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.	)	
	)	

DECLARATION OF ROBERT TIGNER

I, Robert Tigner, state the following facts under oath of my own personal knowledge and am competent to testify to the following:

1. I am General Counsel of the Association of Direct Response Fundraising Counsel (ADRFCO) located at 1612 K Street, N.W., Suite 510, Washington, DC 20006-2802, and my telephone number is 202-293-9640. I serve as the representative of the Association of Direct Response Fundraising Counsel on the Board of Directors of plaintiff American Charities for Reasonable Fundraising Regulation. I also serve as a consultant to plaintiff Nonprofit Federation of the Direct Marketing Association (DMA Nonprofit Federation). I have been retained by plaintiffs to provide expert testimony regarding the Pinellas County charitable solicitations ordinance, Pinellas County Code ' 42-266 et seq. I am receiving no compensation other than out-of-pocket expenses for my testimony. This declaration also serves as the expert witness report required by Federal Rule of Civil Procedure 26(a)(2)(B).

2. I have worked in, for, and with nonprofit organizations for more than 20 years

and have acquired considerable expertise in their operations, functioning, and methods of fundraising. I have special expertise in issues of compliance by charities with governmental regulation of various types, including federal, state, and local.

3. I have attended and made presentations at more than fifty conferences and educational seminars on the topics noted above over the past 15 years. For example, I have frequently served as a presenter or co-presenter at the joint annual education seminar of the National Association of Attorneys General (NAAG) and National Association of State Charity Officials (NASCO). I have also made presentations on these topics at seminars, meetings, conferences, and conventions sponsored by Association of Fundraising Professionals (formerly, National Society of Fundraising Executives), Independent Sector, the National Catholic Development Conference, United States Postal Service, DMA Nonprofit Federation, National Health Council, National Federation of Nonprofits, and others.

4. I have served as an expert witness on behalf of the Internal Revenue Service in an enforcement action taken by the IRS. I have made presentations to legislatures in Illinois, Maryland, Pennsylvania, and Rhode Island and have informally provided advice and counsel to state legislators, attorneys general, secretaries of state, and other governmental officials on the issues of regulation of nonprofit organizations and fundraising. My curriculum vitae, along with a citation to those cases in which I have testified as an expert witness, are attached as Exhibit A.

5. I am familiar with the requirements of the Pinellas County charitable solicitations ordinance ("Ordinance"), which requires charities to register, renew their registrations, and make various reports. This is a byproduct of my consultations with constituents: 250 nonprofit organizations who were members of the National Federation of Nonprofits (now DMA

Nonprofit Federation) and 40 member firms of ADRFCO (and their 500-700 nonprofit clients). Much of my familiarity came as a result of an apparent surge in the County's effort to compel out-of-state charities to register in 1996 and 1997, which the County implemented by sending letters to charities threatening sanctions and other enforcement action if they did not register.

6. In my experience and observations, charities are highly risk-averse when it comes to compliance with charitable regulation and registration. Charities tend to respond literally and completely to what is asked of them by way of regulation and on the reporting forms. Charitable organizations believe that many of the demands imposed by charitable solicitation regulations are unconstitutional, unnecessary, burdensome, and, for the most part, a waste of precious donated charitable resources. Nevertheless, they comply because they are fearful of the harmful public-relations effects of any attack or sanction by a government agency that is supposedly protecting the interests of consumers. Their concern is all the more acute because many states require registrants to report any instances in which a permit to solicit has been denied by another jurisdiction. Even though Pinellas County has never, to my knowledge, actually tried to enforce its extra-territorial jurisdictional claims (other than by sending threatening letters)—even against those few groups, mostly religious organizations, that I know have openly refused to register—hundreds of charities nevertheless begrudgingly choose to comply.

7. I am also familiar with the comparable registration requirements of the State of Florida and other states. It is widely perceived by charities that register and file reports with the Florida Department of Agriculture and Consumer Affairs that registering with and reporting to Pinellas County is an unnecessary and significant burden because the County reporting is largely redundant. Virtually the same information is given to, and available from, the State of Florida.

