

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 JOSEPH A. ZILLO

I, Joseph A. Zillo, 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’ Public Citizen Foundation, Inc. (“PCF”), a nonprofit corporation which is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, and Public Citizen, Inc. (“PCI”), a nonprofit corporation exempt from federal income taxation under section 501(c)(4) of the Internal Revenue Code (collectively referred to as “Public Citizen” unless otherwise noted). I have held these positions since October 1997.

2. I received an MBA from the University of Maryland School of Business in 1984 and a law degree from Georgetown University Law Center in 1995. Before I came to Public Citizen, I was employed as an associate from 1995 to 1997 at Cohen & White, a law firm in Washington, D.C., where I specialized in the areas of government contracts and corporate law. From 1986 to 1995, I held several positions at Analysas Corporation, also in Washington, D.C.,

which had many government contracts focused on computer and environmental work. Before then, I held various administrative positions at several companies in the Washington, D.C. area., specializing in management, government contracting, and program operations.

3. As COO of Public Citizen, I am responsible for assuring that the books and records of Public Citizen are properly maintained and that they comply with generally accepted accounting principles so that our outside auditors can approve our annual financial statements. In addition, I coordinate Public Citizen's compliance with the IRS regulations governing our tax-exempt status. In order to maintain our tax-exempt status, each year both PCI and PCF file informational tax returns with the IRS on the IRS Form 990 "Return of Organization Exempt from Income Tax."

4. Public Citizen is a non-profit organization based in Washington, D.C. It engages in research, lobbying, and litigation and has approximately 150,000 members nationwide. Public Citizen advocates for consumer rights in the marketplace, safe products, a healthy environment and workplace, clean and safe energy resources, and corporate and government accountability.

5. Public Citizen 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), -2. Public Citizen provides access to its three most-recent IRS Form 990s through its Internet website. See <http://www.citizen.org/about/articles.cfm?ID=5165>. The most recent IRS Form 990s for PCI and PCF are attached as Exhibit A, hereto.

6. As COO of Public Citizen, I also oversee Public Citizen's compliance with the charitable solicitation registration regimes of the jurisdictions in which Public Citizen solicits

contributions. Both PCI and PCF are registered with the State of Florida, pursuant to Florida's Solicitation of Contributions Act, Fla. Stat. ch. 496. PCI is registered in 35 other States and the District of Columbia; PCF is registered in 36 other States and the District of Columbia. Public Citizen handles its registrations in-house.

II. Public Citizen's Charitable Solicitations Activity in Pinellas County

7. Public Citizen does not conduct business in Pinellas County (except to the extent that soliciting charitable contributions by mail, telephone, or Internet or selling publications over the Internet constitutes conducting business in the County), or maintain an office or any other physical presence in Pinellas County. In Fiscal Year 2001, Public Citizen had approximately 319 members who resided in the County who had contributed either to PCI or PCF. (These numbers are approximations because Public Citizen's database keeps track of only our members' current addresses, not the addresses at which they resided at the time they made a contribution. Thus, if a Public Citizen member residing in Pinellas County contributed \$100 to Public Citizen and then moved to New York, we would not know that the donation came from a Pinellas County resident once the member provided us with the new address).

8. Public Citizen received a letter dated September 18, 1997 from the Pinellas County ("County") Department of Consumer Protection ("Department") stating that the Department had received information that Public Citizen 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." The letter requested Public Citizen to send the County a completed application and a non-refundable registration fee. Attached to the letter was a New Permit

Application form and a copy of the Pinellas County ordinance (“Ordinance”) governing charitable solicitations, Pinellas County Code §§ 42-266 to -344. The fee schedule is provided on the first page of the New Permit Application. The letter and its attachments are appended hereto as Exhibit B. Before receiving that letter, Public Citizen had engaged in charitable solicitation in Pinellas County through direct mail and telephone solicitation (although Public Citizen engages in telephone solicitation only for a select number of its members).

9. Because of the onerous registration and reporting requirements imposed by the Pinellas County ordinance regulating charitable solicitations, the potential for serious penalties if Public Citizen continued to solicit contributions in the County without complying with the Ordinance, and the possible damage to Public Citizen’s reputation if it refused to comply with the Ordinance or was subject to an enforcement proceeding or penalties, Public Citizen made a decision, based on my recommendation and after consultation with counsel, to halt all solicitations of non-members in Pinellas County. Sometime after we received that September 1997 letter, Public Citizen directed its fundraising consultant to suppress all direct mail solicitations to non-members residing in Pinellas County. Because of a misunderstanding, however, our fundraising consultant did not implement that directive at that time.

