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January 24, 2008

VIA HAND DELIVERY

The Honorable Joseph C. Guimond
Circuit Court of Oregon
Marion County Courthouse
P. O. Box 12869
Salem, OR 97309-0869

Re: VanNatta v. Oregon Government Ethics Commission and State of Oregon
Marion County Circuit Court Case No. 07C20464

Dear Judge Guimond:

Pursuant to my correspondence to you of January 14, 2008, I am enclosing, for filing, Plaintiff's Second Amended Complaint.

I will contact your clerk on Monday to arrange a time for counsel to confer and to thereupon propose a schedule for the remainder of the case.

By copy of this correspondence, I am requesting that Mr. Abrams and Mr. Leith, of the Department of Justice, inform us as to who will be handling the case on behalf of the defendants, from this point on.

Thank you for your courtesies and time concerning this matter.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'John DiLorenzo, Jr.', written over the printed name below.

John DiLorenzo, Jr.

JAD:mg
Enclosure

The Honorable Joseph C. Guimond
January 24, 2008
Page 2



cc: Marc Abrams
David Leith
Fred VanNatta

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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

**SECOND 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.

1 4.

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

5 i. Article I, section 8 of the Oregon Constitution and the First Amendment to
6 the United States Constitution, because sections 18(1), (2), and (3) impermissibly infringe upon
7 the free speech rights of plaintiffs (and others similarly situated) and because sections 18(1), (2),
8 and (3) impermissibly discriminate between different types of speech and different
9 classifications of speakers; and even if a restriction were permissible, in combination with the
10 definition of “gift” in ORS 244.020, the sections are so vague and overbroad that sections 18(1),
11 (2), and (3) unconstitutionally burden permissible speech.

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

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

23 5.

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

1 Legislative Assembly for redress of grievances.

2 7.

3 Because sections 18(1), (2), (3), and (4) and sections 21(1) and (2) of SB 10 are
4 unconstitutional, any other provisions of SB 10 (including Section 17) that would, in the absence
5 of those unconstitutional sections, impose restrictions that are the same as (or more stringent
6 than) those restrictions imposed by sections 18(1), (2), (3) and (4) or sections 21(1) and (2), are
7 also unconstitutional for the reasons provided above.

8 8.

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

12 9.

13 Pursuant to ORS 28.020, *et seq.*, plaintiffs are entitled to declaratory relief as
14 provided in paragraphs 4, 5, 6 and 7 herein.

15 10.

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

19 **INJUNCTION**

20 11.

21 Plaintiffs reallege those allegations in paragraphs 1 through 10.

22 12.

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

25 ///

26 ///

1 ATTORNEY'S FEES

2 13.

3 Plaintiffs reallege those allegations in paragraphs 1 through 12.

4 14.

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

10 15.

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

17 16.

18 In addition, 42 USC section 1983 provides that every person who under color of
19 any statute, subjects, or causes to be subjected, any citizen of the United States or person within
20 the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the
21 constitution, shall be liable to the other party injured in an action at law, suit in equity, or other
22 proper proceeding for redress. Because of SB 10, plaintiffs will suffer impermissible deprivation
23 of their federal constitutional rights. By virtue of their challenge to that deprivation, plaintiffs
24 are entitled to an award pursuant to 42 USC section 1988 of their reasonable attorney fees, costs,
25 and disbursements incurred herein.

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**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.