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Of Attorneys for Plaintiff Gregory Scott Tressel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

GREGORY SCOTT TRESSEL, an
individual,

Plaintiff,

v.

DAVID FRASHER, in his individual
capacity; **DAVID REEVES**, in his
individual capacity; and **CITY OF
GRANTS PASS**, a municipal subdivision
of the State of Oregon;

Defendants.

Case No. _____

COMPLAINT

*(42 USC §§ 1983 and 1985—First Amendment
Retaliation; ORICO Based on Official
Misconduct; Intrusion on Seclusion)*

JURY TRIAL DEMANDED

STATEMENT OF JURISDICTION AND VENUE

1.

This Court has jurisdiction over this case pursuant to 28 USC Sections 1331 and 1343(a).
Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2), because all Defendants
reside or are located in the State of Oregon, and the events and omissions giving rise to the claim
occurred in Oregon.

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PARTIES

2.

Plaintiff Gregory Scott Tressel (hereinafter “Plaintiff”) is a resident, property owner, and elector of Grants Pass, Oregon. Plaintiff’s domicile is located on real property located within the city limits, and he is the owner of that real property. At all times relevant this complaint, Plaintiff has been registered to vote at his domicile within city limits, has been listed with the City of Grants Pass, Oregon as the owner of the real property comprising his domicile for tax purposes, and has been recorded by various City billing departments as residing at his domicile.

3.

Defendant City of Grants Pass, Oregon (hereinafter “Defendant City”) is a municipal corporation formed under ORS 221.031 to 221.061 and Chapter I, Section 2 of the Grants Pass Charter. Defendant David Reeves (hereinafter “Defendant Reeves”) is the Chief Financial Officer for the City of Grants Pass, and the putative “elections officer” for the City. Defendant David Frasher is the City Manager for the City of Grants Pass, and holds supervisory authority over Defendant Reeves. Defendant Frasher is charged with the executive operations of the City, including oversight over non-criminal investigations, and has been delegated significant authority over City policy in the execution of City functions, including authority over personnel matters. At all times relevant this complaint, Defendants Reeves and Frasher were acting under color of state law in their capacities as administrative officers with the City.

ALLEGATIONS AND CLAIMS FOR RELIEF

4.

Plaintiff has been a long-time critic of prior government actions involving the City of Grants Pass. In 2007, Plaintiff filed a writ of review in the Circuit Court of Josephine County, questioning the distribution of City funds through the City’s tourism board. The writ called into question whether those funds were being improperly used to benefit friends of the City’s political

establishment and tourism board members, or were otherwise subject to distribution through political corruption. That action remains pending.

5.

In July of 2008, the then-sitting Grants Pass City Council passed an amendment to the City's comprehensive plan known as the "River District Plan." The River District Plan sought to implement a \$25,000,000 improvement program on downtown Grants Pass, raising funds through a variety of new taxes, new taxing districts, bonds, and re-routed allocations of general funds. The measure was eventually passed over the Mayor's veto, and generated significant grassroots opposition in the community, including a referral of the ordinance to the voters. The River District ordinance was repealed in late August in light of this opposition. In the November 2008 election, all incumbent city councilors running for re-election—four who had supported the River District Plan—were defeated. This created a new majority in the Grants Pass City Council, a majority opposed to the River District Plan and other City programs.

6.

As a result of the election, the new councilors were allowed to appoint new members to various City committees. Plaintiff Tressel was appointed to the Grants Pass Budget Committee. In his role as a Budget Committee member, Plaintiff questioned several programs and expenditures favored by City administration, including Defendants Frasher and Reeves, and other City staff. Defendant Reeves and City staff reacted negatively to Plaintiff's questioning.

7.

To serve on the Budget Committee, the City of Grants Pass purports to require that participating citizens "must be freeholders and electors of [*sic*] City." Plaintiff meets these conditions by owning real property in Grants Pass and being registered to vote in Grants Pass.

8.

Plaintiff owns a dwelling inside Grants Pass city limits (hereinafter "Meier Street residence"), and owns an additional dwelling outside of city limits that he uses on occasion for

entertaining friends and guests. Plaintiff resides at and is domiciled at the Meier Street residence. Plaintiff is registered to vote at the Meier Street residence. Plaintiff is listed, with his wife, as the owner of the Meier Street residence, and pays property taxes and utilities for the Meier Street residence. In short, Plaintiff lives at the Meier Street residence.

9.

