

FILED

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR ST.
JOHNS COUNTY, FLORIDA

2012 MAY -1 A 10:58

CASE NO.:

CA 11-1831
SS

C-04
FOR ENTER
CLERK OF CIRCUIT COURT
ST. JOHNS COUNTY, FLORIDA

DIVISION:

ALLIED VETERANS OF THE
WORLD, INC.: AFFILIATE 31,
a Florida non-profit corporation, et al.,

Plaintiffs,

vs.

ADAM H. PUTNAM, as Commissioner
of the Florida Department of Agriculture
and Consumer Services,

Defendant.

CLERK OF CIRCUIT COURT
ST. JOHNS COUNTY FL

2011 NOV -4 PM 4:57

FILED

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 31, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 32, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 33, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 34, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 35, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 36, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 37, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 38, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 39, a Florida non-profit corporation, ALLIED

Att 11/4/11

CA 11-1831

VETERANS OF THE WORLD, INC.: AFFILIATE 40, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 41, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 42, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 43, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 44, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 45, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 46, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 47, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 49, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 50, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 51, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 52, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 53, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 54, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 55, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 56, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 59, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 60, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 61, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 62, a Florida non-profit

corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 65, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 66, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 67, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 68, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 70, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 71, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 72, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 74, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 75, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 76, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 78, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 80, a Florida non-profit corporation, ALLIED VETERANS OF THE WORLD, INC.: AFFILIATE 81, a Florida non-profit corporation, (collectively "Internet Centers") sue Defendant, ADAM H. PUTNAM, as Commissioner of the Florida Department of Agriculture and Consumer Services, and say:

1. The Court has jurisdiction over this action pursuant to Chapter 86, Florida Statutes, in particular sections 86.011, 86.021, and 86.061.

2. Allied Veterans of the World and Affiliates, Inc. ("Allied Veterans") is a private veterans organization which is exempt from federal income taxation pursuant to § 501(c)(19) of the Internal Revenue Code and has a current determination letter from the

Internal Revenue Service (“IRS”). Allied Veterans’ private membership consists of past or present members of the U.S. Armed Forces, of which 97.5% must be past or present members of the U.S. Armed Forces and cadets, spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the U.S. Armed Forces.

3. Plaintiffs Internet Centers are separately incorporated nonprofit corporations which operate businesses as internet centers throughout the state of Florida. They are *not* tax-exempt entities and therefore pay all applicable federal and state taxes. Internet Centers sell internet access time, or cybertime, to be used on computers which are made available to its customers. Internet access time is sold to customers at a competitive and fair market rate of 20¢ per minute. In addition, other services such as copying, printing, faxing, and home dial-up internet are available.

4. Defendant Adam Putnam, as the Commissioner of the Florida Department of Agriculture and Consumer Services (“Department”), is the state official with regulatory authority over charitable organizations pursuant to Chapter 496, Florida Statutes, otherwise known as the Florida Solicitation of Contributions Act (the “Act”). The Department has taken the position that Allied Veterans and Plaintiffs Internet Centers are subject to the Act because they are charitable organizations that solicit charitable contributions. See letter from the Department, attached hereto as Exhibit A.

5. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes. A genuine and actual dispute exists between the parties as to the applicability of the Act to Plaintiffs Internet Centers.

6. The result of applying the Act to Plaintiffs Internet Centers and requiring them to register with the Department, would be to make all private financial records and

tax returns of Plaintiffs Internet Centers available as public records even though Internet Centers are operating a business and are treated as a business by all other provisions of State and Federal law.

7. Internet Centers maintain their principal offices in St. Augustine, St. Johns County, Florida.

8. Defendant seeks the production of the records of Internet Centers at their St. Augustine office on Monday, November 7, 2011. Thus, Defendant seeks enforcement of a statute by a state agency in St. Johns County, Florida making venue appropriate.

9. All conditions precedent to the institution of this action have occurred, have been performed, or have been waived.

NOT CHARITABLE ORGANIZATIONS

10. Allied Veterans is not subject to the Act because it does not qualify as a “charitable organization” within the meaning and intent of the Act.