10. In a letter dated January 25, 2000, the Department again wrote Public Citizen that it had received information that Public Citizen may be soliciting donations in the County and that the Ordinance requires organizations soliciting charitable contributions first to obtain a permit from the Department. The Department warned that “[f]ailure 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 letter was a New Permit Application form and a copy of the

Ordinance. The January 2000 letter is appended hereto as Exhibit C.

11. Public Citizen again instructed its fundraising counsel to suppress direct mail solicitations to non-members residing in Pinellas County, and all such solicitations have ceased. Because the Ordinance does not apply to the solicitation of current members of a charitable organization, see Pinellas County Code § 42-272(a), Public Citizen has continued to solicit contributions from its current members residing in the County.

12. After consultation with counsel, I responded to the Department in a letter dated February 17, 2000, attached hereto as Exhibit D, stating that Public Citizen believes that the Ordinance is unconstitutional and that Pinellas County has no authority to regulate charitable solicitations in the manner provided in the Ordinance or to require Public Citizen to obtain a permit from Pinellas County prior to any solicitation. My letter confirmed, however, that Public Citizen had previously instructed its fundraising counsel to suppress mail solicitations to non-members residing in Pinellas County, but that Public Citizen continued to correspond with, and request contributions from, Public Citizen's current members in the County.

13. In addition, the Ordinance requires a charity that has received a charitable contribution from a Pinellas County resident as a result of an Internet solicitation to register in the County unless the charity returns the contribution within 30 days. Pinellas County Code § 42-310. Question 13 on the New Permit Application, which requests that the charity applicant check boxes indicating its methods of solicitation, has a box for "Internet" and requires that the applicant attach its Internet address. See also New Permit Application ¶ 29(K). Public Citizen operates an Internet website encouraging viewers to join our organization. A copy of Public Citizen's current charitable solicitation on its website is attached as Exhibit E. See

<https://www.citizen.org/join>. I have learned from our Development Department that, as of May 2002, Public Citizen has received contributions from at least three Pinellas County residents that were made through the Public Citizen website, totaling \$170, over the past three years. The Development Department was able to determine this only by running a special search of its contributions data. We did not return any of these contributions.

14. Public Citizen's website neither targets Pinellas County residents (or the residents of any particular locality) nor contains a disclaimer stating that Public Citizen does not accept contributions from Pinellas County residents. Despite Pinellas County's requirement that we register based only on the receipt of these few contributions from County residents through the Internet, Public Citizen has refused to register because of the burden and expense that registration under the Ordinance entails and because we believe that the County has no right to demand that Public Citizen register, obtain a permit, and pay a filing fee based on a few isolated contributions it receives from County residents through a general charitable solicitation on our website.

15. Nor do I see any reason why Public Citizen should be compelled to return contributions willingly made by Pinellas County residents who have viewed our website. A requirement that Public Citizen return its contributions from Pinellas County not only would force us to forgo the revenue such contributions generate, but more importantly, Public Citizen would lose that new member—one who already has demonstrated her interest in our organization—possibly even offending her by returning her contribution and interfering with that new member's own rights of free speech and free association.

16. I am aware of the fact that Pinellas County has stated in its response to plaintiffs'

interrogatories that a charity could protect itself from the effect of the Ordinance by including a disclaimer on its website that states that it does not accept contributions from Pinellas County residents. Leaving aside the obvious problem for Public Citizen if a County resident nonetheless decided to contribute—as the Ordinance would force us to turn that donor away—in my view including such a disclaimer would harm our ability to attract new members and would send a signal that would be very damaging to Public Citizen and its mission. The inclusion of a disclaimer would send the message that Public Citizen, a consumer advocacy group, was attempting to circumvent its regulatory obligations by sleight of hand, by including a disclaimer rather than register as required by the County. This is not a message that Public Citizen is willing to send—not to the residents of Pinellas County and not to the rest of the world that views our website. If nothing else, the inclusion of such a disclaimer would inevitably raise questions in the mind of a potential member viewing our website: Why won't Public Citizen accept donations from residents of Pinellas County? And if other counties and cities followed Pinellas County's lead, our website soon would be riddled with disclaimers regarding which citizens of the United States could contribute to our organization and which not.

17. The Internet provision of the Ordinance has cast a pall over the propriety of Public Citizen's use of solicitations on the Internet. We neither wish to stop soliciting on the Internet nor to include a disclaimer regarding Pinellas County, but at the same time, Public Citizen does not wish to operate in violation of the law. Our organization is concerned that unless the Internet provision is enjoined and declared unconstitutional, that Public Citizen must either self-censor its speech on the Internet by removing or limiting its charitable solicitation, return contributions from Pinellas County donors, add an undesirable disclaimer to its website,

or else risk sanctions or other enforcement action by the County.