After Plaintiff's appointment to the Budget Committee and Plaintiff's subsequent questioning of City expenditures while serving on the committee, Defendant Reeves began an investigation into Plaintiff's residency, inquiring into the minute details of Plaintiff's private life. At all times relevant this complaint, there was no Charter or Code provision that allowed or authorized Defendant Reeves to investigate the residency status of appointed officials. Rather, on information and belief, Defendant Reeves' motivation in this investigation was malicious and designed to intimidate Plaintiff into withdrawing from public service or curtail his questioning of various City policies. In the course of his illegitimate investigation of Plaintiff's residency, Defendant Reeves learned from the County elections officials that Plaintiff was registered to vote at the Meier Street residence. Defendant Reeves also obtained and reviewed the property tax statements for the Meier Street residence, and unlawfully obtained Plaintiff's personal checks from various City departments that bill Plaintiff and his wife for services to the Meier Street residence. Defendant Reeves further contacted the Oregon Secretary of State, Elections Division, to complain about Plaintiff's residency status. Defendant Reeves was informed by the Elections Division that Plaintiff's residency was irrelevant to an elections officer, because Plaintiff was an *appointed*—not elected—official. Additionally, the Elections Division specifically informed Defendant Reeves in writing, by email on January 28, 2009, that only a county elections officer is allowed to inquire into an elector's residency per Oregon statute, and that Defendant Reeves was opening the City to the risk of litigation in seeking to remove Plaintiff from his appointment.

10.

Even after this initial research confirming Plaintiff's domicile, and Defendant Reeves'

discussion with the Secretary of State, Defendant Reeves remained unwilling to desist in his intrusive, unlawful investigation into Plaintiff's personal life. Instead, Defendant Reeves decided—with approval or acquiescence from Defendant Frasher—to attempt a physical search of Plaintiff's Meier Street residence. At approximately 9:30 a.m. on or about February 12, 2009, and after Plaintiff had left for work, Defendant Reeves knocked on the door of Plaintiff's home. Plaintiff's wife answered the door, and Defendant Reeves identified himself as an employee of the City, but refused to provide identification. He demanded to look through Plaintiff's home for evidence of Plaintiff physically living there. Plaintiff's wife rightly refused him entry. Defendant Reeves then called Plaintiff and demanded that Plaintiff host Defendant Reeves in Plaintiff's home to allay "concerns," while at the same time inquiring into Plaintiff's marital status. Plaintiff refused to be coerced into allowing Defendant Reeves entry into his home.

11.

Due to this serial invasion of privacy and harassment, and the negative effects the investigation was having on his reputation and business, Plaintiff resigned his volunteer post on the City's budget committee on February 27, 2009. Plaintiffs' First Amendment right to participate in government was thereby chilled by the actions of Defendant Reeves. Plaintiff has been damaged in this regard in the amount of \$125,000.00, the exact amount to be determined by the jury at trial.

12.

As further evidence of intimidation tactics used by City administration officials, shortly after Plaintiff's resignation from the Budget committee, the prior City Attorney (along with a City code enforcement officer) visited the home of Plaintiff's then-proposed replacement on the Budget Committee while he was trimming his trees, demanding to see the man's permit for the tree trimming. After the Plaintiff's Budget Committee replacement showed the officials his permit, they remained on the property for some time, simply watching the man work. Defendant Reeves has also pursued an aggressive and largely baseless investigation of one of the newly

elected councilors for gathering signatures for the referendum on the River District Plan. In communications with the Secretary of State, Defendant Reeves tied this signature gathering investigation to Reeves' investigation of Plaintiff. Furthermore, Defendant Frasher has threatened legal action against several current councilors for disagreeing with him publicly and commenting on his temperament. All of this points to an ongoing custom, policy, or practice of political intimidation from the highest reaches of City administration, and demonstrates that the unlawful investigation of Plaintiff was not an isolated incident.

FIRST CLAIM FOR RELIEF
Against All Defendants
(42 USC § 1983 First Amendment Retaliation, §1985 Conspiracy)

13.

Plaintiff realleges and incorporates by reference paragraphs 1 through 12, above.

14.

At all times relevant this complaint, Plaintiff had a clearly established right to be secure from warrantless searches and otherwise unlawful government intrusions into his personal life, home, and effects. Plaintiff has also at all times relevant this complaint held the clearly established right to participate in government free from intimidation by government officials or other actions by government officials designed to curtail that participation.

15.

Defendant Reeves personally engaged in the deprivation of Plaintiff's constitutional rights. Defendant Frasher is a final policy maker as to the approval of the actions of any of his subordinates, including Defendant Reeves, and a final policymaker as to any non-police investigations the City conducts into its citizens. Plaintiff alleges on information and belief that, with full knowledge of the lack of basis in law for an investigation into Plaintiff's residency, Defendant Frasher nevertheless instructed, allowed, or permitted Defendant Reeves to conduct his unlawful and retaliatory investigation into Plaintiff's personal life. In the alternative,

Defendant Frasher delegated final policymaking authority to Defendant Reeves to conduct such an investigation, and Defendant Reeves was acting as a final policymaking authority. Defendant Frasher also knowingly permitted the flourishing of an unwritten custom, policy, or practice of political intimidation against the newly-elected councilors and their political allies and appointees, with deliberate indifference to the known risk of constitutional deprivation.

16.

