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8 Attorney for Plaintiff
9 Moving Oxnard Forward, Inc.

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA,
12 WESTERN DIVISION

13 **Moving Oxnard Forward, Inc.,**

14 Plaintiffs,

15 vs.

16 **Michelle Ascencion**, in her official
17 capacity as City Clerk for the City of
18 Oxnard;
19 **Mark A. Lunn**, in his official capacity
20 as Registrar of Voters for the County of
21 Ventura; and
22 DOES 1 through 25, inclusive,

23 Defendants.
24

Case No.:

**Complaint for Declaratory and
Injunctive Relief**
(42 U.S.C § 1983)

25
26 Plaintiff Moving Oxnard Forward, Inc. alleges as follows:

27 1. This is a civil rights action brought under 42 U.S.C. § 1983 for declaratory
28 and injunctive relief based upon violations of the First and Fourteenth

1 Amendments to the United States Constitution as well as provisions of the
2 California Constitution. The action concerns the constitutionality of a ballot
3 measure, Measure B, that will appear on the March 3, 2020 Primary Election ballot
4 in the City of Oxnard.

5 2. More specifically, this action challenges the proposed \$500 and \$750
6 contribution limits and portions of proposed gift restrictions, facially and as they
7 are applied to individuals within Plaintiff's membership. Measure B, if
8 implemented, will burden and chill Plaintiff's free speech and association, as
9 protected by the First Amendment to the United States Constitution and sections
10 two and three of Article I of the California Constitution. Further, Measure B would
11 treat similarly situated persons differently, without a sufficient government
12 justification, and therefore denies equal protection of the law, as protected by the
13 Fourteenth Amendment to the United States Constitution and section seven of
14 Article I of the California Constitution.

15 **PARTIES**

16 3. Plaintiff **Moving Oxnard Forward, Inc.** is a nonprofit corporation
17 organized under the laws of the State of California, having its principal place of
18 business in the City of Oxnard, County of Ventura, State of California. Plaintiff's
19 membership includes individuals who desire to, without fear of fines or jail time,
20

- 21 a. Contribute more than \$500 to candidates for Oxnard City Council and
22 more than \$750 to candidates for Oxnard Mayor, City Clerk, and City
23 Treasurer;
- 24 b. Run for the office of Oxnard City Council and solicit and receive
25 contributions exceeding \$500 or run for the office of Oxnard Mayor,
26 City Clerk, and/or City Treasurer and solicit and receive
27 contributions exceeding \$750;
- 28 c. Run for the office of Oxnard City Council, Mayor, City Clerk, or City

1 Treasurer and run a campaign for or against a ballot measure in the
2 City and desire to raise at least \$750 for both their individual and
3 ballot measure campaigns;

4 d. Give personal gifts to City officials in the course of a personal
5 relationship or friendship that are not intended to influence the
6 official's actions while still retaining the right to talk to that person
7 about City business; and

8 e. Hold office as an elected City official or appointed Planning
9 Commission member and receive personal gifts from friends and
10 family members that are not intended to influence their official
11 actions.

12
13 4. Defendant **Michelle Ascencion** is sued in her official capacity as City Clerk
14 for the City of Oxnard. She is the City's elections official, and pursuant to City
15 Council resolution, is charged with conducting the election for Measure B. Further,
16 if Measure B is enacted, Ascencion would be charged with its implementation and
17 enforcement.

18 5. Defendant **Mark A. Lunn** is sued in his official capacity as the Ventura
19 County Clerk-Recorder and Registrar of Voters. He is the County's election official
20 charged with conducting elections in Ventura County. The City of Oxnard has
21 contracted with the County of Ventura to conduct the Measure B election and
22 Defendant Lunn will be preparing ballots for the March 3, 2020 primary election
23 that will include the City of Oxnard's Measure B.

