

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

OREGON EDUCATION ASSOCIATION, an)
Oregon Nonprofit corporation,)
)
Plaintiff,)
vs.)

Case No. 0012-12632

OREGON TAXPAYERS UNITED, An Oregon)
Political Committee; and **OREGON**)
TAXPAYERS UNITED EDUCATION)
FOUNDATION, an Oregon Nonprofit)
corporation,)
)
Defendants.)

AMERICAN FEDERATION OF TEACHERS-)
OREGON, AFT, AFT-CIO, an Oregon)
unincorporated association,)
)
Plaintiff,)
vs.)

OPINION FINDING CONTEMPT
OF COURT AND ORDER FOR
SANCTIONS
(CONTEMPT #4)

Case No. 0108-08942

OREGON TAXPAYERS UNITED, An Oregon)
Political Committee; and **OREGON**)
TAXPAYERS UNITED EDUCATION)
FOUNDATION, an Oregon Nonprofit)
corporation,)
)
Defendants.)

STATE OF OREGON,)
)
Intervenor-Plaintiff,)
vs.)

OREGON TAXPAYERS UNITED, An Oregon)
Political Committee; and **OREGON**)
TAXPAYERS UNITED EDUCATION)
FOUNDATION, an Oregon Nonprofit)
Corporation,)
)
Defendants.)

"Oh what a tangled web we weave, when first we practise to deceive." Sir Walter Scott, *Marmion*, *Canto vi. Stanza 17*.

This matter comes before the court on the amended allegations of plaintiffs and intervenor that William Sizemore and American Taxpayers Research Foundation ("ATRF") are in contempt of court for violating the injunction incorporated into the Money Judgment and Equitable Decree ("the injunction"). I will refer to Mr. Sizemore and ATRF as the defendants in this contempt matter. An evidentiary hearing was conducted on October 2, 3 and 8, 2008. At my request, on October 20, 2008, the parties submitted timelines showing the temporal relationship between various financial transactions and activities of defendants. I then took the matter under advisement.

I. Background

A. *Trials and Judgment*

In 2002 there was a jury trial on the legal claims in this case. In 2003 there was a trial to the court on plaintiffs' and intervenor State of Oregon's claims for equitable relief. (For ease of reference I will refer to both the original plaintiffs and the intervenor as plaintiffs.) At the conclusion of the court trial, Judge LaBarre expressed his concurrence with the jury's findings as reflected in its verdict and made many additional findings, all of which I will not set forth here. Both jury and judge found by clear and convincing evidence that racketeering had been committed by Oregon Taxpayers United (OTU-PAC) and Oregon Taxpayers United Education Foundation (OTU-EF), a purported nonprofit corporation.

Judge LaBarre found that although Mr. Sizemore was not named as a defendant, he was actively and deeply involved in the wrongdoing of OTU-PAC and OTU-EF. Judge LaBarre found that Mr. Sizemore had "manipulated and exploited these organizations for his own purposes – sometimes for his own financial gain and sometimes to pursue his political objectives." Judge LaBarre further found that "[i]n effect, Bill Sizemore ran a sham charity." Judge LaBarre made additional findings about Mr. Sizemore's activities from the time of the jury's verdict until the court trial on the equitable claims, including that he had "engaged in a continuous course of conduct . . . to avoid legal accountability" and that the wrongful conduct was "on-going, threatens to continue and it is probable that it will continue in the future unless an appropriate injunction is entered to prevent it." Judge LaBarre also concluded that an injunction was necessary to prevent "continued injury to the public interest."

The judgment, incorporating both the injunction and damages in accordance with the jury's verdict, was entered on July 25, 2003. The injunction dissolved OTU-EF.

In addition, the injunction has five main components:

1. It prohibits any charitable organization in which Mr. Sizemore has a management role from giving anything of value, whether money or in-kind support, to a political action committee for five years. Injunction ¶ 5.
2. Conversely, it prohibits any political action committee in which Mr. Sizemore has a management role from receiving anything of value, whether money or in-kind support, from an I.R.C. § 501(c)(3) organization for five years. Injunction ¶ 6.
3. It prohibits any charitable organization or political action committee in which Mr. Sizemore has a managing role from transferring any assets (for other than an asset of like value on which plaintiffs could execute to satisfy their judgment) until the money judgment in favor of plaintiffs is paid. Injunction ¶ 7.
4. It prohibits any charitable organization or political action committee in which Mr. Sizemore has a managing role from doing business with I&R Petition Services, Inc. or any other petition signature gathering company run by Mr. Sizemore for five years. Injunction ¶ 8.
5. It requires any charitable organization or political action committee in which Mr. Sizemore has a managing role to comply with Oregon campaign reporting laws and Oregon and federal charitable organization reporting laws, including the filing of Contribution and Expenditure ("C&E") reports, CT-12 reports and Form 990s, as well as statements of sponsorship for prospective initiative petitions and the filing or submission of signature sheets for initiative petitions. These provisions are likewise effective for five years. Injunction ¶¶ 9, 10, 11, 12 and 13.

