

Restrictions on Gifts to Public Officials by Heather R. Martin

Vannatta, et al. v. Oregon Government Ethics Commission, ___ P3d ___ (December 31, 2009)

In a recent opinion, the Oregon Supreme Court determined that offering gifts to a public official is protected speech under the Oregon Constitution and requires any related restrictions to be content-neutral and reasonable in time, place and manner. Conversely, gift receipt restrictions were found to be non-expressive activity, and related claims of unconstitutionality were unfounded.

This challenge arose when The Center to Protect Free Speech (Center) and the Center's president and registered lobbyist Fren Vannatta filed for declaratory and injunctive relief asserting that several statutes under the state's Code of Government Ethics were unconstitutional, specifically restrictions on:

- (1) the receipt of specific gifts or gifts of payment for entertainment expense under ORS 244.025(1) and (4)(a) and ORS 244.042(1) and (2);
- (2) the offering of specified gifts or gifts of payment for entertainment expenses under ORS 244.025(2), (3), and (4)(b) and (c); and
- (3) the solicitation of specified gifts or gifts of payment for entertainment expenses under ORS 244.025(1) and (4)(a) and ORS 244.042(1) and (2).

The trial court granted summary judgment for the state on all three issues. On appeal, the Supreme Court dismissed the Plaintiffs' claim regarding solicitation restrictions as neither party was affected by the restrictions and thus they were not entitled to seek declaratory relief under ORS 20.080.

In examining restrictions on offering gifts to public officials, the Court concluded that the statutes impermissibly restrict the right to free expression, as they are laws that focus on the content of speaking or writing. Further, the restrictions on offering gifts do not focus on the "pursuit or accomplishment of forbidden results" as required under Article I, Section 8. Finally, the restrictions were not limited in time, place or manner as they applied to every gift offer.

The restrictions on the receipt of gifts by public officials constituted non-expressive conduct as the statutes were not written such that the terms were directed to the substance of any subject matter communication. Giving a gift to a public official is not inextricably linked with the official's ability to carry out official functions and officials can speak whether they receive gifts or not. Therefore, the Court found gift receipt restrictions constitutional.

The case was affirmed in part, reversed in part and remanded back to the trial court for further proceedings consistent with this ruling.