24 6. The true names of Defendant DOES 1 through 25, inclusive, are unknown to
25 Plaintiff, who therefore brings this action against DOES 1 through 25, inclusive, by
26 such fictitious names and will seek leave of this Petition to show their true names,
27 identities, and capacities when they have been ascertained.
28

1 **JURISDICTION AND VENUE**

2 7. This case arises under 42 U.S.C. § 1983 and the First and Fourteenth
3 Amendments to the United States Constitution. Because Defendants act within
4 their official capacities under color of state law, this Court has jurisdiction over the
5 subject matter of this action under 42 U.S.C. § 1983, 28 U.S.C. § 1331, and 28
6 U.S.C. § 1343(a)(3). This Court also has jurisdiction over Plaintiff’s claim for
7 declaratory judgment under 28 U.S.C. §§ 2201 and 2202.

8 8. This Court has supplemental jurisdiction over any state law claims under 28
9 U.S.C. § 1367.

10 9. Defendants, in their official capacities, are each subject to personal
11 jurisdiction in the Central District of California.

12 10. Venue is appropriate in the Central District of California under 28 U.S.C
13 § 81A and 28 U.S.C. § 1391(b).

14 **FACTS COMMON TO ALL CAUSES OF ACTION**

15 11. On October 15, 2019, the Oxnard City Council placed the Oxnard
16 Government Accountability and Ethics Act (the Act) on the ballot for the March 3,
17 2020 primary election.

18 12. The full text of the Act is attached as **Exhibit A** and incorporated herein.

19 13. The Act has been designated as “Measure B” on the ballot.

20 14. The City’s agenda report for the initiative, as presented to the City Council
21 at the October 15 meeting, describes the Act as implementing the following “good
22 government practices”:
23

- 24 a. Prohibit elected officials and planning commissioners from accepting
25 gifts from lobbyists or city contractors;
- 26 b. Impose, for the first time in Oxnard, contribution limits to the Mayor,
27 City Council and other candidates running for an elected office;
28

- 1 c. Provide transparency by posting all high-value City contracts and
2 monthly financial reports on the City’s website for public review; and
3
4 d. Establishing a three-term limit for the City Council and Mayor, and
5 changing the Mayor’s term from two to four years, to be consistent
6 with the City Council.

7 15. A true and correct copy of the Agenda Report from the October 15, 2019
8 City Council meeting (without attachments) is attached as **Exhibit B**. Attached as
9 **Exhibit C** to this Complaint is a true and correct copy of the City Council
10 resolution (without exhibits) to place the Act on the March 3, 2020 ballot.

11 16. Relevant to this action, the Act’s stated objective is “[e]liminating the
12 influence of special interest in Oxnard by imposing contribution limits to any
13 candidate for elective office ensures that the City’s interests are protected.” The
14 City described this interest as “to provide a representative government that is
15 accessible to all citizens, to deter corruption and the appearance of corruption
16 caused by the coercive influence of large financial contributions on candidates’
17 positions.”

18 17. As described further below, Plaintiff complains, *inter alia*, that the
19 contribution limits imposed by the Act are not narrowly tailored to these interests.
20 More problematic, the Act treats speech by some political candidates differently
21 from others in violation of the state and federal constitutions.

22 **CAUSES OF ACTION**

23 **A. First Cause of Action: The per candidate contribution limits violate free**
24 **speech and association.**

25 18. Plaintiff incorporates by reference all prior paragraphs as if they were fully
26 stated herein.

27 19. Article VI of Measure B applies to “Campaign Finance Reforms.”
28

1 20. Section 2-240 of this article states the ordinance’s purpose, which is to
2 “advance compelling City interests by limiting large contributions from single
3 sources to candidates for Mayor, members of the City Council, City Clerk and City
4 Treasurer, and by imposing reporting and accounting procedures for local
5 campaigns.”

6 21. Section 2-240 also states that the City’s interests “are to provide a
7 representative government which is accessible to all citizens, to deter corruption
8 and the appearance of corruption caused by the coercive influence of large financial
9 contributions on candidates’ positions, and to inform the electorate as to the
10 sources and uses of political contributions.”

11 22. Section 2-243 provides for the following contribution limits applicable to
12 members of the City Council.

- 13
- 14 a. A personal contribution limit of \$500 for any election applicable not
15 only to the candidate’s campaign committee, but also to “all political
16 committees or broad-based political committees controlled by the
17 candidate.” The limit also applies to loans and in-kind contributions.
 - 18 b. A political action committee (PAC) limit of \$1,000 for any election
19 that is otherwise the same as the personal contribution limit.
 - 20 c. A limit of \$500 for loans to the candidate applicable not only to the
21 candidate’s campaign committee but also to the combined total of
22 loans to any committee controlled by the candidate.

