

1 Daniel Robert Bartley, SBN 79586
2 Bartley Law Offices
3 Post Office Box 686
4 Novato, CA 94948-0686
5 Tel 415 898 4741 · Fax 415898 4841
6 E-mail DanielBartleyLaw@aol.com

7 Harold J. Engel, *Pro Hac Vice*
8 Kristine Dunne, *Pro Hac Vice*
9 J. Marcus Meeks, *Pro Hac Vice*
10 Arent Fox Kintner Plotkin & Kahn, PLLC
11 1050 Connecticut Avenue, N.W.
12 Washington, DC 20036 5339
13 Tel 202 857 6388 · Fax 202 857 6395
14 E-mail EngelH@arentfox.com
15 E-mail DunneK@arentfox.com
16 E-mail MeeksM@arentfox.com

17 Attorneys for Plaintiffs

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF ALAMEDA

20 GENERAL JURISDICTION (UNLIMITED)

21 THE PEOPLE OF THE STATE OF
22 CALIFORNIA, *ex rel.* CAROL
23 SPOONER, et al.,
24 Plaintiffs,
25 vs.
26 PACIFICA FOUNDATION, a
27 California non-profit public benefit
28 corporation and charitable trust, et al.,

Defendants.

Case No. 831252-3

DECLARATION OF CAROL SPOONER
IN SUPPORT OF EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE RE PRELIMINARY
INJUNCTION

Hearing Date: Monday, February 26, 2001

Hearing Time: 1:45 p.m.

Judge: Hon. Judith D. Ford

Department: 31

Location: U.S. Post Office Building
201 13th Street
Oakland, CA 94607
Tel 510 208 3949

1 I, Carol Spooner, declare as follows:

2 1. I make this declaration in support of the Application for a Temporary Restraining
3 Order and Order to Show Cause re Preliminary Injunction submitted by Plaintiffs The People of
4 the State of California *ex rel.* Carol Spooner et al. I have personal knowledge of all of the facts
5 contained in this declaration unless stated to be on information and belief. As to those statements
6 alleged to be on information and belief, I believe them to be true. If called to testify, I would and
7 could completely and truthfully testify as to the statements contained herein.
8

9 2. I am a listener-sponsor of Pacifica radio station KPFA in Berkeley, California. I am
10 a Plaintiff/Relator in the action The People of the State of California, *ex rel.* Carol Spooner et al.
11 v. Pacifica Foundation et al. Plaintiffs have brought this action for usurpation of office by
12 thirteen of the seventeen persons currently acting as directors of the Pacifica Foundation, as well
13 as for breach of charitable trust and gross abuse of authority, accounting and declaratory relief.
14 The Pacifica Foundation currently owns five radio stations: KPFA in Berkeley, California, KPFK
15 in Los Angeles, California, KPFT in Houston, Texas, WBAI in New York, New York, and
16 WPFW in Washington, D.C.
17

18 3. I personally attended, as a member of the public audience, the Pacifica Foundation Board
19 of Directors' meeting in Washington, D.C., on September 17, 2000. At that meeting the
20 defendants scheduled the next board meeting for **the first weekend in March 2001 (March 2-**
21 **4)**, to take place in Houston, Texas, and announced plans to take the following actions at the
22 March 2-4 meeting: (1) amend the Pacifica Foundation Bylaws, and (2) appoint additional
23 directors to the board of directors. Also at the September 17th meeting, the board Chair, Mary
24 Frances Berry, announced that her term would expire at the end of September 2000, and that she
25 would step down as a director at that time. On information and belief, she is no longer acting as
26 a Pacifica director.
27
28

4. I personally attended the Pacifica Foundation Board of Directors' meeting in Washington,

1 D.C., on February 27, 2000. At that meeting five directors were purportedly elected all together
2 as a “slate”, up or down, by voice vote. Those directors were Leslie Cagan, Valrie Chambers,
3 Bertram Lee, Beth Lyons, and John Murdock. (See also the Declaration of Alice Chan regarding
4 the purported election of three directors in the same manner at the Board of Directors’ meeting in
5 Houston, Texas, on October 30, 1999.) The total number of persons acting as directors as a
6 result of these purported elections was eighteen. That number has since been reduced to
7 seventeen as a result of the resignation of the Chair, Mary Frances Berry, at the end of September
8 2000.