It is also available from a wide variety of other sources, including Guidestar, www.guidestar.org; charities' own websites; directly from charities themselves (by law, they must provide inquirers with copies of their Form 990 tax filings); and from multiple other sources.

8. It is also widely believed within the charitable fundraising community (and among a growing number of state charity officials, as well) that the current system of charity registration by the states is burdensome, inefficient, and duplicative. Filers find that each added regulating jurisdiction adds management, administrative, and clerical costs on top of and exceeding the registration fees (where they exist). In response, the Multi-State Filers Project (for which I have served as General Counsel and administrator for the past five years) and NASCO have collaborated to produce the Unified Registration Statement (URS), now in use in 37 of the 40 states requiring registration and reporting (not including Florida). The URS aggregates the registration reporting requirements for *all* 37 participating statesCwithout making judgments regarding the validity of these individual requirementsCinto a standard format accepted by the participating states in lieu of their respective forms, thereby easing the compliance burden for those filing in multiple jurisdictions. The URS and instructions are available at http://www.nonprofits.org/library/gov/urs.

9. Simply put, the Pinellas County Ordinance is notably burdensome. This stems both from the sheer weight of its requirements and from the extent to which its requirements diverge from "standard" practices (as measured by the regulatory schemes in the states and other local jurisdictions that attempt to enforce their regulations beyond their own borders).

10. First, the County's registration form, as a whole, is virtually unique. The sheer volume of information requests and their mind-numbing detail set it apart, by a wide margin,

from the comparable forms of other jurisdictions. In fact, the County seeks more information and more detail than do the 37 states participating in the URS *combined* (the URS, which by definition requests of filers *all* of the information required by *any* of the 37 cooperating states, is shorter and simpler than the County form). In addition, first-time registrants, apparently, are required to make an interim report (*i.e.,* at six months, in addition to the usual one-year registration renewal). To my knowledge, Utah is the only other jurisdiction with a comparable requirement, and even that was recently amended to greatly limit its application.

11. Second, although many of its questions are unclear, none of the County's reporting forms contains line-by-line instructions (*cf.,* the extensive instructions and standardized references used in the URS). Consequently, any ambiguities or inconsistencies can be resolved only through one-on-one exchanges with County personnel, a process that dramatically increases the costs and uncertainties of compliance. The County's forms are rife with such problems. I mention only a few from the "New Permit Application":

a. In Question 5C, does the County wish to know whether the charity uses one or more banks or "cages" to receive contributions (a typical practice but not one involving payment based on dollars received)? Indeed, Questions 5A-C involve an extraordinary level of detail and are probably unique to Pinellas County.

b. Questions 7 through 11 request the date of birth and driver's license number for the designated officials and employeesCa highly unusual requirement that invades the privacy of the charity's employees and poses a serious risk of abuse.

c. In Question 14, the County first makes a highly unusual request for *projected* revenues, which, by definition, are not the subject of any "accounting."

Indeed, most of the financial disclosure questions appear to request such projections. Then, the County offers its own, indeterminate definition for "gross revenue." The County also invites filers to make a computation of their "contributions from Pinellas County residents," which, in all likelihood, they will be unable to make unless they are local. (See below).

d. In Question 16, the County demands expense reporting in categories that may not exist in a given charity's budget/accounting structure and to a level of detail that likely do not exist at all in projections.

e. Questions 24 and 27 are virtually unanswerable. For Question 24, there is no way for an organization of any size to know all the organizations with which the designated officers and employees have had a past affiliation, whether as an employee or as a member, much less whether those other organizations were registered in Pinellas County. For Question 27, it is not feasible for a charity to investigate all relationships between every single officer or employee within its organization or between every officer and employee of its organization and those of all firms or agencies with which it contracts.

f. The alternative required attachments identified in Question 29(A)(1) & (2) make no sense because they are not comparable. The organization is to attach its IRS Form 990 or 990-EZ if it has one. If it does not, however, rather than require the organization to submit a financial statement, which, like a Form 990, would report on the charity's results for the past year, the County requires the applicant to submit an itemized budget showing *anticipated* income and expensesCa burdensome request that requires

charities to divulge confidential planning information. Religious groups, for example, are exempt from filing a Form 990, but they do have financial statements available to provide potential donors.

g. Question 29(D) requires an organization that is registered with any other state or agency to send a list and "include standard disclosure contact information." This requirement is incomprehensible.

