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

OREGON EDUCATION ASSOCIATION, an Oregon nonprofit corporation,

Plaintiff,

v.

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

Defendants.

Case No. 0012-12632

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

Plaintiff,

v.

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

Defendants.

Case No. 0108-08942

STATE OF OREGON’S REQUEST FOR EQUITABLE RELIEF

REQUEST FOR RELIEF

Should the Court grant the Attorney General’s Motion to Intervene, the Attorney General seeks equitable relief as follows:

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1 **Defendant Oregon Taxpayers United Educational Foundation**

- 2 1. An order dissolving OTU-EF.
- 3 2. An order enjoining, for a period of five years from the judgment issued in this proceeding, any
4 successor organization to OTU-EF from making any contributions or providing anything of
5 value, including loans or in-kind contributions, to any political action committee.
- 6 3. A “successor organization” to OTU-EF is one that is eligible for § 501(c)(3) charitable tax
7 exempt status and includes one in which any former officer, including executive director, or
8 director of OTU-EF is in a position to direct or control the activities of the successor
9 organization, including, but not limited to, the positions of officer, director, executive director,
10 trustee or key employee.

11 **Defendant Oregon Taxpayers United Political Action Committee**

- 12 4. An order prohibiting OTU-PAC and any successor political action committees participating in
13 the state or local initiative process, including, but not limited to, submitting prospective
14 petitions or contributing anything of value including loans or in-kind contributions to any
15 political action committee associated with any petition or prospective petition, until:
- 16 (a) OTU-PAC files with the Secretary of State complete and accurate contribution and
17 expenditure
18 reports as required by law for the years 1996 through 2000, and
- 19 (b) OTU-PAC files, or causes its agents or former agents to file, complete and accurate agent
20 reports (PC 9 forms detailing expenditures) for the years 1996 through 2000, and as
21 required by and under the application of ORS 260.083 (1997 edition) and the 1998
22 Campaign Finance Manual.
- 23 5. An order enjoining, for a period of five years from the judgment issued in this proceeding,
24 OTU-PAC and any successor political action committees, from receiving any contribution or
25 anything of value from any § 501(c)(3) charitable tax exempt organization.
- 26 6. An order requiring, for a period of five years from the judgment issued in this proceeding,
27 OTU-PAC and any successor political action committees to reject contributions from any
28 nonprofit tax exempt organization other than § 501(c)(3) organizations unless the contributors
29 execute affidavits stating that the contributions were not received in whole or in part by the
30 contributors from third parties with an express or implied directive that they be contributed to
31 OTU-PAC or its successor political action committees.
- 32 7. An order requiring, for a period of five years from the judgment issued in this proceeding,
33 OTU-PAC and any successor political action committees to file the affidavits required by
34 paragraph six with the Secretary of State as an attachment to each contribution and expenditure
35 report on which OTU-PAC or its successor political action committee discloses any
36 contribution from the nonprofit tax exempt organization.
- 37 8. A “successor political action committee” of OTU-PAC includes one in which any current or
38 former director or treasurer of OTU-PAC is in a position to direct or control the activities of

1 the successor organization, including but not limited to the positions of director, treasurer or
2 chief petitioner.

3 **Defendants OTU-EF and OTU-PAC**

- 4 9. An order requiring both OTU-PAC and any successor political action committees, and OTU-
5 EF and any successor charitable or public benefit organizations, to provide, upon reasonable
6 notice, free and unfettered access to any and all records, including records maintained in
7 electronic form, requested by the Oregon Department of Justice for the purpose of enforcement
8 of laws relating to charitable activities or for the purpose of enforcing any part of this
9 judgment.
- 10 10. An order requiring both OTU-PAC and any successor political action committees, and OTU-
11 EF and any successor charitable or public benefit organizations, to provide, upon reasonable
12 notice, free and unfettered access to any and all records, including records maintained in
13 electronic form, requested by the Oregon Secretary of State for the purpose of enforcement of
14 laws relating to elections or for the purpose of enforcing any part of this judgment.

15 **MEMORANDUM IN SUPPORT OF REQUEST FOR RELIEF**

16 The Attorney General seeks the same relief as allowed under ORS 166.725(10), which, in
17 relevant part, provides: “In such action or proceeding, the state shall be entitled to the same relief
18 as if the Attorney General instituted the action or proceeding.” ORS 166.725(10) allows for an
19 array of relief, including dissolution, reorganization, forfeiture and reasonable restrictions on
20 future activities.

