal Application Form. The letter also instructed that “[i]f any of the information contained in the application changes,” Greenpeace should inform the office in writing within fifteen days. The November 20, 1998 letter and its attachments are appended as Exhibit D hereto.

13. Subsequently, Greenpeace, Inc. received a letter from the Department dated July 15, 1999, advising that as a first-time registrant, Greenpeace, Inc. was required under Pinellas County Code ' 42-295 to submit a six-month financial report, which was due on May 20, 1999. The letter alluded to an earlier Departmental notification regarding this report dated May 28, 1999, which I cannot find in Greenpeace’s files. The July 15, 1999 letter stated: “This letter serves as NOTICE OF INTENT TO REVOKE your permit based on your failure to satisfy the requirements of Pinellas County Code, Section 42-295(b)(1)(a).” To avoid revocation, Greenpeace, Inc. was required to send the financial report within fifteen days to the Director of the Department and to provide “a satisfactory accounting or explanation.” The letter is appended as Exhibit E hereto.

14. Evidently, Greenpeace, Inc. provided the missing financial report because the

County did not revoke its permit, though I do not have a copy of what we provided. In September 1999, Greenpeace filed a renewal application. The County responded in a letter dated September 7, 1999 informing us that the application had been filed one month too early and that it must be resubmitted within thirty days of our permit expiration. One month later, Greenpeace, Inc. resubmitted its renewal application. The County responded in a letter dated October 27, 1999 stating that it was unable to issue a permit based on five missing items. I note again that two of these items were “mail sample(s)” and “telephone scripts.” Another letter dated November 12, 1999 followed, stating again that the application was incomplete and that the letter “serves as NOTICE OF INTENT TO DENY your application based on your failure to satisfy the requirements of Pinellas County Code, Section 42-292.” The letter stated: **“Solicitation of Pinellas County citizens by or for your organizations without a permit is unlawful.”** (emphasis in original). It also warned that “[s]olicitation without a permit may result in citation or civil action.” The September, October, and November 1999 letters are attached as Exhibit F, hereto.

15. Greenpeace, Inc. provided the requested information in early December 1999. In a letter dated December 9, 1999, the Department informed Greenpeace, Inc. that its permit had been approved. Again, the Department directed Greenpeace, Inc. to notify it in writing of any changes to the information provided in the application within fifteen days. The letter advised Greenpeace, Inc. that its permit would expire on December 8, 2000 and that failure to file a renewal registration prior to the permit expiration would require completion of a new registration application. The letter is attached as Exhibit G, hereto.

16. Because of the burdens and expense involved in registering in Pinellas County,

the only local governmental jurisdiction in which Greenpeace was registered, I made the decision that Greenpeace, Inc. would not renew its permit when it expired in December 2000, and indeed, Greenpeace, Inc. did not seek to renew its permit at that time. Several months later, I instructed Greenpeace's fundraising consultant and professional solicitor to suppress all solicitations of non-Greenpeace members residing in Pinellas CountyC whether the solicitation occurred by direct mail or by telephone. All such solicitation activity prospecting for new members in Pinellas County has ceased. (Because the Ordinance contains an exception for solicitations of the organization's members, Greenpeace has continued to solicit contributions from its existing members).

17. As a result of a miscommunication, however, Labyrinth, Inc. attempted to renew Greenpeace, Inc.'s permit in early October 2001. The Department responded in a letter dated October 10, 2001, stating that it could not issue a permit based on seven items of missing information, including, among other things, a late fee, a late renewal application (which is substantially longer than the ordinary renewal application), mail samples, telephone scripts, and date of birth information. The letter stated that the requested information must be received within fifteen days or the application would be denied. The letter is attached as Exhibit H, hereto.

18. I directed Labyrinth not to pursue the renewal application further, and neither Labyrinth nor Greenpeace responded to the October 10, 2001 letter. The Department followed up with a November 15, 2001 letter that served as a Notice of Intent to Deny Greenpeace, Inc.'s application, and then a December 12, 2001 letter. That last letter informed us that Greenpeace, Inc.'s application for a permit had been denied. It stated: **“Solicitation of Pinellas county**

**citizens by or for your organization without a permit is unlawful.”** (emphasis in original).

The letter also warned: “Solicitation without a permit may result in citation or civil action. If the organization calls or writes Pinellas County citizens, the organization could be enjoined from further solicitation activity in this County.” The November and December 2001 letters are attached hereto as Exhibit I.

19. In addition, the Ordinance requires a charity that has received a charitable contribution from a Pinellas County resident via the Internet to register in the County unless the charity returns the contribution within 30 days. Pinellas County Code ' 42-310. Greenpeace operates an Internet website containing a general solicitation encouraging website visitors to join. A copy of Greenpeace’s current charitable solicitation on its website is attached as Exhibit J. See <http://www.greenpeace.org> (home page); <https://www.greenpeace.com/forms/gpicontr.html> (join page). As of May 2002, Greenpeace has received through its website contributions from eighteen (18) Pinellas County residents, totaling \$1,014, none of which Greenpeace returned.

