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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

FRED VANNATTA AND CENTER TO
PROTECT FREE SPEECH, INC., an Oregon
Not-For-Profit Corporation,

Plaintiffs,

v.

OREGON GOVERNMENT ETHICS
COMMISSION, formerly known as the Oregon
Government Standards and Practices
Commission, and STATE OF OREGON,

Defendants.

Case No. 07C-20464

**AMENDED COMPLAINT
(Declaratory Judgment; Injunction;
Attorney Fees)**

For their complaint, plaintiffs allege:

DECLARATORY RELIEF

1.

The Center to Protect Free Speech, Inc. (“Center”), is an Oregon not-for-profit corporation, exempt from taxation under section 501(c)(4) of the Internal Revenue Code. The Center is dedicated to protecting rights guaranteed by the state and federal constitutions, including the rights to speak freely on any subject whatever, to instruct representatives, and to apply to the Legislative Assembly for redress of grievances. Fred VanNatta (“VanNatta”) is an elector and taxpayer and the president of the Center. VanNatta exercises the constitutional rights

1 to speak freely on any subject whatever, to instruct representatives, and to apply to the
2 Legislative Assembly for redress of grievances.

3 2.

4 The State of Oregon has adopted a Code of Ethics in ORS Ch. 244. The Oregon
5 Government Ethics Commission (“Commission”) is the agency of the State of Oregon charged
6 by law with implementing and enforcing the Code of Ethics for public officials, including ORS
7 chapter 244 as amended by 2007 SB 10, Ch. 877 Or. Laws 2007. It was formerly known as the
8 Oregon Government Standards and Practices Commission. A copy of Enrolled SB 10, which the
9 Commission is charged with enforcing, is attached hereto as Exhibit 1.

10 3.

11 VanNatta has registered to lobby on behalf of the Center to, among other things,
12 request a repeal during the Special Legislative Session scheduled in February 2008 of many of
13 the provisions of SB 10 which this action addresses. A copy of VanNatta’s lobby registration is
14 attached as Exhibit 2. To further that goal, the Center and VanNatta plan to engage in conduct
15 that would be prohibited and penalized if the Commission were to implement and enforce the
16 code of ethics as amended by 2007 SB 10. VanNatta is also registered to lobby on behalf of the
17 Roman V Ranch, LLC and other clients. He is the Managing Member of the Roman V Ranch,
18 LLC which owns small woodlands. The Legislative Assembly has and is expected to consider
19 legislative proposals which will impact the economic interests of small woodland owners
20 including VanNatta and Roman V Ranch, LLC. Conduct in which VanNatta would engage
21 includes obtaining the good will of public officials and candidates for public office through
22 offering and providing public officials, their families and candidates for public office
23 entertainment, business meals with an aggregate value of more than \$50 in a calendar year in
24 connection with their discussions, and honorariums in connection with official duties. This
25 conduct would also be penalized if the Commission were to implement and enforce the Code of
26 Ethics as amended by 2007 SB 10.

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4.

Sections 18(1), (2), and (3) of 2007 SB 10, which prohibit a person with a legislative or administrative interest from offering or giving such gifts with an aggregate value of more than \$50 in a calendar year to a public official or candidate for public office, violate:

i. Article I, section 8 of the Oregon Constitution, because sections 18(1), (2), and (3) restrict the right to speak freely on any subject whatever; and even if a restriction were permissible, in combination with the definition of “gift” in ORS 244.020, the sections are so vague and overbroad that sections 18(1), (2), and (3) unconstitutionally burden permissible speech.

ii. Article I, section 26 of the Oregon Constitution, because sections 18(1), (2), and (3) restrain inhabitants from instructing their representatives and from applying to the Legislative Assembly for redress of grievances.

iii. Article I, section 20 of the Oregon Constitution, because sections 18(1), (2), and (3) base the rights to speak freely on any subject whatever, to instruct representatives, and to apply to the Legislative Assembly for redress of grievances upon (a) whether the person lacks a legislative or administrative interest; and (b) whether, under ORS 244.020(5)(b)(F), the person is a government, an organization of which a public body is a dues-paying member, or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code and receives less than five percent of its funding from for-profit organizations or entities.

5.