21 The issues presented by plaintiffs’ Complaint are twofold: whether the defendants had
22 engaged in initiative signature fraud and/or filed false reports with the State. The jury found that
23 defendants had engaged in racketeering on all counts. But the evidence produced at trial
24 documented a much greater pattern of unlawful conduct, demonstrating that defendants
25 consistently violated a myriad of state charity and election law standards. It is appropriate for the
26 court to utilize its broad equitable powers to insure that the conduct will not be repeated. The court
should dissolve OTU-EF and enter injunctions that will insure that the charitable and
political/lobbying activities of the principals of the defendant entities will be completely
segregated for a sufficient period of time.

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1 **I. OTU-EF (THE CHARITABLE ORGANIZATION)**

2 1. THE STANDARDS

3 The law sets high expectations for those individuals who manage charitable organizations.
4 After all, they are stewards of charitable assets, which are to be administered for public purposes,
5 not for private gain or personal agendas. Ordinarily, the principles and rules applicable to
6 charitable trusts are applicable to charitable corporations. See Restatement of Trusts, Second, §
7 348, comment f.

8 The standards of behavior for trustees of charitable assets are unbending.

9 “In no decision has the grave responsibility resting upon trustees been better stated than in
10 the language employed by Chief Judge Cardozo in *Meinhard v. Salmon*, 249 NY 458, 464,
11 164 NE 545, 62 ALR 1, as follows: ‘Many forms of conduct permissible in a workaday
12 world for those acting at arms length, are forbidden to those bound by fiduciary ties. A
13 trustee is held to something stricter than the morals of the market place. Not honesty alone,
but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this
there has developed a tradition that is unbending and inveterate.’ ” Waterbury v Nicol et
al, 207 Or 595 (1956).

14 The officers and directors of charitable corporations have commonly recognized fiduciary
15 duties: the duties of care, loyalty and obedience. See Kurtz, Board Liability, Guide for Nonprofit
16 Directors, p. 21 (1989). The latter duty includes the duty to adhere to the organization’s mission,
17 including the provisions of its Articles of Incorporation (corporate charter) and to act in
18 conformity with all laws generally affecting the organization. Kurtz, p. 84 – 86. This would, of
19 course, encompass the duty to file honest and accurate reports as required by state and federal law.
20 The law expects the directors of the corporation to be responsible for directing the operations of
21 the corporation. Because public benefit corporations are expected to fulfill a public, rather than a
22 private, mission, the law requires there be a minimum of three directors. ORS 65.307(1). As
23 previously noted, these directors are subject to a duty of due care. The due care duty has also been
24 codified. ORS 65.357.

25 The specific responsibilities of due care have been summarized. See Cumfer & Sohl, The
26 Oregon Nonprofit Corporation Handbook, Third Edition, pp. 242-248 (2001). The directors have a

1 duty to actively manage the organization including a responsibility to adopt the major policies of
2 the corporation. The board must also provide financial management. This requires the directors to
3 receive and review financial reports and to be sure that accurate books and records are kept. It is
4 also the responsibility of the board of directors to adopt an annual budget for the organization.

5 OTU-EF applied for and received § 501(c)(3) charitable tax exempt status from the Internal
6 Revenue Service. In order to qualify, the organization was required to make several additional
7 commitments. It was required to include provisions in its corporate charter that it would engage in
8 no political activity on behalf of any candidate for public office and that no substantial part of its
9 activities would involve lobbying. Exhibit 45, page 3.

10 501(c)(3) organizations may create affiliated 501(c)(4) advocacy organizations or PACs but
11 only if the affairs are segregated.

12 “Funding and staff members can be shared between the organizations but only when their
13 purposes are clearly documented. Staff overlap must be carefully documented with time
14 records and evidence of staff activity. Shared facilities, memberships, funding campaigns,
15 publications, and other overt products of activity deserve careful allocations, as they will
16 be scrutinized by the IRS.

17 A grant from the (c)(3) to the (c)(4) is allowed, but only if the grant is restricted to
18 charitable purposes (most commonly, research). If allocated to lobbying, the grant should
19 not be for a sum that would violate the (c)(3)’s limitations. Clearly, the (c)(3) organization
20 cannot raise general support funds to be transmitted to the (c)(4), but the reverse could be
21 done.” Blazek, Tax Planning and Compliance for Tax Exempt Organizations, p. 505
22 (1993).

