To: Marion County District Attorney Paige Clarkson
CC: Christine Kotek, in her official capacity as Governor of Oregon

Complaint for proceeding in quo warranto to oust Christine Kotek from Office of Governor,

Introduction

Pursuant to ORS 30.510(2), I present this complaint for proceeding in quo warranto to oust Christine Kotek from Office of Governor with evidence supporting a prima facie[2] case of forfeiture under Oregon Constitution Article II § 22 Section (2)[3].

Please initiate a proceeding in quo warranto in the Oregon Supreme Court[4] with urgency; EMERGENCY PUBLIC INTEREST![5]

Complaint

I, Donice Noelle Smith, 2022 Governor Candidate for the Constitutional Party of Oregon, am the lawful Governor of Oregon; see ATT01. I received 8,047 votes in my race against Christine Kotek (917,074 votes), Christine Drazen (850,347 votes), Betsy Johnson (168,431 votes), and Leon Noble (6,867 votes). See ATT02.

Christine Kotek filed for the Governor's race on 11/16/2021 (See ATT03); **AFTER** precedents established by *Multnomah County et al v. Mehrwein et al.*, 366 Or. 295 (2020), *Couey v. Clarno*, 305 Or App 29, 469 P.3d 790 (2020), and Multnomah County Case No. 17CV18006, OPINION AND ORDER, UPON REMAND, RE: Petitioner Multnomah County's Motion for Declaration of Validity under the First Amendment to the United States Constitution (hereinafter the "REMAND").

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[1] Proceeding brought in accordance with this section is exclusive remedy to decide whether one purporting to act as public officer is holding office lawfully. *State ex rel Madden v. Crawford*, 207 Or 76, 295 P2d 174 (1956); *State ex rel Boe v. Straub*, 282 Or 387, 578 P2d 1247 (1978)

[2] For burden of proof, please see *State ex rel. Brewster v. Ostrander*, 212 Or. 177, 318 P.2d 283 (1957) (Burden of proof for oust and induction considered separately, burden of proof shifts to defendant for oust, burden of proof on relator for oust is of nominal public interest.).

[3] Oregon Constitution Article II § 22 provides that:
Section (1) For purposes of campaigning for an elected public office, a candidate may use or direct only contributions *which originate from* individuals who at the time of their donation were residents of the electoral district of the public office sought by the candidate, unless the contribution consists of volunteer time, information provided to the candidate, or funding provided by federal, state, or local government for purposes of campaigning for an elected public office.
Section (2) **Where more than ten percent (10%) of a candidate's total campaign funding is in violation of Section (1), and the candidate is subsequently elected, the elected official shall forfeit the office and shall not hold a subsequent elected public office for a period equal to twice the tenure of the office sought**. Where more than ten percent (10%) of a candidate's total campaign funding is in violation of Section (1) and the candidate is not elected, the unelected candidate shall not hold a subsequent elected public office for a period equal to twice the tenure of the office sought.
Section (3) **A qualified donor (an individual** *who is a resident* **within the electoral district of the office sought by the candidate**) shall not contribute to a candidate's campaign any restricted contributions of Section (1) received from an unqualified donor for the purpose of contributing to a candidate's campaign for elected public office. **An unqualified donor** (*an entity which is not an individual* **and** *who is not a resident of the electoral district of the office sought by the candidate*) shall not give any restricted contributions of Section (1) to a qualified donor for the purpose of contributing to a candidate's campaign for elected public office.
Section (4) A violation of Section (3) shall be an unclassified felony. [Created through initiative petition filed Jan. 25, 1993, and adopted by the people Nov. 8, 1994] (Emphasis Added)

[4] Oregon Constitution Article VII (amended) § 2 provides the Oregon Supreme Court original jurisdiction in quo warranto proceedings; The Oregon Supreme Court is the "final arbiter of the Oregon Constitution" *State v. Hancock*, 317 Or 5, 26 (1993) (Unis, J., dissenting).

[5] *McAlmond v. Myers*, 262 Or. 521, 527, 500 P.2d 457 (1972) ("[T]he entire voting public has an interest in knowing as soon as possible whether [a candidate] is qualified.").

Christine Drazen and Betsy Johnson suffer unelected forfeiture under Oregon Constitution Article II § 22 Section (2) for similar violations of Oregon Constitution Article II § 22 Section (1).

