

**IN THE SUPREME COURT FOR THE STATE OF OREGON**

**FRED VANNATTA and  
CENTER TO PROTECT FREE SPEECH, INC.,  
an Oregon Not-for-Profit Corporation,**

**Plaintiffs-Appellants,**

**v.**

**OREGON GOVERNMENT ETHICS  
COMMISSION and  
STATE OF OREGON,**

**Defendants-Respondents.**

**Supreme Court  
No. S057570**

**Court of Appeals  
No: A140080**

**Marion County Circuit  
Court No. 07C20464**

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**APPLICATION FOR LEAVE TO APPEAR AND FILE BRIEF  
ON BEHALF OF AMICUS CURIAE  
SEVEN INDIVIDUAL OREGON ELECTORS**

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Appeal from Judgment entered September 22, 2008  
Marion County Circuit Court  
Honorable Joseph C. Guimond

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DANIEL W. MEEK  
OSB No. 79124  
10949 S.W. 4th Avenue  
Portland, OR 97219  
(503) 293-9021 voice  
(503) 293-9099 fax  
dan@meek.net

Attorney for Amicus Curiae  
Bryn Hazell, Francis Nelson,  
Tom Civiletti, David Delk, and  
Gary Duell

LINDA K. WILLIAMS  
OSB No. 78425  
10266 S.W. Lancaster Road  
Portland, OR 97219  
503-293-0399 voice  
503-245-2772 fax  
linda@lindawilliams.net

Attorney for Amicus Curiae  
Joan Horton and Ken Lewis

(counsel continued on next page)

JOHN DILORENZO, JR.  
Davis Wright Tremaine LLP  
1300 S.W. 5th Ave Ste 2300  
Portland, OR 97201  
johndilorenzo@dwt.com

Attorney for  
Fred Vannatta and  
Center to Protect Free Speech, Inc.

\*JOHN KROGER, OSB #077207  
Attorney General  
\*MARY H. WILLIAMS, OSB #911241  
Solicitor General  
\*ERIKA L. HALOCK, OSB #912978  
\*JEROME LIDZ, OSB #772631  
\*ANNA MARIE JOYCE, OSB #013112  
anna.joyce@doj.state.or.us  
Assistant Solicitor General  
1162 Court St., Suite 400  
Salem, OR 97301-4096  
Telephone: (503) 378-4402

Of Attorneys for Plaintiff-Appellant-  
Respondent on Review State of Oregon

## APPLICATION

Seven individual Oregon electors request leave to appear and to file their Brief of Amici Curiae, submitted herewith. This brief is aligned with the position of the Defendants-Respondents on Review, Oregon Government Ethics Commission and the State of Oregon. The brief of Defendants-Respondents is due August 5, 2009. Therefore, applicants proffer this Application and also the proposed Amicus Brief and Appendix.

The interests of the Amici are in the application of a the correct rule of law, and the specific interests of these applicants are as follows.

Applicants Bryn Hazell, Francis Nelson, Tom Civiletti, David Delk, and Gary Duell (the "Hazell Plaintiffs") and Joan Horton and Ken Lewis (the "Horton Plaintiffs") are plaintiffs and appellants in *Hazell v. Brown*, Court of Appeals No. A137397. Hazell, Nelson, and Delk were chief petitioners on statewide campaign finance reform measures in 2006, including the successful Measure 47 (2006). Horton, Lewis, and Civiletti were supporters of the measures.<sup>1</sup> During the years 2004-2006, all of them spent countless hours in the processes of drafting Measure 47, collecting thousands of signatures to put the measure on the statewide ballot, engaging in public forums and educational events about campaign finance measures, writing Voters' Pamphlet statements, and urging other Oregon voters to support the measure. They all seek in

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1. Ken Lewis currently serves on the Oregon Government Ethics Commission. He appears here in his capacity as an Oregon elector and not as a representative of the Commission.

*Hazell v. Brown* to require the Secretary of State and Attorney General to implement Measure 47 or show that it is impermissible under the Oregon Constitution.

The immediate interest of the proposed Amici in the instant case is to ensure that the Court receives a correct history of limits on lobbying and limits on money given to public officeholders or candidates.

In this case, Plaintiffs contend that there should be no historical exception to Article I, § 8, recognized for the various gifts, entertainment, and honoraria limits in ORS 244.025 and ORS 244.042. The primary authority they cite is *Vannatta v. Keisling*, 324 Or 514, 931 P2d 770 (1997), which analyzed campaign finance limits for an historical exception. The Amici in this brief offer extensive primary research, conducted after *Vannatta v. Keisling* was decided, that demonstrates that restrictions on lobbying and on providing money to public officials and/or candidates were in place well before 1857, the time of the Oregon Constitutional Convention, and were not considered to be precluded by the freedom of speech guarantees (or in some cases, the "natural rights" guarantees) of those states. None of the early primary source evidence or early legal authority cited in this brief was presented to the Supreme Court in *Vannatta v. Keisling* or to the trial court in the instant case.