23 The above represents a summary of the standards for charitable corporations against which
24 OTU-EF’s conduct should be judged. Based upon the jury verdict, that OTU-EF engaged in
25 racketeering activity, the court has the discretion to enjoin future activity and dissolve the
26 corporation. ORS 166.725(1).

27 In exercising that discretion, the court should be mindful of the authority granted to courts by
28 ORS chapter 65 (the nonprofit corporation act). ORS 65.084 gives the court authority to enjoin
29 unauthorized corporate acts. ORS 65.661 provides that the court may dissolve a nonprofit
30 corporation when it has been established that the corporation has exceeded or abused the authority

1 conferred upon it by law, the corporation has fraudulently used the money solicited, or the
2 corporation is a public benefit corporation and its assets are being misapplied.

3 2. THE EVIDENCE

4 The totality of the evidence paints a picture of a public benefit corporation that, whatever the
5 original purpose, evolved into an organization whose principal purpose was to support the political
6 and lobbying agenda of its executive director. There is no evidence that OTU-EF had a bona fide
7 board of directors. Its president, Paul Rundle, testified that it could fairly be characterized as “an
8 advisory board,” that he was not privy to any of the organization’s financial records, that he could
9 not recall any specific projects of the organization and that he had no involvement in approving a
10 budget for the corporation. Rundle Trial Transcript, p. 7, 8, 9 and 12.

11 Defendant OTU-EF was able to produce only minimal evidence of educational activities at
12 trial. In contrast, there was considerable evidence of substantial lobbying activities and even some
13 political activities (as to the latter, see Becky Miller Trial Transcript, p. 66-68). This did not occur
14 because the managers of the corporation had no reason to know of the prohibition on such
15 substantial activities. As already noted, these restrictions were in the organization’s Articles of
16 Incorporation. In addition, the organization’s accountant delivered an article describing the
17 prohibition in detail. Exhibit 132. Despite this information, the organization’s executive director
18 discouraged the staff from keeping any time records or any records of any type which would
19 properly allocate time and expenses between the charitable and non-charitable activities. Becky
20 Miller Trial Testimony, p. 65-66.

21 Despite the fact that no accurate records were produced at trial, there is every reason to
22 believe that the payroll and overhead expenses were disproportionately borne by OTU-EF.
23 Specifically, even though OTU-PAC employed no staff beyond Bill Sizemore, roughly 75% of the
24 time of the OTU-EF staff was spent on lobbying activity. Becky Miller Trial Testimony, p. 54-55.
25 Additionally, OTU-EF made regular substantial cash contributions for lobbying activity. In fiscal
26 year 1999-2000, these contributions exceeded \$100,000. Plaintiff’s Exhibit 9. Taken together, all

1 of this activity clearly exceeded the 5% limitation on lobbying activity by §501(c)(3) non-electing
2 organizations.

3 With regard to the CT-12 reports and form 990 reports filed with the Internal Revenue Service
4 and Oregon Department of Justice, the jury found that these reports were false. What is staggering
5 is not just that there was underreporting of lobbying expenses, but the fact the forms regularly
6 reported that there were no lobbying expenses at all! Both of the organization’s key staff, Bill
7 Sizemore and Becky Miller, were aware of the staff activities and most of the expenditures cited
8 above.

9 While not central to plaintiff’s case that the form 990’s were knowingly false, other
10 information emerged at trial relative to OTU-EF’s propensity to comply (or not to comply) with
11 the law. Becky Miller acknowledged rewriting OTU-EF minutes to remove reference to political
12 activity discussions, after receiving notification of an IRS audit. Becky Miller Trial Transcript,
13 pp. 88-91. Becky Miller also described a scheme to collect contributions checks at the OTU-EF
14 office, made payable to Americans for Tax Reform (ATR). OTU-EF staff would forward the
15 checks to ATR, which would make contributions to OTU-PAC and related lobbying
16 organizations. Becky Miller Trial Transcript, p. 80-87.