According to ORESTAR data (11/16/2021 to 11/08/2022), Christine Kotek received 80.947829% ($19,613,338.22) of her total campaign funding in violation of Oregon Constitution Article II § 22 Section (1) suffering forfeiture of the Office under Oregon Constitution Article II § 22 Section (2). Please see the following data:

1. Oregon Individuals; please see ATT04 ("OregonIndividuals"):
    a. $3,562,518.13 total cash contributions.
2. Out of State Individuals; please see ATT04 ("OutOfStateIndividuals"):
    a. $2,647,412.22 total cash contributions.
3. Business Entities; please see ATT04 ("BusinessEntities"):
    a. $763,850 total cash contributions.
4. Labor Organization; please see ATT04 ("LaborOrganization"):
    a. $2,606,500 total cash contributions.
5. Other; please see ATT04 ("Other"):
    a. $7,085,000 total cash contributions.
6. Political Committee; please see ATT04 ("PoliticalCommittee"):
    a. $4,739,077 total cash contributions.
7. Political Party Committee; please see ATT04 ("PoliticalPartyCommittee"):
    a. $3,500 total cash contributions.
8. Unregistered Committee; please see ATT04 ("UnregisteredCommittee"):
    a. $1,767,999 total cash contributions.
9. Total Cash Contributions; please see ATT04 ("TotalCashContribution"):
    a. $24,229,603.76
10. Total Unlawful; please see ATT04 ("TotalUnlawful"):
    a. $19,613,338.22

History on Oregon Constitution Article II § 22

In 1995, Oregon Constitution Article II § 22 was declared inoperable by the Ninth Circuit District Court; please see *Vannatta v. Keisling*, 899 F.Supp. 488 (D. Or. 1995) (facially challenged under the 1st Amentment).

In 1997, Oregon Constitution Article II § 22 was declared inoperable by the Oregon Supreme Court; please see *Vannatta v. Keisling*, 324 Or. 514 (1997) (facially challenged under Oregon Constitution Article I § 8). This court rejected adopting the 9th Circuit's ruling citing a pending appeal; see *Id.* 324 Or. at 525-526.

In 1998, the Ninth Circuit Court of Appeals affirmed *VanNatta v. Keisling*, 899 F.Supp. 488 (D. Or. 1995); please see *VanNatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998). See also *Johnson v. Williams*, 568 U.S. 289, 305 (2013) (holding that decisions of lower federal courts do

not bind state courts and "disagreeing with the lower federal courts is not the same as ignoring federal law"). Federal courts, of course, lack the power to issue advisory opinions; see e.g. *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (*[A] federal court has neither the power to render advisory opinions nor 'to decide questions that cannot affect the rights of litigants in the case before them.*" (quoting North Carolina v. Rice, 404 U.S. 244, 246 (1971)).

In 2020, the Oregon Supreme Court concluded that "VANNATTA I erred in holding that those laws are facially invalid on that basis"; please see *Couey v. Clarno*, 305 Or App 29, 38-39, 469 P.3d 790 (2020) (relating back to the forward operation[6] of *Multnomah County et al v. Mehrwein et al.*, 366 Or. 295 (2020)).

On August 23, 2021, Hon. Eric J. Bloch[7] on remand from the Oregon Supreme Court in *MEHRWEIN*, established forward operation for Oregon's analysis under the 1st Amendment regarding challenges to campaign contribution laws without facial challenges consistent with the *MEHRWEIN*'s forward operation[8]; see REMAND, page 16 (ATT04-16).

ATTACHMENTS

The following attachments are true and correct copies to the best of my knowledge;

1. ATT01 is an ORESTAR printout of Candidate Information for Donice Noelle Smith's Original filing for Office of Governor.
2. ATT02 is a printout from of the November 08, 2022, Oregon General election results for the Office of Governor.
3. ATT03 is an ORESTAR printout of Candidate Information for Christine Kotek's Original filing for Office of Governor.
4. ATT04 is Multnomah County Case No. 17CV18006, OPINION AND ORDER, UPON REMAND, RE: Petitioner Multnomah County's Motion for Declaration of Validity under the First Amendment to the United States Constitution
5. ATT05 is a USB drive containing the following ORESTAR Exports of Christine Kotek's Cash Contributions:
    1. OregonIndividuals
    2. OutOfStateIndividuals
    3. BusinessEntities
    4. LaborOrganization
    5. Other
    6. PoliticalCommittee
    7. PoliticalPartyCommittee
    8. UnregisteredCommittee
    9. TotalCashContribution
    10. TotalUnlawful

[6] Please see *Great Northern Ry. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358(1932) (A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward.)

[7] Of Note, Hon. Eric J Bloch served as Oregon's Assistant Attorney General arguing the state's position in *Vannatta v. Keisling*, 899 F.Supp. 488 (D. Or. 1995). He DID NOT RELATE BACK to the federal cases for forward operation; abandoning facial challenges under the 1st Amendment for campaign contribution laws.