23 23. Section 2-244 includes contribution limits applicable to candidates for
24 Mayor, City Clerk, and City Treasurer. The limits are the same except that the
25 personal contribution limit is \$750, and the PAC contribution limit is \$1,500.
26

27 24. Under section 2-249 of the proposed ordinance, the penalty for any
28 violation would be a misdemeanor in accordance with section 1-10 of the City’s

1 Municipal Code. Under section 1-10, the punishment would be a \$1,000 fine or
2 six months in jail.

3 25. The Measure B contribution limits do not further a sufficiently important
4 state interest. Indeed, there is only one state interest that might justify a campaign
5 contribution limit: evidence of actual quid pro quo corruption or the appearance of
6 quid pro corruption. However, this interest is not implicated at or near the Measure
7 B limits, and there is no evidence that there is even an appearance of quid pro
8 corruption. The perceived threat is illusory.

9 26. Even if there is a sufficiently important state interest, the contribution limits
10 are not closely drawn to that end because, inter alia, it would take significantly more
11 than a \$500 or \$750 contribution to create even the appearance of quid pro quo
12 corruption, let alone its reality. Existing significant criminal penalties for actual
13 quid pro quo corruption do more to advance this interest than an arbitrary dollar
14 limit that restricts the right of honest citizens to participate in City elections. The
15 limit is not closely drawn or narrowly tailored to the government interest in
16 question.

17 27. Moreover, the Measure B contribution limits are insufficient to allow
18 candidates to amass sufficient resources to wage an effective campaign. Indeed, the
19 Measure B contribution limits prohibit candidates from contributing more than
20 \$500 to their own campaign for City Council or \$750 to their own campaign for
21 Mayor, City Clerk, or City Treasurer.

22 28. Further, treating candidate campaign committees differently from other
23 committees controlled by a candidate further restricts individual rights of speech
24 and association. A person who contributes the maximum contribution to
25 candidate's campaign committee would be precluded from making contributions to
26 another committee controlled by that candidate, perhaps a committee supporting
27 or opposing a ballot measure, which has a purpose other than supporting a specific
28

1 candidate. Additionally, a candidate who contributes the maximum \$500 to his or
2 her own campaign would be prohibited from contributing to a ballot measure
3 campaign he or she runs.

4 **B. Second Cause of Action: The aggregate contribution limits violates free**
5 **speech, association, and equal protection.**

6 29. Plaintiff incorporates by reference all prior paragraphs as if they were fully
7 stated herein.

8 30. Under Measure B, candidates for City office would be subject to applicable
9 \$500 or \$750 contribution limit aggregated between their campaign committees
10 and any other committee they control. A candidate who is also running a campaign
11 for or against a ballot measure would be forced to choose between receiving a
12 maximum contribution to either his or her campaign or to the ballot measure
13 committee or would need to divide the maximum contribution in some way
14 between the two.

15 31. However, under Measure B someone who is not a candidate may run a ballot
16 measure campaign and would not be subject to any limits whatsoever. This treats
17 non-candidate ballot measure proponents differently from candidates who are also
18 ballot measure proponents and denies candidates the same free speech and
19 association rights afforded to non-candidates.

20 32. Just as Measure B contribution limits themselves do not further a sufficiently
21 important state interest, the aggregate limits applied to each of a candidate's
22 committees do not further a sufficiently important state interest either. As stated
23 above, there is no indication that there is even an appearance of quid pro
24 corruption, and this does not change when candidates campaign for themselves or
25 other causes within the City.
26

27 33. To the extent that Measure B contribution limits are insufficient to allow
28 candidates to amass sufficient resources to wage an effective campaign, the effect is

1 magnified when the limit is aggregated across committees. For candidates trying to
2 campaign for themselves and for or against a ballot measure, the insufficiency of the
3 limits is amplified because the candidate must use the same resources to run two or
4 more campaigns. This is especially true if the candidate must run a ballot measure
5 campaign subject to contribution limits against a ballot measure campaign that is
6 not subject to limits.