17 All of the above activity represents a sustained effort by the managers of OTU-EF to violate
18 the organization’s corporate charter, federal and state tax laws, common law and statutory duties
19 of due care and obedience to the law, the state election law filing requirements, and to cover up the
20 activity by false filings and altered corporate minutes. This conduct is inconsistent with nonprofit
21 charitable status. OTU-EF should be dissolved and the corporation’s officers/directors should be
22 enjoined from perpetuating the conduct.

23 **II. OTU-PAC (THE POLITICAL ACTION COMMITTEE)**

24 1. STANDARDS

25 Complete and accurate disclosure of ballot measure campaign contributions and expenditure is
26 essential to our political process. As Justice Brandeis wrote about government processes, “sunlight

1 is said to be the best of disinfectants; electric light the most efficient policeman.” L. Brandeis,
2 Other People's Money (1933 edition, p. 62). Public exposure of the processes of government is
3 virtually always in the public's best interest.

4 Oregon, like every other state, has enacted extensive and stringent reporting laws and
5 regulations in order to provide the transparency necessary for our democratic system. *See* ORS
6 Chapter 260 and Campaign Finance Manuals. Statutes relevant to this case include the
7 requirements surrounding the statements of contributions and expenditures (c & e reports). These
8 requirements dictate formatting and the exact date of filing to allow for uniform access to all
9 campaign finance information. ORS 260.058-260.078. Every contribution over \$50 is to be
10 accounted for along with the identity of the contributors. ORS 268.083. Civil penalties may be
11 assessed for each reporting infraction. ORS 260.995. Deliberately concealing the identity of a
12 contributor is such a serious infraction that it has been designated a Class C felony. ORS 260.402;
13 ORS 260.993(2).

14 2. EVIDENCE AND SPECIFIC TERMS OF INJUNCTIVE RELIEF

15 A. *Reporting*

16 Evidence at trial revealed that OTU-PAC and its related agent I&R Petitions failed to submit
17 reports with the Secretary of State that were accurate or complete. Becky Miller Trial Testimony,
18 throughout; Plaintiffs’ Exhibits 33 through 35. Ms. Miller testified that the agent reports she
19 prepared for I&R Petitions were “not at all inaccurate.” Becky Miller Trial Transcript, pp. 119, pp.
20 117-121. Defendants and their successor organizations should be required to provide accurate and
21 complete information for the years in question, as required by law, and because that information
22 continues to be important to the public and to the Secretary of State.

23 B. *Contributions from §501(c)(3) Organizations*

24 OTU-PAC failed to report large in-kind contributions from OTU-EF, a practice that violated
25 election laws governing accurate C & E reporting. ORS 260.058 et seq. Contributions included
26 overhead – the shared use of office space and office equipment, and staff time. Becky Miller Trial

1 Transcript, pp. 61-69; Plaintiffs' Exhibits 74 to 80. Aside from the lobbying limits that OTU-EF
2 exceeded, staff, who were compensated entirely by OTU-EF, spent much of their time – from 50%
3 to 75% – working on PAC-related activities. Becky Miller Trial Testimony; Plaintiffs Ex. 33-42.

4 Based on this evidence, it is reasonable to restrict OTU-PAC from receiving contributions
5 from any §501.c.3. The big picture created from the evidence revealed a political committee that
6 survived on the transfer of charitable capital that was facilitated by the opportunities afforded by
7 shared books and staff on the premises. Allowing the same kind of physical relationship will only
8 permit the same abuses in the future. Further, the restriction of cash contributions from any other §
9 501(c)(3) will ensure that the easy exchanges of contributions and loans will be stopped.

10 C. *Affidavits for Legitimate Donations*

11 Evidence revealed that OTU-PAC solicited contributions from Americans for Tax Reform, a
12 national nonprofit tax exempt organization based in Washington, D.C. Becky Miller Trial
13 Transcript pp. 80-88. Although these contributions may have been reported in C & E reports, the
14 true identity of the individual donors was obscured through the transfer scheme. To the extent
15 these donors may not have given these particular donations had it not been for the ability to keep
16 their names secret, OTU-PAC misled the public, its political opponents and the Secretary of State.
17 Requiring a certification that funds received from other nonprofit organizations did not arise out of
18 this type of laundering scheme is a reasonable restriction, serving as a guarantee that all involved
19 in contributing to any OTU-PAC-related entity are doing so in their own name.

20 HARDY MYERS
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22 _____
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