11. The legislative intent of the Act was to require “full public disclosure of the identity of persons who solicit contributions from the public, and of the purposes for which such contributions are solicited and the manner in which the contributions are actually used. It [was] further the intent of the Legislature to prohibit deception, fraud, and misrepresentation in the solicitation and reporting of contributions.” § 496.402, Florida Statutes. Therefore, the legislature intended that “charitable organizations” be those that seek charitable donations, not those that occasionally engage in voluntary charitable acts with their own financial resources.

12. The Act defines a “charitable organization” as:

496.404 Definitions. –

(1) “Charitable organization” means any person who is or holds herself or himself out to be established for any benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, *or other eleemosynary purpose*, or any person who in any manner employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation. It includes a chapter, branch, area office, or similar affiliate soliciting contributions within the state for a charitable organization which has its principal place of business outside the state.

Fla. Stat. § 496.404(1) (emphasis added).

13. Allied Veterans is not a “charitable organization” within the meaning and intent of the Act for the following reasons:

- a. Allied Veterans is a private membership veterans group and was not established for, nor holds itself out to be established for, a charitable purpose. All purposes listed in § 496.404(1) are “eleemosynary”, which is to say that they are all: 1. of or pertaining to alms, charity, or charitable donations; charitable; 2. derived from or provided by charity; 3. dependent on or supported by charity. Dictionary.com search results, <http://dictionary.reference.com/browse/eleemosynary> (last visited Nov. 3, 2011).
- b. Allied Veterans was not organized for the purpose of engaging in charity or performing charitable acts. See Amended and Restated Articles of Incorporation, attached hereto as Exhibit B. The common use of the word “charity” or “charitable” implies and suggests that the organization takes action to aid the poor, ill, or

helpless or that the organization gives something to a person or persons in need. Dictionary.com search results, <http://dictionary.reference.com/browse/charity> (last visited Nov. 3, 2011). Allied Veterans was organized for the purpose of providing and supporting services to veterans and its members.

- c. Allied Veterans functions solely with its own financial resources. Allied Veterans receives membership dues from its members and from its investments.
- d. Allied Veterans does not ask for donations from anyone, nor does it accept donations from anyone. If a person were to try to give a donation to Allied Veterans, that donation would not be a charitable or deductible donation because the IRS does not recognize a 501(c)(19) veterans organization as a charity.
- e. Allied Veterans is similar to other 501(c) organizations that the IRS does not recognize as a charity (any donations made thereto are not charitable and deductible donations) and which are *not* subject to the Act and which do *not* register with the Department*:
 - i. Homeowners Associations [501(c)(4) – Civic Leagues and Social Welfare Organizations]
 - ii. Labor Unions [501(c)(5) – Labor, Agricultural, and Horticultural Organizations]

* To the extent that any of the listed organizations have voluntarily registered with the Department, such registrations are not evidence of required filings, but are evidence of the over breadth and vagueness of the Act. See ¶¶ 22– 31 herein.

- iii. Agricultural Groups [501(c)(5) – Labor, Agricultural, and Horticultural Organizations]
- iv. Chambers of Commerce [501(c)(6) – Business Leagues, etc.]
- v. Boards of Trade [501(c)(6) – Business Leagues, etc.]
- vi. Alumni Associations [501(c)(7) – Social and Recreation Clubs]
- vii. College Fraternities and Sororities [501(c)(7) – Social and Recreation Clubs]
- viii. Country Clubs [501(c)(7) – Social and Recreation Clubs]
- ix. Dinner, Hobby, and Garden Clubs - [501(c)(7) – Social and Recreation Clubs]
- x. Freemason Lodges [501(c)(8) – Fraternal Beneficiary Societies and Domestic Fraternal Societies]
- xi. Employee Associations [501(c)(4), 501(c)(9), 501(c)(17)]
- xii. Local Benevolent Life Insurance Associations, Mutual Irrigation and Telephone Companies, and Like Organizations [501(c)(12)]
- xiii. Cemetery Companies [501(c)(13)]
- xiv. Credit Unions and Other Mutual Financial Institutions [501(c)(14)]

- f. Allied Veterans, similar to the organizations listed above, are not obligated or required to make charitable donations or perform any other charitable act.
- g. Any charitable acts performed by Allied Veterans with their own resources are purely voluntary in nature and alone do not qualify Allied Veterans as a “charitable organization”.
- h. Many private corporations engage in charitable acts with their own resources, however, they are not “charitable organizations” nor are they required to register with the Department.
- i. Many veterans groups and fraternal organizations engage in charitable acts with their own resources, however, they are not “charitable organizations” nor are they required to register with the Department.