This Court should consider all of the historical research necessary in what are three current appeals concerning contentions that certain laws pertaining to elections and money in politics fail under *Vannatta v. Keisling*. A portion of the historical research we present in this brief is also relevant to *State v. Moyer*, 225 Or App 81,

200 P3d 619 (2009) (now S056990), in which defendant challenges the constitutionality of a ban on political donations in a "false name" as precluded by Article I, § 8. Again, the party in that case challenging the constitutionality of the statute is relying upon *Vannatta v. Keisling* and upon the claimed absence of an historical exception for the statute at issue. Amici filed an amicus brief, with motion for leave to appear, in *State v. Moyer* on July 29, 2009.

On July 1, 2009, the Hazell Plaintiffs and the Horton Plaintiffs jointly moved in *Hazell v. Brown* that the Court of Appeals certify those consolidated cases to the this Court, pursuant to ORS 19.405(1) and Rule 10.10, Oregon Rules of Appellate Procedure, because that would allow the Oregon Supreme Court to hear and decide *Hazell v. Brown*, *State v. Moyer*, and this case, *Vannatta v. Oregon Government Ethics Commission* [hereinafter *Vannatta v. OGE*], concurrently. In all three cases, parties cite and rely upon *Vannatta v. Keisling* extensively, and they assert (or deny) the existence of an historical exception for the statute at issue in each case. Fred Vannatta and the Center to Protect Free Speech, Inc., have filed an opposition to the motion to certify in *Hazell v. Brown*. The Court of Appeals has not ruled upon the motion.

The interplay between *Hazell v. Brown* and *Vannatta v. OGE* is intense. If the Oregon Constitution does not allow numerical limits on political contributions, there would appear to be no way to enforce a limit on gifts to public officials and

candidates, because any gift to an elected official or candidate could be labeled a "campaign contribution," whether or not the official ever runs for office.

Further, the Amici would have filed this brief in the Court of Appeals, but for SB 577 (2009), which ordered the Court of Appeals to immediately certify this case to the Oregon Supreme Court, causing it to leapfrog over *Hazell v. Brown*, in which briefing at the Court of Appeals by all parties, including Fred Vannatta, has been complete since April 13, 2009. If this case had not been legislatively leapfrogged ahead of *Hazell v. Brown*, at the behest of Plaintiffs herein, then this Court would have had the extensive new historical research at hand before deciding this case.

Dated: August 4, 2009

Respectfully Submitted,

/s/ Linda K. Williams

/s/ Daniel W. Meek

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LINDA K. WILLIAMS  
OSB No. 78425  
10266 S.W. Lancaster Road  
Portland, OR 97219  
(503) 293-0399 fax 245-2772  
linda@lindawilliams.net

---

DANIEL W. MEEK  
OSB No. 79124  
10949 S.W. 4th Avenue  
Portland, OR 97219  
(503) 293-9021 fax 293-9099  
dan@meek.net

Attorney for Amicus Curiae:  
Joan Horton and Ken Lewis

Attorney for Amicus Curiae:  
Bryn Hazell, Francis Nelson,  
Tom Civiletti, David Delk, and  
Gary Duell

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I filed the foregoing APPLICATION FOR LEAVE TO APPEAR AND FILE BRIEF OF BRIEF OF AMICUS CURIAE SEVEN INDIVIDUAL OREGON ELECTORS by Efile and further that:

1. I SERVED by Efile the parties indicated by "\*" and registered with Efile system;
2. I SERVED 1 true copy of it by mailing it to all other parties listed below, deposited in the U.S. Postal Service at Portland, Oregon, with first class postage prepaid.
3. I SERVED a true electronic copy of it by email to each email address listed below.

JOHN DILORENZO, JR.  
Davis Wright Tremaine LLP  
1300 S.W. 5th Ave Ste 2300  
Portland, OR 97201  
johndilorenzo@dwt.com

Attorney for  
Fred Vannatta and  
Center to Protect Free Speech, Inc.

\*JOHN KROGER, OSB #077207  
Attorney General  
\*MARY H. WILLIAMS, OSB #911241  
Solicitor General  
\*ERIKA L. HALOCK, OSB #912978  
\*JEROME LIDZ, OSB #@772631  
\*ANNA MARIE JOYCE, OSB #013112  
anna.joyce@doj.state.or.us  
Assistant Solicitor General  
1162 Court St., Suite 400  
Salem, OR 97301-4096  
Telephone: (503) 378-4402

Of Attorneys for Plaintiff-Appellant-  
Respondent on Review State of Oregon

Dated: August 4, 2009

/s/ Daniel W. Meek

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Daniel W. Meek