7 **C. Third Cause of Action: The gift ban violates free speech and association.**

8 34. Plaintiff incorporates paragraphs 1 through 16 by reference as if they were
9 fully stated herein.

10 35. Article VII of the proposed ordinance prohibits gifts from city contractors
11 and lobbyists. Section 2-250, paragraph (A), prohibits elected City officials and
12 Planning Commission members from receiving any gift, regardless of value, from
13 “any person who during the prior 12 months knowingly attempted to influence an
14 elected City official or member of the Planning Commission in any legislative or
15 administrative action.” Paragraph (B) of that section prohibits City officials from
16 accepting gifts made with the intent to influence their.

17 36. The proposed ordinance broadly defines “gift” as including anything that
18 “confers a personal benefit for which [a City official] does not provide payment or
19 services of equal or greater value.” Both paragraphs (A) and (B) of section 2-250
20 apply to gifts of any amount, no matter how de minimis the value.

21 37. Application of paragraph (A) to “any person who during the prior 12 months
22 knowingly attempted to influence an elected City official or member of the Planning
23 Commission in any legislative or administrative action” applies even more broadly
24 to virtually anyone in the City.

25 38. This paragraph would prevent City officials from accepting even nominal
26 personal gifts from friends, neighbors, and even family members. Examples of
27 prohibited gifts might include:
28

- 1 a. Holiday cookies from a friend who once asked for help dealing with a
- 2 barking dog;
- 3 b. A cough drop from someone who has spoken at a City Council
- 4 meeting; or
- 5 c. Birthday presents from relatives who suggest that the official vote in
- 6 accordance with moral principles while serving on the City Council,
- 7 even if the relatives have no other connection to the City.
- 8

9 39. But it goes further because City officials are prohibited from accepting gifts
10 from individuals who attempt to influence any other City official, even if the City
11 official receiving the gift has no knowledge of a gift to another official.

12 40. In this regard, paragraph (A) is both vague and overbroad.

13 41. If enacted, this ordinance would not serve to eliminate corruption. Instead, it
14 would unconstitutionally chill First Amendment rights of City officials to discuss
15 city business with friends, neighbors, and other City residents who may fear
16 criminal penalties for accepting kind gestures wholly unrelated to their conduct as
17 City officials.

18 42. This ordinance would further chill the association rights of City officials who
19 would reasonably refuse to accept gifts from anyone in fear that the person giving
20 the gift might have attempted to influence some other City official.

21 43. Paragraph (B) similarly prohibits officials from receiving gifts made with a
22 specific intent even if the official is unaware of the giver's intent or reasonably
23 believes that the giver is giving the gift with something other than the intent to
24 influence.

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PRAYER FOR RELIEF

Wherefore, Plaintiff prays that the Court award:

1. A declaratory judgment declaring the Measure B individual contribution limits to candidates is unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution and sections two and three of Article I of the California Constitution;

2. A declaratory judgment declaring the Measure B aggregated contribution limits to candidates is unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution and sections two, three, and seven of Article I of the California Constitution;

3. A declaratory judgment declaring the Measure B prohibition on personal gifts that are not intended to influence official action is unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution and sections two and three of Article I of the California Constitution;

4. A preliminary and permanent injunction enjoining Defendants, in their official capacities, from placing Measure B on the March 3, 2020 primary election ballot;

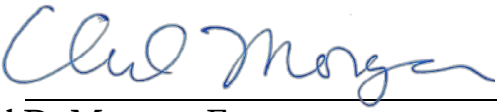
5. A preliminary and permanent injunction enjoining Defendant Michelle Ascencion, in her official capacity, from enforcing the above-referenced unconstitutional laws;

6. Plaintiff's costs of suit and reasonable attorneys' fees under 42 U.S.C. § 1988, California Code of Civil Procedure section 1021.5, or any other theory; and

7. Such other and further relief as the Court deems proper.

1 DATE: December 6, 2019

2 Respectfully Submitted,
3 LAW OFFICE OF CHAD D.
4 MORGAN

5 By: 
6 Chad D. Morgan, Esq.
7 Attorney for Plaintiff
8 Moving Oxnard Forward, Inc.

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