14. Plaintiffs Internet Centers are not subject to the Act because they do not qualify as “charitable organizations” within the meaning and intent of the Act.

15. Plaintiffs Internet Centers are not “charitable organizations” within the meaning and intent of the Act for the following reasons:

- a. Internet Centers were not established for, nor hold themselves out to be established for, a charitable purpose. See Amended and Restated Articles of Incorporation attached hereto as Exhibit C (all Internet Center Amended and Restated Articles have identical terms). Internet Centers were organized for the purpose of selling a product or service and operating a business in the form of an internet center.

- b. Internet Centers are not 'owned' by Allied Veterans but rather are independently incorporated entities which operate a business in the form of internet centers. A nonprofit corporation may neither pay dividends nor distribute income or profits to its members.
- c. Internet Centers are not tax-exempt entities. They are not included in the group exemption from tax granted to Allied Veterans under § 501(c)(19) of the Internal Revenue Code. They are separately taxed as individual corporations.
- d. Internet Centers do not submit Form 990 nonprofit tax returns to the IRS because the IRS does not consider them to be charities. Instead, the Internet Centers file a Form 1120, which is a corporate tax return.
- e. Internet Centers sell a product or service at market price. When a customer purchases internet time, they are not making a donation, but rather purchasing a product or service. Internet Centers do not solicit charitable donations but sell products and services just as any other business.
- f. Internet Centers do not collect donations from anyone, nor do they ask for donations from anyone. There is no mechanism whereby a customer could give money to an internet center without purchasing a product or service.

- g. Internet Centers, even though by nature are nonprofit, are not obligated or required to make charitable donations or perform any other charitable act.
- h. Any charitable acts performed by Internet Centers with their own resources are purely voluntary in nature and alone do not qualify Internet Centers as “charitable organizations”.
- i. Many private corporations engage in charitable acts with their own resources, however, they are not “charitable organizations” nor are they required to register with the Department.
- j. Many veterans groups and fraternal organizations engage in charitable acts with their own resources, however, they are not “charitable organizations” nor are they required to register with the Department.

NO SOLICITATION OF CONTRIBUTIONS

16. Even if the Court determines that Allied Veterans is a charitable organization within the meaning of Chapter 496, it would only be subject to the Department’s authority if it also solicited, or intended to solicit, donations. Allied Veterans does not solicit or even accept donations for charity or for any other reason, nor does it intend to do so.

17. Even if the Court determines that Internet Centers are charitable organizations within the meaning of Chapter 496, they would only be subject to the Department’s authority if they also solicited, or intended to solicit, donations. Internet Centers do not solicit or even accept donations for charity or for any other reason, nor do

they intend to do so. Internet Centers operate a business and generate income from the sale of internet access time.

18. The Act defines "Solicitation" as:

496.404. Definitions. -

(20) "Solicitation" means a request, directly or indirectly, for money, property, financial assistance, or any other thing of value on the plea or representation that such money, property, financial assistance, or other thing of value or a portion of it will be used for a charitable or sponsor purpose or will benefit a charitable organization or sponsor. "Solicitation" includes, but is not limited to, the following methods of requesting or securing the promise, pledge, or grant of money, property, financial assistance, or any other thing of value:

(a) Any oral or written request;

(b) Making any announcement to the press, on radio or television, by telephone or telegraph, or by any other communication device concerning an appeal or campaign by or for any charitable organization or sponsor or for any charitable or sponsor purpose;

(c) Distributing, circulating, posting, or publishing any handbill, written advertisement, or other publication that directly or by implication seeks to obtain any contribution; or

(d) *Selling* or offering or attempting to sell any advertisement, advertising space, book, card, coupon, chance, device, magazine, membership, merchandise, subscription, sponsorship, flower, admission, ticket, food, or other service or tangible good, item, or thing of value, or any right of any description *in connection with which any appeal is made* for any charitable organization or sponsor or charitable or sponsor purpose, or when the name of any charitable organization or sponsor is used or referred to in any such appeal as an inducement or reason for making the sale or when, in connection with the sale or offer or attempt to sell, any statement is made that all or part of the proceeds from the sale will be used for any charitable or sponsor purpose or will benefit any charitable organization or sponsor.