10 5. Attached hereto as “Exhibit A” and incorporated by this reference is a list of the Pacifica
11 Foundation directors “updated November 2, 1999.” I downloaded and printed this document
12 from the Pacifica web page at <http://www.pacifica.org/board/members/members.html>. This
13 document shows that the number of persons acting as directors as of November 2, 1999 was
14 fifteen, including three directors purportedly elected on October 30, 1999. This document also
15 shows that David Acosta’s 3-year term as a director expired in March 1999, yet he is still acting
16 as a director, and that Ken Ford’s 3-year term as a director expired in June 2000, yet he is also
17 still acting as a director. Since November 2, 1999 three of the directors listed have resigned. I
18 was personally present at the Pacifica board meeting on February 27, 2000, when William Lucy
19 announced his resignation as of that date, and a letter of resignation from June Makela, effective
20 as of that date, was read by the Chair, Mary Frances Berry. Also, since November 1999, five
21 new board members have been appointed by the board. This brings the number of persons
22 currently acting as Pacifica Directors to seventeen. They are: David Acosta, Peter Bramson,
23 Leslie Cagan, Valrie Chambers, Andrea Cisco, Robert Farrell, Ken Ford, Wendell Johns, Rabbi
24 Aaron Kriegel, Bertram Lee, Beth Lyons, Frank Millspaugh, Tomas Moran, John Murdock,
25 Michael Palmer, Rob Robinson, and Karolyn van Putten.

26 6. If defendants are not restrained from appointing additional directors at the March 2-4

1 directors' meeting, and throughout the pendency of this action, plaintiffs (who are suing on
2 behalf of the interests of the People of the State of California in the lawful governance of the
3 Pacifica Foundation) will suffer great harm in that the voting power of the lawfully elected
4 directors and of the board members who oppose the current direction of Pacifica will be diluted,
5 and more persons with no authority to act will be in control of the Foundation.
6

7 7. On January 24, 2001, defendant Leslie Cagan caused to be posted a copy of draft proposed
8 bylaws amendments to the internet. Ms. Cagan posted to a public email discussion list,
9 NewPacifica@egroups.com, a request for public comments on the proposed bylaws amendments.

10 A true copy of Ms. Cagan's email message is attached hereto and incorporated by this reference
11 as "Exhibit B." A true copy of the proposed bylaws amendments is attached hereto and
12 incorporated by this reference as "Exhibit C." The bylaws defendants are now threatening to
13 adopt would vest virtually all power in a 7-person "Executive Committee" of the board. Section
14 4.2 of the proposed bylaws provides that:
15

16 "Except to the extent limited by the Not-For-Profit Corporation Law, these Bylaws or a
17 resolution of the Board of Directors, the Executive Committee shall have and may
18 exercise all the powers and authority of the Board of Directors in the management of the
19 business, operations, activities and affairs of the Foundation between meetings of the
20 Board of Directors; provided, however, that the Executive Committee shall not have the
21 power or authority with regard to the following matters: (i) filling vacancies in the Board
22 of Directors or any committee thereof; (ii) adopting, amending or repealing any By-Law
23 of the Foundation or any resolution of the Board of Directors which by its terms shall not
24 be so amendable or repealable; (iii) the sale, transfer or other disposition of substantially
25 all of the assets or property of the Foundation; (iv) the merger, consolidation, liquidation,
26 dissolution or winding up of the Foundation; or (v) appoint or remove the Executive
27 Director of the Foundation. The Executive Committee shall have oversight of and
28 authority over the formation and activities of the Local Advisory Boards described in
Article IX."

8. If defendants are not restrained from amending the bylaws at their March 2-4 directors'
meeting, and throughout the pendency of this action, plaintiffs (who are suing on behalf of the
interests of the People of the State of California in the lawful governance of Pacifica Foundation)
will suffer great harm in that the fundamental governance structure of Pacifica, the subject of this

1 litigation, will be altered by a board majority of usurpers who have no authority or right to take
2 such actions.

3 9. On information and belief, preparations are being made to move the principal place of
4 business, including the financial offices, of the Pacifica Foundation from its current location in
5 North Hollywood, California, to Washington, D.C., at any moment. On information and belief,
6 Defendants are currently having a temporary personnel service pack the corporate financial
7 records in preparation for a planned move of these records outside the state of California on
8 **February 28, 2001, or March 1, 2001.** In addition, on information and belief, the defendants
9 have within the past four weeks terminated the employment of Pacifica's financial Controller for
10 at least the past 20 years, Sandra Rosas. On information and belief, Ms. Rosas recently reported
11 that her computer had been "stolen" under incredible circumstances, and much data were
12 reportedly "lost". The computer "theft" allegedly occurred by the noisy means of jimmying the
13 controllers' office door open with a crowbar at a time when such noisy goings on would have
14 been heard by numerous volunteers who were then at the KPFK facilities taking phone-in
15 contributions during an on-air fund drive. In addition, I have received information from an eye
16 witness employee-informant, who fears retaliatory firing if identified, that a substantial number
17 of documents have recently been shredded at the financial offices in North Hollywood,
18 California.
19
20
21

22 10. If defendants are not immediately restrained from destruction of documents, and from
23 moving the Pacifica principal place of business, including the financial offices, from their current
24 location in North Hollywood, plaintiffs will suffer irreparable harm in that crucial evidence of
25 financial misfeasance, malfeasance and waste, as well as documents needed for a full accounting
26 of Pacifica's books, may be lost or destroyed.