Section 18 (4) of 2007 SB 10, which prohibits a person with a legislative or administrative interest from offering or giving gifts of entertainment to a public official or candidate for public office, violates:

i. Article I, section 8 of the Oregon Constitution because section 18(4) restricts the right to speak freely on any subject whatever; and even if a restriction were

1 permissible, in combination with the definition of “gift” in ORS 244.020 and the lack of
2 definition of “entertainment,” the section is so vague and overbroad that section 18(4)
3 unconstitutionally burdens permissible speech.

4 ii. Article I, section 26 of the Oregon Constitution because section 18(4)
5 restrains inhabitants from instructing their representatives and from applying to the Legislative
6 Assembly for redress of grievances.

7 iii. Article I, section 20 of the Oregon Constitution, because section 18(4)
8 bases the rights to speak freely on any subject whatever, to instruct representatives, and to apply
9 to the Legislative Assembly for redress of grievances based upon (a) whether the person lacks a
10 legislative or administrative interest; and (b) under ORS 244.020(5)(b)(F), whether the person is
11 a government, an organization of which a public body is a dues-paying member, or a not-for-
12 profit corporation that is tax exempt under section 501(c)(3) of the of the Internal Revenue Code
13 and receives less than five percent of its funding from for-profit organizations or entities.

14 6.

15 Sections 24(1) and (2) of 2007 SB 10, which prohibit a person from providing an
16 honorarium to a public official or candidate for public office in connection with official duties,
17 violate:

18 i. Article I, section 8 of the Oregon Constitution, because sections 24(1) and
19 (2) restrict the right to speak freely on any subject whatever.

20 ii. Article I, section 26 of the Oregon Constitution, because sections 24(1)
21 and (2) restrain inhabitants from instructing their representatives and from applying to the
22 Legislative Assembly for redress of grievances.

23 7.

24 Defendants deny the Center’s and VanNatta’s above-stated contentions.
25 Defendants intend to enforce the above-referenced provisions of SB 10 on their respective
26 operative dates.

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8.

Pursuant to ORS 28.020, *et seq.*, plaintiffs are entitled to declaratory relief as provided in paragraphs 4, 5 and 6 herein.

9.

The Center and VanNatta have no plain, speedy, and adequate remedy in the ordinary course of the law and an injunction is therefore necessary to preserve their right to speak freely and to avoid irreparable harm.

INJUNCTION

10.

Plaintiffs reallege those allegations in paragraphs 1 through 9.

11.

The Center and VanNatta are entitled to an injunction permanently enjoining defendants from enforcing the above-referenced provisions as of their respective operating dates.

ATTORNEY'S FEES

12.

Plaintiffs reallege those allegations in paragraphs 1 through 11.

13.

Since at least 2000, the Office of Legislative Counsel has advised the Legislative Assembly that the Oregon Constitution prohibits the Legislative Assembly from adopting laws that limit the gifts that persons may give to members of the Legislative Assembly. A copy of one such opinion of the Office of Legislative Counsel dated March 10, 2000 is attached hereto as Ex. 3.

14.

The Center and VanNatta are entitled to recover their reasonable attorney fees from defendants because the Center and VanNatta are seeking to vindicate important constitutional rights applying to all citizens and not to vindicating individualized and different

1 interests or any pecuniary or other special interest of their own aside from that shared with the
2 public at large and because the above-referenced restraints on speech have been enacted despite
3 the advice of the Legislature's official legal advisors.

4 **WHEREFORE**, the Center and VanNatta demand judgment as follows:

5 1. Declaring that sections 18(1), (2), (3), and (4) and 24(1) and (2) of 2007 SB 10
6 are void and unenforceable because in violation of the Oregon Constitution;

7 2. Permanently enjoining enforcement of the above-referenced sections of Enrolled
8 SB 10;

9 3. Awarding the Center and VanNatta their reasonable attorney fees and costs and
10 disbursements incurred herein.

11 4. For such other and further relief as the court deems just and equitable.

12 DATED this 22 day of October, 2007.

13 DAVIS WRIGHT TREMAINE LLP

14
15 By 

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17 Gregory A. Chaimov, OSB #822180
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23
24 Attorneys for Plaintiffs Fred VanNatta and Center To
25 Protect Free Speech, Inc.
26

**Enrolled
Senate Bill 10**

Sponsored by Senators BROWN, COURTNEY, Representative MERKLEY; Senator MORRISETTE
(Presession filed.)