A solicitation is considered as having taken place whether or not the person making the solicitation receives any contribution. A solicitation does not occur when a person applies for a grant or an award to the government or to an organization that is exempt from federal income taxation under s. 501(a) of the Internal Revenue Code and described in s. 501(c) of the Internal Revenue Code and is duly registered with the department.

Fla. Stat. § 496.404(20) (emphasis added).

19. Allied Veterans does not “solicit” within the meaning and intent of the Act for the following reasons:

- a. Allied Veterans does not directly ask the public for donations. The only outlets that Allied Veterans uses to communicate with the public are its website and its newsletters. Neither the website nor the newsletters ask for donations or explain how a donation could be made. Indeed, Allied Veterans does not accept donations.
- b. Allied Veterans does not employ professional solicitors, professional fundraising consultants, commercial co-venturers, or anyone else to indirectly solicit donations on its behalf from the public.
- c. Allied Veterans does not conduct or sponsor any activities that could be construed as solicitations.

20. Plaintiffs Internet Centers do not “solicit” within the meaning and intent of the Act for the following reasons:

- a. “Solicitation” requires a request for money on a plea or representation that the money will be used for a charitable purpose or will benefit a charitable organization. In their business of selling

internet access time, Internet Centers never directly or indirectly request a donation for any charitable organization or purpose.

- b. The Department may contend that since Internet Centers sell internet access time, they fall under § 496.404(20)(d), the portion of the definition of “Solicitation” that addresses selling. Internet Centers do not sell any of the specifically named items or services listed under § 496.404(20)(d). The sale of internet access time could only fall under the very broad, catch-all language, “or other service or tangible good, item, or thing of value or any right of any description.” However, selling alone is not enough to be considered solicitation. Under § 496.404(20)(d) the selling must be accompanied by an “appeal” (i.e. a plea for help) for a particular charity or charitable organization.
- c. Internet Centers do not sell internet access time in conjunction with an appeal for charity. Internet Centers make no statements, in connection with the sale, that all or a portion of the proceeds from the sale of internet access time will benefit any charitable organization or purpose.
- d. Internet Centers do not use the name of a charitable organization in any appeal as an inducement or reason for purchasing internet access time. In fact, if there is any inducement or appeal used by Internet Centers, the inducement for the sale would be its sweepstakes promotion.

- e. Internet Centers are engaged in the simple act of selling. There is no charitable appeal or inducement to buy the product, such as there is with products like “Susan G. Komen Race for the Cure®” exercise apparel. At the internet centers, there is no representation that the customer is purchasing anything other than internet time. Furthermore, there is no representation that purchasing internet time is needed to help any charitable organization.
- f. Even if Allied Veterans is considered to be a charitable organization under the meaning of the Act, the mere fact that the Internet Centers operate under a similar name does not, in and of itself, rise to the level of solicitation. It is public record that the Internet Centers are separately and independently formed corporations.

21. There is no prohibition on a charitable organization owning or operating a business. Internet Centers and Allied Veterans pay all applicable taxes on their sale of internet access. There is no law that limits charitable organizations or veterans’ organizations from using part of their name to run a business as long as it pays its taxes and it does not solicit contributions or support. The fact that a business may ultimately decide to use some or even all of the profits for charitable causes does not make the sale of its goods or services solicitation under the act.

UNCONSTITUTIONALLY OVERBROAD AND VAGUE

22. If Allied Veterans and Plaintiffs Internet Centers are considered charitable organizations that engage in solicitations under the Act, then the Act is unconstitutionally

overbroad and vague as applied such that it violates Plaintiffs' constitutionally protected rights.