[8] "In reaching the decision in Mehrwein, Chief Justice Walters, writing for the Court, expressly rejected the reasoning and result of Vannatta v. Keisling, 324 Or. 514 (1997) which was controlling precedent for this court analysis and decision, thus overruling a case which had guided the application of the framework established in State v. Robertson, 293 Or. 402, 412 (1982) for determining which laws are subject to a facial challenge under Article I, Section 8, of the Oregon Constitution.", see REMAND; ATT04-01.

6. ATT06 is a list of Negative Treatment for *VanNatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998) from WESTLAW.
7. ATT07 is an Authority Check Report for Vannatta v. Keisling, 899 F.Supp. 488 (D. Or. 1995) from fastcase.
8. ATT08 is an Authority Check Report for *VanNatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998) from fastcase.

CERTIFICATE OF SERVICE

Service has been made to the following in the following method:

To:	Method
Paige Clarkson, Marion County District Attorney[9] ~~1200 SW 1st Avenue, Suite 5200~~ 555 Court Street NE ~~Portland~~, OR 97204 Salem OREGON 97309 503-588-5222	Office Delivery Certified Mail
Christine Kotek, in her official capacity as Oregon Governor 900 Court Street, Suite 254. Salem, OR 97301-4047 503-378-4582	Certified Mail
U.S. Department of Justice, Justice Management Division[10] 950 Pennsylvania Avenue, NW room 1111 Washington, DC 20530	Certified Mail

Dated: 3/6, 2025,

Donice Noelle Smith

/s/ *Donice Noelle Smith*

Donice Noelle Smith
4601 Carnes Rd STE 8
#112
Roseburg, OR 97471-4600
donice4oregon@proton.me
541-530-4718
Sui Juris

[9] When an action under this section is on the relation of a private party there must be a showing, either by appropriate allegations or by official signature, that the action has been commenced and is being prosecuted by the district attorney; SEE E.G. *State v. Cook*, 39 Or 377, 65 P 89 (1901). The action should be in the name of the state and prosecuted by the district attorney whether it is only to oust an intruder from office or, in addition, to instate the person entitled thereto. Id.

[10] Please see, ATT06-03 (Oregon legislative counsel suggesting that "a candidate who *** is subject to different rules regarding campaign contribution limits violates the Fourteenth Amendment's equal protection guarantees".)

ACKNOWLEDGEMENT

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Executed on (date) 3/6, 2025.

Signature

State of Oregon Notarial Certificate

Verification on Oath or Affirmation

State of Oregon)
)
County of Marion)

Signed and sworn to (or affirmed) before me on (date) march 3, 2025 by

(Name(s) of individuals making statement) Banice Smith.

Notary Public – State of Oregon

OFFICIAL STAMP

Zachary James Shaffner
Print Name

OFFICIAL STAMP
ZACHARY JAMES SHAFFNER
NOTARY PUBLIC - OREGON
COMMISSION NO. 1039607
MY COMMISSION EXPIRES AUGUST 03, 2027

Aug 03, 2027
My Commission Expires

ATT06-01

Negative Treatment

Negative Citing References (3)

The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:

Treatment	Title	Date	Type	Depth	Headnote(s)
Disagreed With by	1. State v. Alaska Civil Liberties Union 978 P.2d 597 , Alaska GOVERNMENT - Elections. Non-group entities' speech could not permissibly be restricted by expenditure prohibition.	Apr. 16, 1999	Case		3 5 6 F.3d
Implied Overruling Recognized by	2. Montana Right to Life Ass'n v. Eddleman MOST NEGATIVE 343 F.3d 1085 , 9th Cir.(Mont.) GOVERNMENT - Elections. Limits on campaign contributions by individuals and PACs furthered important state interests.	Sep. 11, 2003	Case		1 5 6 F.3d

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ATT07-01

Authority Check Report

for Vannatta v. Keisling, 899 F.Supp. 488 (D. Or. 1995)

Total	Federal	Bankruptcy	State	District	Bad Law
9	1	0	1	7	0

Vannatta v. Keisling, 324 Or. 514, 931 P.2d 770 (Or. 1997)

OR | State Supreme | Case | Feb 6, 1997 | Cited: 56

..., "is preemptive" and that " 'it occupies the field' and defines campaign contribution rights under the Oregon Constitution." Petitioners respond by pointing out that Article II, section 22, has been declared void by a federal district court. See Vannatta v. Keisling, 899 F.Supp. 488 (D.Or.1995) (so holding, declaring that Article II, section 22...

