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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

6 OREGON EDUCATION ASSOCIATION, an
7 Oregon nonprofit corporation,

8 Plaintiff,

9 v.

10 OREGON TAXPAYERS UNITED, an Oregon
11 political committee; OREGON TAXPAYERS
12 UNITED EDUCATION FOUNDATION, an
13 Oregon nonprofit corporation; and JOHN DOES
14 2 THROUGH 10,

15 Defendants.

Case No. 0012-12632

16 AMERICAN FEDERATION OF TEACHERS-
17 OREGON, AFT, AFL-CIO, an Oregon
18 unincorporated association,

19 Plaintiff,

20 v.

21 OREGON TAXPAYERS UNITED PAC, an
22 Oregon political committee; OREGON
23 TAXPAYERS UNITED EDUCATION
24 FOUNDATION, an Oregon nonprofit
25 corporation; and JOHN DOES 1 THROUGH 10.

26 Defendants.

Case No. 0108-08942

STATE OF OREGON'S MOTION TO
INTERVENE AND CERTIFICATION OF
GENERAL PUBLIC IMPORTANCE

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MOTION TO INTERVENE

The State of Oregon moves to intervene in this action. ORS 166.725(10) provides:

[T]he Attorney General may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or (7) of this section if the Attorney General certifies that, in the opinion of the Attorney General, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Attorney General instituted the action or proceeding.

1 This motion is timely because intervention does not require the introduction of any new
2 evidence, cause any delay in the resolution of this case, or prejudice any party.

3 In support of this motion, the State relies on ORS 166.725(10) and on the certification set
4 forth below.

5 **CERTIFICATION**

6 The Attorney General certifies that this action is of general public importance.

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8 I. FRAMEWORK OF THE RACKETEERING STATUTE.

9 The Oregon Racketeer Influenced and Corrupt Organizations Act (ORICO), ORS 166.715 to
10 166.735, authorizes private remedies for serious and repeated unlawful conduct. ORICO does
11 not merely provide compensation to victims; it also enlists them in the public’s interest. In
12 recognition of the overlap between some private ORICO actions and the public’s interest, private
13 plaintiffs have sometimes been referred to as “private attorneys general.”

14 The wrongs addressed by some private attorneys general may not be of sufficient public
15 importance to warrant the State’s participation. The interests advanced by other private attorneys
16 general may be completely congruent with the State’s interests in the pattern of racketeering
17 conduct proven in the case, and thus necessitate no expenditure of public resources to vindicate
18 the public’s interest. But ORS 166.725(10) expressly recognizes that some private ORICO
19 claims may engage the public interest in a way that warrants, in the Attorney General’s
20 discretion and at an appropriate stage of the case, the State’s participation as a party. As
21 described in more detail below, this is such a case, and the remedies phase of this case is an
22 appropriate stage.

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3 II. THE PROVEN CONDUCT RAISES ISSUES OF GENERAL PUBLIC IMPORTANCE.

4 The conduct proven by private plaintiffs in this case implicates important public interests in
5 protecting the assets of charitable organizations from misuse and in maintaining the integrity of
6 the state's campaign contribution and expenditure disclosure laws.

7 The Attorney General supervises charitable organizations holding assets in Oregon, including
8 identifying and correcting the breaches of fiduciary duties by those who manage public benefit
9 corporations. *See Wemme v. First Church of Christ*, 110 Or 179, 217, 219 P 618, 223 P 250
10 (1924); *see also* ORS Chapter 65. Public benefit corporations like defendant Oregon Taxpayers
11 United Educational Foundation (OTU-EF) hold themselves out as doing good works or
12 benefiting society in some way. To encourage these organizations to deliver benefits to the
13 community, state and federal laws grant them special privileges. These include protecting the
14 identities of contributors, allowing contributors certain tax benefits, and exempting the
15 organizations themselves from taxation under specified conditions. *See* ORS 316.695 and
16 317.080. To ensure that public benefit corporations do not abuse these privileges, the Attorney
17 General may, among other things, bring actions against directors for ultra vires acts, or for
18 breaches of the duty of care or loyalty. As described below, defendant OTU-EF engaged in a
19 pattern of racketeering activity that allowed it to enjoy the benefits of the privileges of a public
20 benefit corporation without adhering to the limitations on such organizations.