27 11. On information and belief, the terms of directors Robert Robinson and Peter Bramson
28 will expire in March 2001. (See "Exhibit A", attached.) On information and belief, the local

1 station boards (also known as local advisory boards) that originally elected them as directors, the
2 WPFW local station board and the KPFA local station board, respectively, have or will have re-
3 elected Mr. Robinson and Mr. Bramson as directors for another 3-year term prior to the March 2-
4 4, 2001 directors' meeting. Attached hereto as "Exhibit D" and incorporated by this reference is
5 a true copy of an email sent by Sam Hussein, Chair of the WPFW local advisory board, stating
6 that Mr. Robinson has been re-elected by the WPFW local board, and that Ken Ford's term has
7 expired, that Mr. Ford has not been re-elected and no longer represents the WPFW station board.
8

9 Plaintiffs have reason to believe that defendants intend to remove Mr. Bramson and Mr.
10 Robinson, or refuse to seat them, as lawfully elected directors at the March 2-4, 2001 board
11 meeting.
12

13 12. Unless defendants are restrained from removing or refusing to seat Mr. Robinson and
14 Mr. Ford at the March 2-4, 2001 board meeting, and throughout the pendency of this action,
15 plaintiffs will suffer irreparable harm in that lawfully elected directors who are diligently
16 attempting to carry out their fiduciary duties to protect and preserve the charitable trust held by
17 the Pacifica Foundation will be prevented from participating in board deliberations and
18 discussions and from voting on matters before the board of directors.
19

20 13. Since this action was filed on September 15, 2000, and while prosecution of the case has
21 been delayed by defendants' removal to federal court, the defendants have taken or permitted to
22 be taken, and continue to take or permit, destructive actions at Pacifica's radio station WBAI in
23 New York that are reminiscent of the firings at KPFA in Berkeley in 1999 and the resultant
24 public demonstrations of dismay and outrage, and the waste of Pacifica's assets, that are recited
25 in the Complaint. On information and belief, the management of WBAI, including the station
26 manager and program director, were fired on December 22, 2000, several volunteer staff
27 members were "banned" from the station, and the station locks were changed. These actions are
28 summarized in the *New York Times* article headlined "Pacifica Foundation Locks WBAI Station

1 Manager Out of Office,” dated December 28, 2000, a true copy of which is attached hereto as
2 “Exhibit E” and incorporated by this reference, and also in a “Statement From Dissident
3 Members of The National Board of the Pacifica Foundation” posted to the
4 NewPacifica@egroups.com email discussion list by defendant director Leslie Cagan on January
5 18, 2001. A true copy of this “Statement From Dissident Board Members” is attached hereto as
6 “Exhibit F” and incorporated by this reference. On information and belief, since December 22,
7 2000, several other WBAI employees have been fired or banned from the station. These actions
8 are summarized in a *Newsday* (a New York daily newspaper) article headlined “FLASH! The
9 latest entertainment news and more ...” Office,” dated February 15, 2001, a true copy of which I
10 downloaded from the *Newsday* internet web page and relevant excerpts of which are attached
11 hereto as “Exhibit G”
12

13
14 14. As a result of the recent firings, bannings, and other disruptions at WBAI, a national
15 campaign to “boycott” Pacifica’s fund drives has been commenced by an organization called the
16 “Pacifica Campaign.” I received by email copy of a “Pacifica Campaign” press release
17 announcing the boycott, a true copy of which is attached hereto as “Exhibit H” and incorporated
18 by this reference.
19

20 15. If the defendants are not restrained from taking any substantial actions that are not
21 necessary for day-to-day operations affecting Pacifica’s assets, governance, management,
22 operations, staffing and programming, then the Pacifica Foundation on behalf of which this
23 action is brought will suffer irreparable harm, including, but not limited to, loss of good will and
24 reputation, and loss of income from public donations which are its major funding source.
25

26 17. On information and belief, the WBAI local station board (also known as Local Advisory
27 Board) elected Andrea Cisco to a 3-year term as a Pacifica Foundation director commencing
28 March 1998, and elected Frank Millspaugh to a second 3-year term as a Pacifica director also
commencing March 1998, and on or about April or May 2000 a majority of the WBAI local

1 station board voted to remove both Ms. Cisco and Mr. Millspaugh as directors.