12. Third, the Ordinance requires the submission of *all* phone scripts and fundraising letters. It also requires that these submissions be updated continuously throughout the term of the registration because the Ordinance require charities to update all changes in information within 15 days. The required submission of all solicitation materials is unusual and, as with respect to written solicitations, virtually unique (a similar requirement in West Virginia was amended at the behest of state officials because compliance overwhelmed the state's administrative capacity to review the documents submitted). The imposed burden of compliance on *any* fundraising program would be substantial. Even a modest program would have dozens of differing letters and scripts that are constantly changing, at least in small ways. And to the extent that this provision implies the County's right to condition registration on its approval of planned letters or phone scripts, in my opinion it constitutes an illegal prior restraint.

13. Fourth, the Ordinance provides for an unusually long 30-day period for applications to be reviewed and prohibits solicitation before the permit issues. This seems to me to be another invalid prior restraint on speech. It also means that new charities or new fundraising initiatives, such as those that were created within hours of September 11, cannot begin immediately, but instead must wait as long as 30 days.

14. Fifth, the Ordinance permits Pinellas County to revoke a permit without a hearing because the right to a hearing is triggered by an appeal of a revocation. A registrant must then refrain from soliciting while awaiting a hearing, as long as 30 days under the Ordinance (and possibly longer since the Ordinance does not entitle a registrant to a *decision* within the 30 days).

15. Sixth, the Ordinance has a relatively high fee structure, though not outside the range of *state*-imposed fees. Moreover, most regional or national charities likely would have to pay the highest fees since few of them account for donations on a county level. Even if many out-of-state charities theoretically could qualify for the lowest fee, few would find it cost-efficient to generate the necessary data. It makes more sense to pay the highest fee ($120) than to spend several hundred dollars to substantiate a $20 fee.

16. Seventh, the Ordinance requires that charities that operate Internet websites soliciting support must register with Pinellas County. I know of no similar assertion of jurisdiction in, or based on, any other solicitation law or ordinance. I am, however, quite familiar with the "Charleston Principles" (having been an active participant in discussions leading to their creation), adopted as voluntary guidelines by NASCO. The purpose of the "Principles" is to set reasoned boundaries (based upon limits of constitutional law and realistic enforcement practices) for solicitation law jurisdiction, as applied to Internet fundraising. To the best of my knowledge, these Principles are being honored by all state charitable solicitation law administrators. The Charleston Principles are available at http://www.nasconet.org/stories/storyReader$10. In attempting to assert extra-territorial jurisdiction over Internet solicitation whenever a County resident donates funds on a charity's website, without regard to whether the charity specifically targeted County residents and without

regard to whether the charity receives contributions from County residents on a repeated and ongoing basis, the Ordinance flouts the guidelines agreed to and adhered to by state regulators.

17. In my experience, uncertainty as to jurisdictional boundaries (even *with* the "Principles") has led some charities to forego or even to halt all forms of Internet fundraising. This chilling effect on speech is compounded by the County's limitless jurisdictional claim. The County's suggested "safe harbor" (I am told, to prominently display language on the website to the effect that citizens of Pinellas County should not donate or are not intended to be solicited) is, in my opinion, less than worthless. At best, it would appear nonsensical to, say, a website visitor at her home in Raleigh, NC. At worst, it would convey the profoundly misleading notion that some wrongdoing was being camouflaged by legalese. Any charity would regard either prospect as seriously damaging to its fundraising efforts.

18. 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 _____.

_____
Robert Tigner

General Counsel
Association of Direct Response Fundraising Counsel