18. In sum, Public Citizen no longer wishes to refrain from soliciting non-members in Pinellas County or to be subject to civil or criminal penalties if it is found to be in violation of the Ordinance. Because Public Citizen believes that the Ordinance and its accompanying forms are unconstitutional, it has decided to challenge their constitutionality in this lawsuit.

III. The Burdens of the Pinellas County Ordinance

19. In order to receive a charitable solicitations permit from Pinellas County, charitable organizations such as Public Citizen must file a sworn application on the County's own form, the Charitable Solicitation New Permit Application ("New Permit Application"); pay the filing fee, as set forth in the Fee Schedule in the application; and submit extensive additional materials specified by both the Ordinance and the forms. Then, after the charity obtains a permit, it must comply with annual renewal and periodic reporting requirements and pay an annual filing fee. According to the Ordinance, all of the information submitted to the County to obtain a new or renewal permit is available to the public. Pinellas County Code §§ 42-270, 42-279(b) (citing Florida Public Records Law, Fla. Stat. ch. 119).

A. Duplication of Information Publicly Available Elsewhere

20. The current version of the Ordinance and New Permit Application, attached hereto as Exhibits F & G, respectively, require charities to provide a considerable amount of information that is already publicly available on their informational tax filings submitted to the IRS, the IRS Form 990s. For example, Public Citizen's address and telephone number, the name and business address of each member of our board of directors, the names of our officers, and a description of the programs and activities that we raise funds to support—all information

required by Pinellas County—are included on Public Citizen’s IRS Form 990s. See Exhibit A (Form 990s); New Permit Application ¶¶ 3, 7-11, 21-22, 29(F) (Exhibit G). The State of Florida requires the same information, which Public Citizen also supplies. See Fla. Stat. ch.

496.405(2)(b), (c), (g). Public Citizen provides its Form 990s to more than 35 states, including Florida. See Fla. Stat. ch. 496.405(2)(a) & .407(2). Pinellas County also requires that charity applicants provide their Form 990s. New Permit Application ¶ 29(A)(1).

21. Pinellas County requires charities to report on the New Permit Application extensive financial information, such as their “expected” gross revenue, “expected” contributions, “projected” program services, “anticipated” management and general expenses, fundraising expenses, compensation of officers and directors, and the net assets or fund balances at the beginning and end of each year. See New Permit Application ¶¶ 14-20; see also Pinellas County Code § 42-292(a)(12)(c)-(e). Leaving aside the question of providing “anticipated” figures versus an accounting of the nonprofit organization’s financial performance during the past fiscal year, which I discuss below, Public Citizen and other charities provide similar information on their Form 990s for the past fiscal year as that sought by Pinellas County. Indeed, the Form 990 provides a highly detailed breakdown of Public Citizen’s sources of revenue, assets, liabilities, program services expenditures, management and general expenses, and fundraising expenses. See Exhibit A (Form 990s, Parts I & II). Again, we provide this information not only to the IRS, but to Florida. See Fla. Stat. ch. 496.405(2)(a) & .407(2).

22. We furnish still other information required by Pinellas County to Florida. The County requires, for instance, that a charity identify any professional solicitor, federated fundraiser, fundraising consultant/counsel, commercial co-venturer, or federated fundraising

agency (e.g., United Way) in its application, describe the system of payment for the professional organization, and attach all contracts. New Permit Application ¶¶ 4, 5, 5A-C, 29(C). Florida requires nearly identical information. See Fla. Stat. ch. 496.405(2)(e). Every year, Public Citizen provides Florida with copies of its contracts with professional solicitors and professional fundraising consultants.

23. Pinellas County requires applicants to report prior convictions on the part of the charity or various officers, directors, and employees relating involving theft, fraud, misrepresentation or misuse of funds, as well as any permit suspensions, revocations, or other enforcement action taken for misconduct involving charitable solicitation. New Permit Application ¶¶ 25 & 26. Florida requires similar disclosures. Indeed, the disclosures regarding under Florida law are more comprehensive, covering a larger number of employees, a greater time-frame for prior convictions, and a larger range of jurisdictions with respect to regulatory actions taken. See Fla. Stat. ch. 496.405(2)(d).