2 18. Over the course of the past two years I have obtained from numerous sources copies of
3 the Pacifica Foundation bylaws, as they were amended from time to time over the past fifty one
4 years. I have good reason to believe the copies I have obtained are true and correct copies.
5 However, during the discovery stay imposed by Pacifica's removal of our case to federal court,
6 we have not been able to obtain authenticated copies from the defendants who have sole custody
7 and control of such documents. On information and belief, attached hereto as "Exhibit I" and
8 incorporated by this is a true and correct copy of the Pacifica Foundation Bylaws as they existed
9 circa 1955. On information and belief, attached hereto as "Exhibit J" and incorporated by this
10 reference is a true copy of the Pacifica Foundation bylaws as amended on July 31, 1976. On
11 information and belief, attached hereto as "Exhibit K" and incorporated by this reference is a true
12 copy of the Pacifica Foundation Bylaws as amended on January 31, 1984. On information and
13 belief, attached hereto as "Exhibit L" and incorporated by this reference is a true copy of the
14 Pacifica Foundation Bylaws as amended on January 9, 1988. On information and belief, attached
15 hereto as "Exhibit M" and incorporated by this reference is a true copy of the Pacifica
16 Foundation Bylaws as amended on September 30, 1995. On information and belief, attached
17 hereto as "Exhibit N" and incorporated by this reference is a true copy of the Pacifica
18 Foundation Bylaws as amended on September 27, 1997. On information and belief, attached
19 hereto as "Exhibit O" and incorporated by this reference is a true copy of the Pacifica Foundation
20 Bylaws as amended on February 28, 1999.

21 19. On information and belief, none of the post-1984 bylaws amendments affecting the
22 voting rights of the station boards was ever put to a vote of approval of the station boards.

23 20. Over the course of my investigations over the past two years I have obtained from
24 numerous sources copies of Minutes of meetings of the Pacifica Foundation Board of Directors.
25 I have good reason to believe the copies I have are true and correct copies, however, during the
26
27
28

1 discovery stay imposed by Pacifica's removal of our case to federal court, we have not been able
2 to obtain authenticated copies from the defendants who have sole custody and control of such
3 documents. Attached hereto are copies of all the Minutes of board meetings in my possession
4 that record the addition of a director or directors to the Pacifica Foundation board of directors
5 between February 1987 and June 1992. I do not have copies of any board meeting Minutes prior
6 to the June 6-7, 1992 board of directors meeting. On information and belief, attached hereto and
7 incorporated by this reference true and correct copies of the Minutes of the board of directors
8 meetings on February 7-8, 1987 ("Exhibit P"), May 30-31, 1987 ("Exhibit Q"), January 9-10,
9 1988 ("Exhibit R"), May 7-8, 1988 ("Exhibit S"), September 24-25, 1988 ("Exhibit T"), January
10 27-29, 1989 ("Exhibit U"), April 29-30, 1989 ("Exhibit V"), January 27-28, 1990 ("Exhibit W"),
11 June 2-3, 1990 ("Exhibit X"), October 6-7, 1990 ("Exhibit Y"), February 9-10, 1991 ("Exhibit
12 Z"), June 8-9, 1991 ("Exhibit AA"), February 1-2, 1992 ("Exhibit BB"), and June 6-7, 1992
13 ("Exhibit CC").
14
15

16 I declare under penalty of perjury under the laws of the State of California that the foregoing
17 is true and correct, and that this declaration was executed on February __, 2001, in Santa Rosa,
18 California.
19

20 _____
21 Carol Spooner
22
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1 **DECLARATION OF PROOF OF SERVICE**

2 The undersigned declares he/she is employed in the county of Marin, State of California, by
3 Daniel Robert Bartley Law Offices, P.O. Box 686, Novato, CA, 94948-0686. I am over the age
4 of 18 and not a party to this action. On today's date, I served, true and correct copies of
5 "DECLARATION OF CAROL SPOONER IN SUPPORT OF EX PARTE APPLICATION FOR
6 TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE
7 PRELIMINARY INJUNCTION" by placing such in a sealed envelopes addressed as follows:

8 Daniel Rapaport, Esq.
9 Wendel, Rosen, Black & Dean, LLP
10 1111 Broadway, 24th Floor
11 Oakland, CA 94607
12 [Tel 510 834 6600 Fax 510 834 1928]
13 [E-mail drapaport@wendel.com]

14 I then this day caused such documents to be personally served upon Defendants' local counsel
15 Daniel Rapaport.

16 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
17 is true and correct and that this Decl. was executed on this 23rd day of February, 2001, at
18 Novato, California.

19 _____
20 Daniel Robert Bartley
21
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