The actions of Defendants Frasher and Reeves—directly or pursuant to the custom, policy, or practice of political intimidation by City administrative officers and staff—were conducted in retaliation against Plaintiff for his opposition to the distribution of tourism funds and to the policies favored by the City administrative officers and staff, including the River District Plan. This retaliatory investigation in fact caused Plaintiff to resign his position on the Budget Committee, and thereby deprived Plaintiff of his constitutional right to participate in government. The intimidation chilled Plaintiff's First Amendment right to free speech and right to petition the government for the redress of grievances, and would likewise chill a person of ordinary firmness from continuing to engage in these constitutionally-protected activities.

17.

On information and belief, Defendant Frasher conspired with Defendant Reeves in the execution of this retaliatory investigation, and took actions in furtherance of the investigation, for the purpose of chilling Plaintiff's First Amendment rights or to prevent Plaintiff's performance of his official duties. On information and belief, Defendants Reeves and Frasher engaged in the intimidating investigation of Plaintiff to accomplish this goal, and Plaintiff was in fact injured in that he ceased in his participation in City government. Defendants Frasher and Reeves thus conspired to deprive Plaintiff of his constitutional rights in violation of 42 USC Section 1985(3).

18.

Because of Defendants' retaliatory and unlawful investigation into his personal life, and subsequent chilling of his First Amendment rights, Plaintiff has been damaged in the amount set

forth in paragraph 11, above.

19.

If successful on this claim for relief, Plaintiff is entitled to attorney fees pursuant to 42 USC Section 1988.

SECOND CLAIM FOR RELIEF
Against Defendants Reeves and Frasher
(*ORICO*)

20.

Plaintiff realleges and incorporates by reference paragraphs 1 through 19, above.

21.

Defendant Reeves' conduct in performing a retaliatory, unlawful investigation into Plaintiff's residency constitutes the crime of "Official Misconduct" in the first degree under ORS 162.415, in that he "knowingly perform[ed] an act constituting an unauthorized exercise in official duties." Defendant Reeves first committed official misconduct when he accessed information to which he was not entitled by reviewing Plaintiff's personal checks, and second by knowingly persisting in an investigation of an appointed official—up to and including the attempted warrantless search of Plaintiff's home—for which Reeves had no authority under Oregon law as an elections officer. On information and belief, Defendant Reeves intended to harm and intimidate Plaintiff by these acts of official misconduct. Alternatively, on information and belief, Defendant Reeves sought to assist various third parties through these intimidatory tactics.

22.

On information and belief, Defendant Frasher authorized or directed Defendant Reeves to review Plaintiff's personal checks from various City departments, and authorized or directed Defendant Reeves to investigate Plaintiff at his home, knowing this conduct was unlawful, and intending to intimidate Plaintiff thereby, or assist himself or third parties in the conduct of City

business. As demonstrated by subsequent intimidation tactics against other political opponents, these events were not isolated.

23.

As a result of the racketeering activity of Defendants Frasher and Reeves, Plaintiff has suffered damages as alleged in paragraph 11, above. Under ORS 166.715(7)(a), Plaintiff is entitled to “three-fold the actual damages” from Defendants Reeves and Frasher.

24.

If successful on this claim for relief, Plaintiff is entitled to reasonable attorney fees pursuant to ORS 166.725(14)

THIRD CLAIM FOR RELIEF
Against All Defendants
(Oregon Tort Claims Act — Intrusion Upon Seclusion)

25.

Plaintiff realleges and incorporates by reference paragraphs 1 through 24, above.

26.

In abusing his civil authority to peruse Plaintiff’s personal checks, and in demanding and attempting entry to Plaintiff’s home under the guise of an official investigation—while knowingly lacking any authority to do so—Defendant Reeves intentionally intruded upon the solitude or seclusion of Plaintiff and his private affairs or concerns. This intrusion was highly offensive to a reasonable person.

27.

Defendant Reeves’ investigation was (1) committed in direct connection and for the purposes of fulfilling his employment and agency with the City; (2) committed within the time and space limits of their agency as putative “elections officer” for the City; (3) done initially and at least in part from a desire to serve the interests of the City; (4) done ostensibly in the performance of his duties as putative “elections officer” for the City; (5) was generally actions of

a kind and nature similar to those which Defendant Reeves was authorized to perform; and (6) was done at the direction of, and pursuant to, the power vested in him by Defendant City.

28.

As a result of this intrusion upon Plaintiff's seclusion, Plaintiff has suffered the damages alleged in paragraph 11, above.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. If successful on any of Plaintiff's Claims for Relief, damages in the amount of \$125,000.00, the exact amount to be determined by the jury at the time of trial;
2. If successful on Plaintiff's Second Claim for Relief against Defendants Reeves and Frasher, treble damages in the amount of \$425,000.00
3. If successful on Plaintiff's First or Second Claims for Relief, for Plaintiff's reasonable attorney fees and costs;
4. For Plaintiff's costs and disbursements incurred; and
5. For any other relief this Court deems just and equitable.

DATED this ___ day of June, 2009.

O'DONNELL CLARK & CREW LLP

Kristian Roggendorf, OSB #013990
Of Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff Gregory Scott Tressel hereby demands a trial by jury pursuant to 28 U.S.C. §
1411.

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Of Attorneys for Plaintiff