24. Pinellas County requires considerable additional documentation that we are also required to submit to Florida. The County requires that the applicant charity submit the IRS Letter of Determination reflecting its the tax exemption. See New Permit Application ¶ 29(E). So does Florida. Fla. Stat. ch. 496.405(2)(f). The County requires submission of verification of incorporation for the applicant. See New Permit Application ¶ 29(J). Again, so does Florida. Fla. Stat. ch. 496.405(2)(f).

25. As Pinellas County well knows, because it requires proof of registration in Florida, see New Permit Application ¶¶ 28, 29(B), charitable organizations eligible for registration in the County have already provided the duplicative information the County

demands, as highlighted above, to the State of Florida pursuant to state statute, as well as to the IRS (and also to Florida) on its Form 990s.

26. As I discuss below, the additional information that is required by the County, but not by the IRS or Florida, is (a) invasive of the privacy of Public Citizen's officers, directors, and employees; (b) extremely burdensome for Public Citizen to gather and report; and/or is (c) proprietary and confidential; and (d) is of no value to Pinellas County residents.

B. Requests for Personnel-Related Information

27. First, disclosure of some of the information required by the Ordinance and the accompanying form would invade the privacy rights of our employees. Public Citizen does not give out the type of personal identifying information sought by the County to anyone, let alone make it publicly available, except in a few limited circumstances.

28. For example, the County requires not only the name and title, but the address, telephone and fax numbers, date of birth, and driver's license number or federally issued identification number for its officers and directors and certain identified employees. New Permit Application ¶¶ 7-11, 29(F); Pinellas County Code § 42-292(a)(5). The application form evidently requires the specified individuals' *residential*, and not business, contact information because the form already requires the charity to submit detailed contact information for the charitable organization itself (name, fictitious name, program names used in solicitations, national and regional addresses, national and regional telephone numbers and fax numbers, corporation type, date of incorporation, and IRS employer identification number). See New Permit Application ¶¶ 1-3, 6.

29. As a general matter, Public Citizen does not release its employees' federal

identification numbers, such as Social Security numbers, or their driver's license numbers (which in many jurisdictions, including the District of Columbia, may be the same as the driver's Social Security number)—except as required by federal statute, taxing authorities, employee benefit plans, or at the specific request of an individual employee. Because of the personal nature and sensitivity of this identifying information and the potential for its abuse, Public Citizen generally does not provide employee driver's license or social security numbers on State charitable solicitation registration forms, even when this information is specifically requested.

30. Nor does Public Citizen release residential addresses, telephone numbers, or dates of birth for its employees, except as required by federal statute, taxing authorities, employee benefit plans, or at the specific request of an individual employee. Because of the personal nature and sensitivity of this identifying information and the potential for its abuse, Public Citizen does not provide this type of information to the states even when it is specifically requested.

31. The County also requires a permit applicant to provide a statement as to whether any director, officer, or employee of the applicant is related as parent, spouse, child, or sibling to any other director, officer, owner, or employee of the applicant or to any director, officer, supervisor, manager, or employee of any vendor or supplier that provides goods or services to the applicant. Pinellas County Code § 42-292(a)(7); New Permit Application ¶ 27. This requirement is unduly burdensome because it would force Public Citizen to investigate the relationships among its approximately 90 officers and employees and all of their specified family members, as well as the relationship between all of these officers, directors, and employees, on the one hand, and the countless officers, directors, and employees of the law firms, fundraising

consultants, accounting firms, print shops, mail houses, courier services, custodial and janitorial companies, office supply stores, and myriad other entities with which Public Citizen contracts for goods and services, on the other. Indeed, Public Citizen uses approximately 100 such consultants, vendors, and suppliers. Not only would such an investigation invade the privacy of our officers and employees, but compliance with the requirement would be almost impossible. We also do not see how the fruits of this untenable investigation would be relevant to the County or its residents.

32. Yet another example of an intrusive and infeasible personnel-related reporting obligation imposed by Pinellas County is the requirement that a charity disclose whether any director, supervisor, manager, or person with authority to receive and/or disburse solicitation income has ever been employed by or a member of another organization registered under the Ordinance, and if so, the name of such individual and the name of the other organization. New Permit Application ¶ 24. This provision is unduly onerous because it would require Public Citizen first to investigate the identities of all other organizations for which every designated person—which includes every director, supervisor, and manager of the organization, as well as potentially employees in our Administration and Development Departments—have ever worked or of which they have been a member, and then to determine whether any of these other organizations has ever registered in Pinellas County. Many of these individuals have held several prior jobs, and many are members of multiple organizations. Presumably, our investigation would have to be continually updated (as would the investigation described in the preceding paragraph), because an organization with which one of our employees is or was affiliated at some point in the past might decide to register in Pinellas County at some future

date. Needless to say, we have neither the manpower, the database, nor the inclination to comply with such a requirement, and the required investigation would be especially intrusive to the extent that Public Citizen were obligated to probe its employees' memberships in different organizations. Moreover, whether one of our employees worked for some other organization registered in Pinellas County should be irrelevant to the County's decision whether to grant *Public Citizen* a permit.

