

**In the Circuit Court of the State of Oregon
For the County of Marion**

**FRED VANNATTA AND CENTER TO
PROTECT FREE SPEECH, INC.**

Plaintiffs,

vs.

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

Defendants.

Case No.

TO: State of Oregon

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

**NOTICE TO THE DEFENDANT.
READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "Answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have any attorney, proof of service upon the plaintiff.

If you have any questions you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

STATE OF OREGON, County of Marion) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

/s/ John DiLorenzo, Jr.

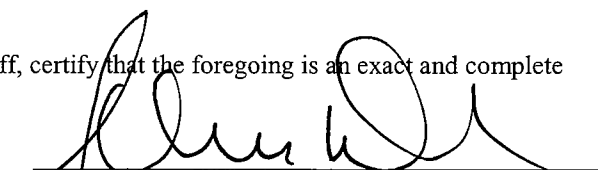
Signature of Attorney/Author for Plaintiff

JOHN DiLORENZO, JR. OSB # 80204

Attorney's/Author's Name (typed or printed)

**DAVIS WRIGHT TREMAINE LLP
1300 SW Fifth Avenue, Suite 2300
Portland, Oregon 97201 Phone: (503) 241-2300**

Trial Attorney: John DiLorenzo, Jr. OSB #80204



Attorney of Record for Plaintiff(s)

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

/s/ John DiLorenzo, Jr.

Attorney(s) for Plaintiff(s)

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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. _____

**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. Conduct in which the Center and VanNatta would
17 engage includes obtaining the good will of public officials and candidates for public office
18 through offering and providing public officials, their families and candidates for public office
19 entertainment, business meals with an aggregate value of more than \$50 in a calendar year in
20 connection with their discussions, and honorariums in connection with official duties.

21 4.

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

25 i. Article I, section 8 of the Oregon Constitution, because sections 18(1), (2),
26 and (3) restrict 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, the sections are so
2 vague and overbroad that sections 18(1), (2), and (3) unconstitutionally burden permissible
3 speech.

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

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

15 5.

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

19 i. Article I, section 8 of the Oregon Constitution because section 18(4)
20 restricts the right to speak freely on any subject whatever; and even if a restriction were
21 permissible, in combination with the definition of “gift” in ORS 244.020 and the lack of
22 definition of “entertainment,” the section is so vague and overbroad that section 18(4)
23 unconstitutionally burdens permissible speech.

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

1 speak freely and to avoid irreparable harm.

2 **INJUNCTION**

3 10.

4 Plaintiffs reallege those allegations in paragraphs 1 through 9.

5 11.

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

8 **ATTORNEY'S FEES**

9 12.

10 Plaintiffs reallege those allegations in paragraphs 1 through 11.

11 13.

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

17 14.

18 The Center and VanNatta are entitled to recover their reasonable attorney fees
19 from defendants because the Center and VanNatta are seeking to vindicate important
20 constitutional rights applying to all citizens and not to vindicating individualized and different
21 interests or any pecuniary or other special interest of their own aside from that shared with the
22 public at large and because the above-referenced restraints on speech have been enacted despite
23 the advice of the Legislature's official legal advisors.

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

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

**Enrolled
Senate Bill 10**

Sponsored by Senators BROWN, COURTNEY, Representative MERKLEY; Senator MORRISSETTE
(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
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