CHAPTER

AN ACT

Relating to government ethics; creating new provisions; amending ORS 171.725, 171.730, 171.735, 171.740, 171.745, 171.750, 171.772, 171.992, 244.020, 244.040, 244.045, 244.050, 244.060, 244.070, 244.100, 244.110, 244.280, 244.290, 244.350, 244.360, 244.390, 260.407, 293.708, 351.067 and 353.270 and sections 5, 14, 15 and 40b, chapter ____, Oregon Laws 2007 (Enrolled House Bill 2595); and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

COMMISSION FUNDING

SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 244.

SECTION 2. (1) The Oregon Government Standards and Practices Commission shall estimate in advance the expenses that it will incur during a biennium in carrying out the provisions of ORS 171.725 to 171.785 and 171.992 and this chapter. The commission shall also determine what percentage of the expenses should be borne by the following two groups of public bodies:

- (a) Public bodies in state government; and
- (b) Local governments, local service districts and special government bodies that are subject to the Municipal Audit Law.

(2) The commission shall charge each public body for the public body's share of the expenses described in subsection (1) of this section for the biennium. The amount to be charged each public body shall be determined as follows:

(a) The commission shall determine the rate to be charged public bodies in state government. The same rate shall be applied to each public body described in this paragraph. To determine the amount of the charge for each public body, the commission shall multiply the rate determined under this paragraph by the number of public officials serving the public body.

(b) The commission shall set the charge for local governments, local service districts and special government bodies that are subject to the Municipal Audit Law so that each local government, local service district or special government body described in this paragraph pays an amount of the total expenses for the group that bears the same proportion to the total expenses that the amount charged to the local government, local service district or special government body for the municipal audit fee under ORS 297.485 bears to the total amount assessed for the municipal audit fee.

EXHIBIT 1
PAGE 1

(3) Each public body shall pay to the credit of the commission the charge described in this section as an administrative expense from funds or appropriations available to the public body in the same manner as other claims against the public body are paid.

(4) All moneys received by the commission under this section shall be credited to the Oregon Government Standards and Practices Commission Account established under ORS 244.345.

(5) The commission shall adopt rules specifying the methods for calculating and collecting the rates and charges described in this section.

(6) As used in this section:

(a) "Local government" and "local service district" have the meanings given those terms in ORS 174.116.

(b) "Public body" has the meaning given that term in ORS 174.109.

(c) "Public official," notwithstanding ORS 244.020 (13), means any person who, on the date the commission charges the public body under this section, is serving the public body as an officer or employee.

(d) "Special government body" has the meaning given that term in ORS 174.117.

(e) "State government" has the meaning given that term in ORS 174.111.

SECTION 3. The Oregon Government Standards and Practices Commission shall first impose charges under section 2 of this 2007 Act for the biennium beginning July 1, 2009.

REPORTING REQUIREMENTS

SECTION 4. Section 5 of this 2007 Act is added to and made a part of ORS 171.725 to 171.785.

SECTION 5. Statements required to be filed with the Oregon Government Standards and Practices Commission under ORS 171.745 and 171.750 shall be filed in each calendar year:

(1) Not later than April 15, for the accounting period beginning January 1 and ending March 31;

(2) Not later than July 15, for the accounting period beginning April 1 and ending June 30;

(3) Not later than October 15, for the accounting period beginning July 1 and ending September 30; and

(4) Not later than January 15 of the following calendar year, for the accounting period beginning October 1 and ending December 31.

SECTION 6. ORS 171.725 is amended to read:

171.725. As used in ORS 171.725 to 171.785, unless the context requires otherwise:

(1) "Compensation" has the meaning given that term in ORS 292.951.

(2) "Consideration" includes a gift, payment, distribution, loan, advance or deposit of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable.

(3) "Executive agency" means a commission, board, agency or other body in the executive branch of state government that is not part of the legislative or judicial branch.

(4) "Executive official" means any member or member-elect of an executive agency and any member of the staff or an employee of an executive agency. A member of a state board or commission, other than a member who is employed in full-time public service, is not an executive official for purposes of ORS 171.725 to 171.785.

(5) "Judge" means an active judge serving on the Oregon Supreme Court, Court of Appeals, Oregon Tax Court, or an Oregon circuit court.

(6) "Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment, or report, or any matter that may be the subject of action by either house of the Legislative Assembly, or any committee of the Legislative Assembly, or the approval or veto thereof by the Governor.