C. Financial Reporting Requirements

33. Pinellas County requires charities seeking a permit to submit their Form 990s for the prior tax year. Pinellas County Code § 42-292(a)(9); New Permit Application ¶ 29(A).

34. Public Citizen believes this required submission of its Form 990s to be unnecessary and duplicative because this information is available on our website and from the State of Florida. In addition to the fact that Public Citizen provides public access to its Form 990s, as required by IRS regulation, and posts them on its website, its Form 990s, and those of thousands of other nonprofit organizations, are available for free through multiple sources in the public domain, including The National Database of Nonprofit Organizations maintained on the GuideStar website, www.guidestar.org, and websites operated by state regulators.

35. Despite the fact that these Form 990s require extensive financial information regarding charities' sources of revenue, assets, liabilities, program services expenditures, management and general expenses, and fundraising expenses, see Exhibit A, the County demands still more financial information not sought by either the IRS or Florida, calling for estimates of Public Citizen's future financial performance at a level of detail that either Public Citizen does not maintain or that is proprietary and sensitive. The County requires that charities

report the following items of anticipated financial information for the coming year: (i) Expected gross revenue; (ii) Expected contributions; (iii) Projected program services; (iv) Anticipated management and general expenses, broken out into detailed items that do not conform to our bookkeeping categories; and (v) Fundraising Expenses. New Permit Application ¶¶ 14-16; see also Pinellas County Code § 42-292(a)(12)(c)-(e) (applicants must report the “contemplated receipts and expenses of the solicitation,” the “proportion of the contribution which will go toward the object of the solicitation,” and “the distribution plan for collected contributions”).

36. It would impose quite a serious hardship on Public Citizen if it were forced to provide this additional information in the detail required. First, take the requirement that a charity report its expected gross revenue, contributions, projected program services costs, anticipated management and general expenses, and expected fundraising expenses. Public Citizen does develop a budget each year for the broader categories of expected revenues and expenses for the coming year, but we consider this information to be proprietary and highly confidential. To furnish information about our fiscal and fundraising planning for the coming year—coupled with the requirement that we provide copies of the solicitation materials we expect to use in the County (which I discuss below)—would expose the internal operations of the organization and its solicitation strategy to other charities and to the rest of the world because all of the information received from charities is made public by the County.

37. Such information is highly sensitive in the competitive field of charitable solicitations. Nonprofit organizations develop their fundraising strategies over the course of each year, spending tremendous amounts of resources and relying on the advice of in-house employees and outside paid consultants. The value of this effort would be seriously undermined,

if not destroyed, if other nonprofit organizations, fundraising consultants, and solicitors were privy to our fundraising and other fiscal planning for the coming year.

38. I am also at a loss to understand how reporting our *anticipated* revenues and expenses would be of value to anyone considering making a contribution to Public Citizen, especially in light of the other publicly available information about our organization and its actual fiscal history. (Our average contribution from a new member in response to a direct mail solicitation is only \$26). Our Form 990s provide the *actual* amount of total contributions and the *actual* amount in total revenue collected in contributions and membership dues for the previous year. See IRS Form 990, Part I, Questions 1, 12 (Exhibit A). PCI and PCF must also list their total *actual* expenses for the preceding year, including program services, management and general, and fundraising expenses. See id., Part I, Questions 13-17. Moreover, charities must provide detailed breakdowns of their expenses, including separate figures for compensation of officers and directors, fundraising expenses, professional fundraising fees, and telemarketing fees, among many others. See id., Part II (Statement of Functional Expenses); Supplemental Statements. Requiring “estimates” not only imposes a greater burden on charities and discloses confidential fundraising information to our competitors, but it is not even as reliable a gauge of the organization’s budgeting and efficiency as its actual performance in previous years. Unexpected events, such as those of September 11, can frequently causes charities to effect substantial changes in their budgetary and fundraising planning for the coming year.

39. Second, although the County permits reporting of expected gross revenue based on a national accounting system, it still requires charities to report their expected contributions from Pinellas County so that the registration fee may be determined. New Permit Application

¶ 14. The requirement that charities report their *expected* contributions is troublesome enough for charities, given that the information, as explained above, is proprietary. But the reporting obligation is even more problematic because Public Citizen, a nonprofit organization that solicits contributions across the country, does not keep track of, or monitor, its contributions on a county-by-county basis, or even on a state-by-state basis—although Public Citizen can determine this information by running time-consuming and expensive searches.