23. Interpreting the Act to include the activities of Allied Veterans and Plaintiffs Internet Centers as described above is overly broad and beyond the intended purpose of the Act, which is to require full public disclosure of those organizations that solicit contributions from the public in an effort to protect and inform the public. See Wickman v. Firestone, 500 So. 2d 740, 741 (Fla. 4th DCA 1987).

24. It is well settled in Florida that an overly broad and vague application of a law that regulates or prohibits constitutionally protected rights is unconstitutional. See D'Almberte v. Anderson, 349 So. 2d 164, 166 (Fla. 1977)(stating, "[w]hen [a] statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be."). The Department's application of the Act is overbroad, vague and inconsistent and is therefore unconstitutional under Florida law.

25. The Department's overbroad and vague application of the Act is evident from the fact that several organizations that are not "charitable organizations" and which do not "solicit" public contributions have registered with the Department. For example, according to the Department's Gift Givers Guide, less than twenty Free Masons lodges in Florida are registered with the Department. Florida Charities Gift Givers Guide, <https://csapp.800helpfla.com/cspublicapp/giftgiversquery> (last visited Nov. 3, 2011). However, over 300 lodges exist and operate within the state of Florida. Grand Lodge of Free and Accepted Masons of the State of Florida, <http://glfamason.org/lodgelocator> (last

visited Nov. 3, 2011). This is evidence of confusion among organizations as to whether they are regulated under the Act and the Department's inconsistency in its application of the Act.

26. The Free Masons organization is similar to Allied Veterans. Both entities are private membership organizations that exist for the benefit of their own members. Any charitable donations made by the Free Masons to third party nonmembers are funded from the organizations' own private financial resources.

27. Requiring a private organization that does not solicit the public for charitable donations to register with the Department is well beyond the purpose and intent of the Act. However, because the Act as applied is vague and overbroad, the Department and even some Free Mason lodges think the Act applies or may apply to these private member organizations. See Composite Exhibit D.

28. In addition to going beyond the intent and purpose of the Act, the Department's interpretation and application of the Act violates the constitutionally protected rights of private organizations. Interpreting the Act to encompass private businesses requires these businesses to disclose their proprietary and confidential records, including financial records, and is in violation of the organization's Fourth Amendment rights.

29. The Florida Constitution grants every person the right to pursue lawful business and to freely contract. By interpreting the Act to encompass private organizations that do not solicit donations from the public, the Department is infringing on these constitutional rights. Indeed, the Department seeks to penalize private organizations that choose to make donations from their own funds for charitable purposes

by making such private organizations disclose their private financial records.

30. Interpreting the Act to require the public disclosure of the financial records and tax returns of any private company that sells products or services and contributes some or all of the proceeds of such sales is a grossly overbroad construction. For instance, Target represents that it contributes a portion of all sales to local charities. A construction of the Act to require public disclosure of Target's tax returns would be unconstitutionally impermissible. As another example, McDonald's represents that a portion of the sale of every Happy Meal benefits the Ronald McDonald House and prominently advertises and displays that information in its restaurants. Certainly, the Act would not require the disclosure of the tax returns of both McDonald's and the individual franchise owners of all McDonald's restaurants. However, this is the position taken by the Department.

31. The Act as applied to private organizations, such as the Free Masons or Plaintiffs is unconstitutionally vague and overbroad and infringes on the organizations' constitutionally protected rights of privacy, the right to contract, the right to engage in lawful business, the right against illegal search and seizures under the Fourth Amendment of the United States Constitution and due process rights under Fourteenth Amendment of the United State Constitution and article I, section 9 of the Florida Constitution.

WHEREFORE, Plaintiffs Internet Centers seek declaratory judgment declaring that they are not are subject to Chapter 496, Florida Statutes, otherwise known as the Florida Solicitation of Contributions Act and providing for such other and further relief including supplemental relief as this Court may deem just, proper and equitable.

DATED this 4th day of November, 2011.

MATHIS & MURPHY, P.A.

By: 

Kelly B. Mathis

Florida Bar No.: 0768588

James T. Murphy

Florida Bar No.: 0145599

1200 Riverplace Boulevard, Suite 902

Jacksonville, FL 32207

904/396-5500 (ph); 904/396-5560 (fax)

Attorneys for Plaintiffs Internet Centers