20. Greenpeace’s website does not direct its solicitation toward Pinellas County residents.<sup>1</sup> It also does not contain a disclaimer stating that Greenpeace does not accept donations from County residents. For the same reasons expressed in the Second Declaration of Joseph Zillo (“Second Zillo Decl.”) §§ 14-17, Greenpeace likewise objects to the requirement that it register in the County based solely on the fact that it has received contributions from County residents through the Internet, as well as to any requirement that in lieu of registration,

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<sup>1</sup> Similarly, Greenpeace, Inc. runs an infomercial on cable television, but it also is not directed at citizens of Pinellas County.



Greenpeace place a disclaimer on its website and return any contributions made by County residents.

21. Greenpeace wishes to resume full solicitation activity in Pinellas County without the threat of civil and criminal penalties. Because it believes that the Pinellas County Ordinance and forms are unconstitutional and unduly burdensome, Greenpeace has decided to challenge their constitutionality in this case.

### **III. The Burdens of the Pinellas County Ordinance and the Impact on Greenpeace**

22. I have reviewed the Second Declaration of Joseph Zillo and completely agree with its description of the redundancy, burdensomeness, and invasiveness of Pinellas County's registration and reporting requirements. On behalf of Greenpeace, I adopt his description of those burdens, the resulting costs, and his objections fully, as if set forth herein. See Second Zillo Decl. §§ 19-59. Mr. Zillo's description of how these requirements affect an organization like Public Citizen holds equally true for Greenpeace. I will add only a few points specific to Greenpeace below.

23. With respect to the County's intrusive requests for private personnel-related information, Greenpeace objects to providing this information for the same reasons as outlined in Joseph Zillo's Declaration. See Second Zillo Decl. §§ 27-30. Greenpeace resists providing personal information regarding its officers, directors, and employees to regulators unless it has no choice.

24. I also agree with Joseph Zillo's description of the burdens imposed by Questions 24 and 27 on the New Permit Application, see Second Zillo Decl. §§ 31-32, both of which are nearly impossible to answer for an organization of Greenpeace's size. Greenpeace currently has

approximately 90 employees.

25. With respect to the County's request for information regarding contributions received from Pinellas County residents, Greenpeace, Inc. does not keep track of contributions at a county level and therefore reported its total national contributions, not its County contributions, when it registered. Greenpeace, Inc. therefore paid the maximum \$120 fee to register both in 1998 and 1999.

26. Greenpeace objects to the requirement that it provide the wording of verbal solicitations and "any written or printed material(s) used in solicitation," see New Permit Application & 29(H); Pinellas County Code ' 42-292(a)(12)(f) & (g), as a condition of obtaining both an initial and a renewal permit, for the same reasons expressed in Mr. Zillo's Declaration. See Second Zillo Decl. && 44-49. I would add that the scope of Greenpeace's direct mail campaigns is even greater than Public Citizen's. Between its two organizations, Greenpeace sends out more than thirty waves of direct mail per year and uses approximately fifteen different verbal scripts. In 2001, with respect to "prospecting" mail alone the type of direct mail we have halted in Pinellas County Greenpeace sent out approximately six million pieces across the country. There simply is no way Greenpeace could provide Pinellas County with copies of every type of letter or script that might be used in the County.

27. As with Public Citizen, the loss to Greenpeace from our inability to solicit new members in the County is far more serious than the sacrifice of the fundraising revenue we might hope to gain from County residents though that is not insubstantial. See Second Zillo Decl. && 55-57. Greenpeace's mailings are one of the principal means by which we communicate with and educate the public, highlighting issues, causes, and undertakings pursued by

Greenpeace's six major campaigns, and ask for the reader's support for and participation in these efforts. Many of our mailings also provide individuals informational inserts as well as a way to make their support of Greenpeace's work known to lawmakers and other public officialsC whether or not the reader decides ultimately to join Greenpeace. In other words, our mailings often encourage current and potential members to become engaged in the democratic process. Greenpeace's professional solicitors provide similar information by telephone when they call current and prospective members to make appeals, ask them to join, or encourage them to renew their memberships. Greenpeace has been forced to refrain from all of these public education and advocacy activities in the County as a result of the burdens and costs imposed by this Ordinance.

28. In addition to direct mail, Greenpeace sends its current members various newsletters and other information throughout the year. Because we have been unable to recruit new members in the County, Greenpeace's other communications with Pinellas County residents, such as through these newsletters, necessarily has also declined.

29. 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 \_\_\_\_\_.

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Ellen H. McPeake  
Chief Operating Officer  
Greenpeace, Inc. and Greenpeace Fund, Inc.