40. Thus, even if we were to project contributions for the coming year based on contributions during the previous year from Pinellas County residents, either our Development Director or I would have to direct an employee in the Development Department to take substantial time out from his or her other responsibilities to conduct a special search for Pinellas County zip codes in our contributions lists in order to make a guess as to future Pinellas County contributions, which we would not otherwise do. The only way I was able to provide the number of Public Citizen members residing in Pinellas County in this Declaration was by directing an employee of the Development Department to conduct a special search for it. I would not do that as a matter of course. It is an expensive and time-consuming proposition to segregate the contributions that come from a single county in the entire United States, and the burden only multiplies for every local government that demands the same information.

41. To avoid the drain on resources entailed by determining Public Citizen's level of contributions from Pinellas County residents, if I were completing this form I would provide the total national contributions received by PCI and PCF—a number that is in the millions of dollars. As a result, PCI and PCF would each be required to pay the full \$120 annual registration fee, even though each organization, if the actual level of contributions in Pinellas County were

computed, would likely have to pay only \$20 apiece. See New Permit Application at 1 (Fee Schedule).

42. Third, as indicated above, Public Citizen budgets for management and general expenses for the coming year, but it does not keep track of expenses in the detail or precise categories required by Pinellas County, much less *project* its expenses at this level of detail. See New Permit Application ¶ 16. It is also not clear to me from the application form whether the County seeks national or only county expense information. Public Citizen does not keep track of any revenue or expense information at the county, or even the state, level. But even assuming that County will accept national information, the permit application form breaks down management and general expenses into twenty-five different categories, covering such minutia as “commissions,” “decorations/favors,” “entertainers/musicians,” and “prizes”—many of which do not match our bookkeeping categories. For example, an occasional fundraising event for Public Citizen may include flowers or other “decorations,” but we do not keep track of those kinds of expenses separately from other fundraising expenses. Thus, Public Citizen cannot easily comply with the County’s anticipated expenses reporting requirement without restructuring its accounting system—a step which Public Citizen is not willing, and should not be required, to undertake. I find the prospect of attempting to complete this particular question accurately quite daunting.

43. Nor is there any good reason we can perceive why Public Citizen should be compelled to provide expense data, whether actual or anticipated, in the minute detail required by the County, especially given the extensive reporting of expenses provided in our Form 990s. Many of the items on the County’s list (*e.g.*, costumes/uniforms, decorations/favors,

entertainers/musicians, advertising/publicity, prizes) suggest that the permit application form was tailored more to a local charity hosting a dinner rather than to a national nonprofit organization engaging in long-distance fundraising to support a multi-million dollar annual budget.

D. Demands for Solicitation Materials

44. The Ordinance also requires extensive and burdensome information regarding the charity's solicitation activities. The requirement that we provide this information in advance of obtaining a permit is especially troubling because the requested information may subject the applicant to potential censorship by the County, and is proprietary and sensitive in nature, burdensome to compile and produce, and either not yet developed or changed frequently.

45. The County's requirement that we submit the wording of verbal solicitations and "any written or printed material(s) used in solicitation," New Permit Application ¶ 29(H), first, as a condition of obtaining a permit, and then, again, as a condition of renewing the permit, is especially objectionable to Public Citizen. See Pinellas County Code § 42-292(a)(12)(f) & (g); New Permit Application ¶ 29(H); Charitable Solicitation Renewal Application, List of Required Attachments, ¶ I ("Renewal Application") (attached as Exhibit H). While we have, on occasion, submitted telephone scripts to States that have requested them, as an accommodation to our telephone solicitor when it was required by a State to provide a script, we object to doing so and believe that such a requirement is invalid as a condition of obtaining a permit. We never provide the States with copies of our written solicitation materials.