21 In addition, the Attorney General represents the Secretary of State, chief election officer for
22 the State of Oregon. The Secretary of State is responsible for maintaining compliance with all
23 state election laws. *See* ORS Chapter 260. At the request of the Secretary of State the Attorney
24 General is intervening in this case to protect the state's interest in the full disclosure of the source
25 of all contributions and expenditures received by political action committees (PACs). Public
26 disclosure laws are in place to provide each citizen the ability to determine who is influencing

1 the shaping of laws and election of officials. As described below, the jury found that defendants
2 engaged in a pattern of racketeering activity that had the effect of concealing information about
3 contributions and expenditures.

4 Finally, it is also of public importance to conserve state's scarce prosecutorial resources. The
5 state has the option to file its own lawsuits, alleging violations of the charity, public benefit
6 corporation and election laws cited above. However, in this instance, private action at no public
7 expense has brought the case to the point of shaping remedies for proven unlawful conduct. If
8 satisfactory prospective relief is ordered in this proceeding, it will alleviate the need to expend
9 prosecutorial resources in subsequent enforcement actions against the defendant public benefit
10 corporation and political action committee.

11 Other authorities recognize the appropriateness of the Attorney General's intervention as to
12 the issues presented in this case. The model state RICO law, drafted by the Criminal Justice
13 Section of the American Bar Association, requires that the appropriate law enforcement authority
14 intervene before the court orders suspension or revocation of a license, permit, or corporate
15 charter. ORS 65.040(2) provides that in an action to dissolve a nonprofit public benefit
16 corporation, relief now requested by the plaintiffs, the Attorney General may intervene as a
17 matter of right.

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19 III. SPECIFIC EXAMPLES OF UNLAWFUL CONDUCT THAT ILLUSTRATE THE
20 PUBLIC IMPORTANCE OF THIS CASE.

21 Defendants created a fraudulent arrangement that violated both charitable activities law and
22 elections law. Representatives of the Attorney General attended the trial and have subsequently
23 reviewed much of the evidence, including transcripts of trial testimony. The jury's verdict was
24 well-founded in the evidence. A few examples illustrate the extent to which the proof engages
25 the public's interest in charitable organizations and political action committees.

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1 Contributions to OTU-EF, which were required, overall, to be used for the benefit of the
2 public, were instead diverted to political causes and personal benefit. Program accomplishments
3 of OTU-EF for the public good, as reflected on the organization's form 990 return were grossly
4 overstated. The board of directors failed to exercise even minimal oversight required by the
5 fiduciary agents of all charitable organizations.

6 In addition, reports submitted by OTU-EF to the Department of Justice since at least 1996
7 failed to disclose that any of the organizations assets were being used to lobby or influence
8 legislation. Based on the proof adduced at trial, these reports were false. Mr. Sizemore testified
9 that he had instructed his staff to report that OTU-EF's lobbying expenses were under 20% of
10 OTU-EF's budget. In fact, according to the Internal Revenue Code and its interpretations, OTU-
11 EF was prohibited from expending more than 5% of its resources on lobbying. Ms. Miller
12 testified that Sizemore instructed his staff not to keep records of how they spent their time, and
13 that, in fact, from 50% to 75% of OTU-EF staff time, offices and equipment were devoted to
14 political or lobbying activity. In addition to limiting lobbying, public benefit corporations are
15 prohibited from engaging in any political activity.

16 Oregon law requires that all political contributions to political action committees, cash and
17 in-kind, must be reported and recorded in records available to the public. The evidence
18 establishes that OTU-PAC violated this rule by taking contributions from OTU-EF as part of a
19 scheme to shelter from public disclosure the identity of the individuals who made the
20 contributions.

21 Oregon law also requires the agents of political action committees to disclose their
22 expenditures. This is part of the statutory framework that provides the public with timely,
23 accurate information about expenditures. The evidence establishes that OTU-PAC failed to
24 provide accurate reports about agent spending, particularly in connection with a for-profit
25 corporation, I & R Petition Services, that gathered signatures to get certain measures on the year
26 2000 ballot.