fastcase

ATT08-01

Authority Check Report

for VanNatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998)

Total	Federal	Bankruptcy	State	District	Bad Law
18	10	0	1	7	0

The Lincoln Club of Orange County v. City of Irvine, 274 F.3d 1262 (9th Cir. 2001)

9th Cir. | Federal Appellate | Case | Dec 20, 2001 | Cited: 12

.... 238, 259-60 (1986) ("We have consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending"). We have also construed Buckley as requiring different levels of constitutional scrutiny for expenditure and contribution limitations. See VanNatta v. Keisling, 151 F.3d 1215, 1220 (9th Cir. 1998) (stating...

Thompson v. Hebdon, 7 F.4th 811 (9th Cir. 2021)

9th Cir. | Federal Appellate | Case | Jul 30, 2021 | Cited: 2

.... at 359, 130 S.Ct. 876). Indeed, "[c]ampaign finance restrictions that pursue other objectives ... impermissibly inject the Government 'into the debate over who should govern.' " Id. (quoting Ariz. Free Enter. Club's Freedom Club PAC v. Bennett , 564 U.S. 721, 750, 131 S.Ct. 2806, 180 L.Ed.2d 664 (2011)); see also VanNatta v. Keisling , 151 F.3d 1215, 1217 (9th Cir...

State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999)

AK | State Supreme | Case | Apr 16, 1999 | Cited: 43

...). 115 See O'Callaghan v. State, 914 P.2d at 1257 (discussing Wisconsin ex rel. LaFollette v. Democratic Party of United States, 93 Wis.2d 473, 287 N.W.2d 519 (1980), rev'd sub nom., Democratic Party of United States v. Wisconsin, 450 U.S. 107, 101 S.Ct. 1010, 67 L.Ed.2d 82 (1981)). 116 Vote Choice, 4 F.3d at 39. 117 See AS 15.13.070. 118 151 F.3d 1215 (9th Cir.1998...

Montana Right to Life Ass'n v. Eddleman, 306 F.3d 874 (9th Cir. 2002)

9th Cir. | Federal Appellate | Case | Sep 24, 2002 | Cited: 2

..., not to exceed $800; (e) for a candidate for any other public office, not to exceed $500." 2. MRLA's reliance on VanNatta v. Keisling, 151 F.3d 1215 (9th Cir.1998); Service Employees Int'l Union, 955 F.2d at 1312; and other Ninth Circuit cases interpreting Buckley fails to recognize the impact of the Supreme Court's superceding decision in Shrink Missouri...

Montana Right to Life Ass'n v. Eddleman, 343 F.3d 1085 (9th Cir. 2003)

fastcase

ATT08-02

9th Cir. | Federal Appellate | Case | Sep 11, 2003 | Cited: 48

..., not to exceed $2,000; (d) for a candidate for the state senate, not to exceed $800; (e) for a candidate for any other public office, not to exceed $500." 2. MRLA's reliance on VanNatta v. Keisling, 151 F.3d 1215 (9th Cir.1998); Service Employees Int'l Union, 955 F.2d at 1312; and other Ninth Circuit cases interpreting Buckley fails...

Thompson v. Hebdon, 909 F.3d 1027 (9th Cir. 2018)

9th Cir. | Federal Appellate | Case | Nov 27, 2018 | Cited: 7

... the Government 'into the debate over who should govern.' " Id. (quoting Ariz. Free Enter. Club's Freedom Club PAC v. Bennett , 564 U.S. 721, 750, 131 S.Ct. 2806, 180 L.Ed.2d 664 (2011)); see also VanNatta v. Keisling , 151 F.3d 1215, 1217 (9th Cir. 1998) (noting "the lack of support for any claim based on the right to a republican form of government"). That unqualified directive leaves...

Lincoln Club of Orange Cnty v. City of Irvine, Ca, 292 F.3d 934 (9th Cir. 2001)

9th Cir. | Federal Appellate | Case | Dec 20, 2001 | Cited: 8

... that restrictions on contributions require less compelling justification than restrictions on independent spending"). We have also construed Buckley as requiring different levels of constitutional scrutiny for expenditure and contribution limitations. See VanNatta v. Keisling, 151 F.3d 1215, 1220 (9th Cir.1998) (stating that "restrictions on contributions ... are subjected to less exacting...

Received by Jennifer Roberts
MCDA Investigator
3-6-2025

Witness: Sarah Rollins MCDA Investigator
03/06/25
Sarah Rollins

fastcase