46. The requirement that charities provide both scripts and copies of written or printed solicitation materials is unreasonable, unjustifiable, and impracticable, in my view, for

several reasons:

47. First, the Ordinance grants the Director of the Department broad authority to deny, suspend, or revoke a charity's permit for any violation of the Ordinance, Pinellas County Code § 42-276(e), and it specifies that it is a violation to make "a false or misleading statement, deception or fraud in connection with any solicitation of any contribution" by any charity. Id. § 42-323. In answer to a question plaintiffs asked in discovery in this case, Pinellas County also stated that it requires solicitation materials so that it can assure itself that "information in the 'pitch' is consistent with information in the application." Notice of Service of Defendants' Answers to Plaintiffs' Second Set of Interrogatories, No. 32. The requirement that we submit our solicitations materials *in advance* of receiving or renewing a permit therefore opens us and other charities up to the potential for delay, censorship, and reprisal by the County and to a substantive review by the County of our communications to the citizens of Pinellas County to determine whether they are sufficiently "consistent" with Public Citizen's description of its mission and program services in its application. The Ordinance contains no assurance or safeguard against a potential abuse of the County's authority to review the wording of our phone scripts and solicitations letters and then to withhold or revoke a permit (or sanction Public Citizen for a violation of the Ordinance) unless that wording is precisely to the County's liking.

48. Second, our solicitations materials are voluminous and change frequently throughout the year, making it quite burdensome to keep the County up-to-date. Each year, Public Citizen sends out millions of pieces of mail in more than twenty waves of mailings across the country, and for each mailing, there are multiple variations. Public Citizen also uses seven or eight different verbal scripts in a typical year. The residents of any one County are likely to

receive direct mail from most or all of these mass mailings and, at least as to current Public Citizen members, to receive telephone solicitations using a variety of different scripts. To provide Pinellas County copies of this vast quantity of printed solicitation materials we generate is not remotely practicable. Nor is it feasible for us to weed out from the millions of pieces of mail those that are specifically going to be used in any one county in the entire country.

49. To make matters worse, it is not as if we had to provide copies of our solicitation materials to the County only once a year. The Ordinance requires a permit holder to report any changes in the information provided to the County within 15 days of the change, Pinellas County Code § 42-295(b)(4), a requirement that apparently would apply whenever we changed a solicitation letter (as well as whenever a new officer or director is appointed, a designated official moves or obtains a new driver's license, or a relative is hired by an entity with which the charity contracts, just to name a few other examples). Our solicitation materials, both written and verbal, directed to Pinellas County and elsewhere, change throughout the year.

E. Renewal and Interim Reporting Requirements

50. In addition to the requirement that charities notify the County within 15 days whenever any information provided has changed, the County requires that new permit holders report their financial data or submit their Form 990s six months after obtaining their permit, before their annual renewal is due, along with yet another form. Pinellas County Code § 42-295(b)(1)(a); see Charity Report of Results form (attached as Exhibit I). Charities are already required to submit their Form 990s with their initial application, so depending when the six-month due date falls, the charity may well be compelled to submit the same Form 990 yet again. Nothing on the form indicates that the charitable organization can forgo filing it if it has

no new Form 990 ready to provide.

51. The County then requires the charity to submit its Form 990s each year upon renewal of the permit. See Pinellas County Code §§ 42-294(c), 42-295(b)(1)(b); Renewal Application, List of Required Attachments, ¶ V (Exhibit H). The upshot of these requirements is to require a nonprofit to file a Form 990 with Pinellas County three times within its first year of activity in the County.

52. The Renewal Application requires that the charity pay the annual filing fee and that it resubmit much, though not all, of the information provided in the initial application. Pinellas County Code § 42-294(c); Renewal Application. Although there is a question at the top of the second page “Has any information provided in the previous permit application/updates/renewals changed?” the renewal form does not indicate that, if the answer is “No,” the renewing charity may forgo completing the remainder of the form. See Renewal Application at 2. Indeed, the presence of the question suggests that the charity must resubmit the information without regard to whether there have been changes. In the event that the charity fails to file its renewal form before the expiration of its permit, it is required to submit a Late Renewal Application (attached as Exhibit J), which is substantially identical to the New Permit Application and much longer than the ordinary Renewal Application; pay a \$10 additional late fee for every thirty days beyond the permit expiration date the renewal application is filed, id. at 1; Pinellas County Code § 42-294(c)(1), and cease soliciting. Id. § 42-321(a)(3).

F. Overall Burden of the County’s Registration and Reporting Requirements

53. Even assuming that Public Citizen could actually alter its accounting system and its operations to track the voluminous information sought by the County and to break down the

information to the level of detail demanded, Public Citizen would have to dedicate numerous hours of employee time to complete the tasks necessary to meet the needs of this one single County.

54. It is important to note that changing our accounting system and fundraising practices to meet the reporting requirements of Pinellas County would in no way ease the burden Public Citizen bears in meeting its reporting requirements in other jurisdictions. Forty States, including the District of Columbia, require charitable organizations to register in their jurisdictions. To this burden, Pinellas County adds its own registration form, its own renewal form, its own interim reporting form, and its own particular reporting requirements. Currently, to comply with the laws of the various states, whose requirements generally are not nearly as onerous as Pinellas County's, Public Citizen already expends hundreds of hours of employee time and at least \$90,000 per year to pay such costs as the registration fees, in-house staff time to comply with governing laws, outside auditor fees and in-house staff time to prepare the IRS Form 990s and audited financial statements (both of which many states require), photocopying costs, and printing costs associated with printing disclosures on solicitation materials required by state law. To add to this already impressive burden the staff hours required to comply solely with the requirements of this single county, Public Citizen would have to change fundamentally the operations in our office and possibly hire additional employees to meet these demands. And as high as the hurdles and costs of compliance in Pinellas County are to a sophisticated, mid-size nonprofit organization like ours, they would appear to be insurmountable for a new, small, or unsophisticated charity.

55. The high costs associated with redesigning Public Citizen's accounting system

and changing its operating practices to comply with the Ordinance would prohibit Public Citizen, as an economic matter, from soliciting non-members in Pinellas County. The loss to our organization from our inability to solicit new members has been much more profound than the sacrifice of the fundraising revenue we might hope to gain from County residents. Solicitation of funds is only one of several purposes served by our mailings. Our mailings are the primary means by which we communicate with and educate the public, as they highlight the projects, causes, and issues promoted by Public Citizen's groups and ask for the reader's support for and participation in these endeavors. In addition to the descriptions of current Public Citizen activities, each mailing also generally provides individuals with the means to make their support of Public Citizen's work known to the decisionmakers and public officials connected to the highlighted issues, whether or not the reader decides to contribute funds to Public Citizen. In other words, our mailings actively encourage our current and prospective members to become engaged in the democratic process. Public Citizen has been forced to refrain from these public education and advocacy activities in the County as a result of the extensive burdens and costs imposed by the Ordinance on charities' communication with non-members in the County.

56. According to estimates I have received from our Development Department, in Fiscal Year 2000 alone, Public Citizen suppressed almost 21,000 pieces of mail that otherwise would have been sent to Pinellas County residents, and almost 7,000 pieces of mail in Fiscal Year 2001 (Public Citizen sent out fewer pieces of direct mail nationwide last year, hence the lower estimate for Pinellas County). This cessation of efforts to recruit new members has translated into a significant loss of members in Pinellas County in the last two years. While we had approximately 581 Pinellas County members in Fiscal Year 1999, we had only about 319 in

Fiscal Year 2001, and that number presumably continues to drop.

57. In addition to direct mail, Public Citizen sends its current members Public Citizen's newsletters and other information. We also market our various publications to our members. Because our total number of members has declined in Pinellas County in whole or in part as a result of our suppression of solicitation materials there, Public Citizen's other communications with Pinellas County residents, such as through these newsletters, as well as our sales to these residents, necessarily has also declined.

58. Pinellas County is only one of more than 3,000 counties across the United States. Public Citizen's compliance with the requirements of the three dozen jurisdictions in which it is registered nationwide already calls for the collective efforts of a number of employees throughout our organization, acting under my supervision, to collect the required information and handle all of the paperwork and filing requirements. The obligations of complying with these myriad registration schemes are sometimes beyond the capability of our in-house staff. Complicated requests about our membership require us to turn for assistance to our outside vendor who houses the data for all of Public Citizen's members, obliging our organization to expend even greater time and resources. If more than even a smattering of local governments followed Pinellas County's lead, Public Citizen not only would struggle under the weight of the mounting filing fees, but we likely would have to hire additional staff whose only function would be to try to keep up with the ever-growing demands of local governments seeking information that either duplicates what is already provided to the IRS or the States, or else is unreasonably onerous to complete and invasive to make public.

59. This does not include the added burden imposed by the filing fees required by

Pinellas County, and other jurisdictions if they followed suit. If we were to register in Pinellas County, PCI and PCF each would have to pay an annual filing fee of \$120 based on these organizations' national contribution levels. If other local governments imposed similar fees, Public Citizen would be compelled to halt all mailings into those jurisdictions with the most burdensome or expensive registration and reporting requirements—much as we did in Pinellas County—thereby limiting our ability to perform our mission and to educate and communicate with the public about the issues to which Public Citizen is devoted. We believe that in the absence of any evidence that the fees are used for an important public purpose—and I know of none—those fees, like the rest of the requirements under the Ordinance, are unreasonable and unconstitutional.

60. 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.

Executed on _____.

Joseph A. Zillo
Chief Operating Officer
Public Citizen, Inc. and Public Citizen
Foundation, Inc.