B. Appeals

Defendants appealed from the July 25, 2003, judgment. The Oregon Court of Appeals issued its first opinion in that appeal on October 4, 2006. *American Fed. Teachers v. Oregon Taxpayers United*, 208 Or App 350. In that opinion the Court of Appeals concluded that the filing of false C&Es, as alleged in count 3 of the complaint, could not support plaintiffs' ORICO claims against OTU-PAC. As a result, the Court of Appeals reversed the money judgment based on count 3 against OTU-PAC, and likewise reversed paragraphs 6 and 9 of the injunction. It further reversed paragraph 13 as to OTU-PAC and vacated paragraph 7 as to OTU-PAC and remanded with instructions for the trial court to determine whether it would have entered that injunctive relief against

OTU-PAC based on its liability under count 1, without reference to count 3. The Court of Appeals otherwise affirmed the judgment.

The Court of Appeals allowed plaintiffs' petition for reconsideration but adhered to its former opinion in a second opinion issued on December 6, 2006. *Id.*, 209 Or App 518. The Oregon Supreme Court granted defendant OTU-PAC's petition for review and issued its opinion affirming the decision of the Court of Appeals on July 3, 2008. *Id.*, 345 Or 1. The appellate judgment issued on November 18, 2008.

C. Other Litigation

In October 2004 Mr. Sizemore moved for relief from the injunction. The record is not clear as to the reasons hearing on that motion was delayed, but it was eventually heard and denied on October 31, 2005. Mr. Sizemore did not appeal from the denial of his motion.

In March 2007 Mr. Sizemore filed a separate lawsuit seeking relief from the injunction on constitutional grounds. Summary judgment was granted and judgment entered against Mr. Sizemore in that action in November 2007 and he did not appeal.

Sometime in late 2007 or early 2008, plaintiffs brought an action against Mr. Sizemore, ATRF and CBS Consulting under the Uniform Fraudulent Conveyances Act.¹

D. Prior Contempts

The court has previously found that although Mr. Sizemore was not named as a defendant in the original action, he is bound by the terms of the judgment and can be held in contempt for violating it under the principles set forth in *Polygon Northwest v. NSP Development, Inc.*, 194 Or App 661 (2004).

Mr. Sizemore, OTU-EF and various "successor organizations" have been found in contempt of court for violating the injunction three times. Judge LaBarre found a contempt for OTU-EF's transfer of assets and Mr. Sizemore's failure to properly sign CT-12s and Form 990s. That proceeding is sometimes referred to by the parties as "Contempt #1".² This court found Mr. Sizemore and OTU2-PAC, an OTU successor organization, in contempt for the transfer of assets by OTU2-PAC (Contempt #2). In

¹ This action was referred to in the testimony, but no specific information about it was provided.

² Defendants appealed from the order in Contempt #1. The matter was argued before the Court of Appeals on August 13, 2008, and is under advisement.

Contempt #3, this court found Mr. Sizemore and Give Seniors a Break (another OTU successor organization) in contempt of court, likewise for transferring assets.

II. The Allegations in Contempt #4

Plaintiffs have alleged that Mr. Sizemore violated the injunction in connection with the activities of ATRF. Specifically, they allege that ATRF:

- is an OTU-EF successor organization;
- provided financial support to Mr. Sizemore for his political activities in support of numerous initiative measures in the 2008 and 2010 election cycles;
- was required to file CT-12 reports and has not done so; and
- transferred assets.

Plaintiffs further allege that Mr. Sizemore had duties as chief petitioner or treasurer of the chief petitioner committees to accurately report the contributions by ATRF to those committees and that he violated the injunction by failing to do so.

III. Findings of Fact³

A. Overview

In summary, between late 2005 and early 2008 Mr. Sizemore and his family were being supported financially by Loren Parks and Dick Wendt, either directly or through organizations they controlled. These men, either directly or through their organizations, were also the sole financial donors to the effort to get Mr. Sizemore's initiatives on the Oregon ballot. In order to obfuscate the source of the money and his

³ ATRF's corporate records, its filings with the Nevada Secretary of State and its filings with the Internal Revenue Service are either non-existent or so incomplete and riddled with errors as to lead this court to the conclusion that Mr. Sizemore was intentionally lying and attempting to mislead anyone who might be trying to understand whether or not he was complying with the injunction. (His actions might well have also misled anyone trying to collect a judgment against him, but that is not the subject of the proceedings currently before this court.) Mr. Sizemore's repeated lying under oath in prior testimony and his efforts to prevent plaintiffs from obtaining ATRF's records confirms this conclusion and made this court's fact-finding process much more difficult than it should have been. A non-exclusive list of examples of the breadth and magnitude of Mr. Sizemore's mendacity is set forth in Appendix A to this opinion.

activities, Mr. Sizemore used various sham corporations including Initiative Resource Management ("IRM"), ATRF, CBS Consulting, Initiative Preservation Institute ("IPI") and Oregon Taxpayers United ("OTU3"⁴). He also used Democracy Direct in his ploys. Mr. Sizemore shifted the money path to make it more difficult for the plaintiffs to collect their judgments against him and to prevent the plaintiffs from learning that he was violating the injunction.

Mr. Sizemore first used IRM and Democracy Direct. He then used ATRF and CBS Consulting. When it appeared that plaintiffs might be on to the truth about ATRF Mr. Sizemore shifted again, this time using IPI and eventually OTU3.

Mr. Sizemore and ATRF violated the injunction in several ways.

B. The Organizations Involved

1. CBS Consulting

"CBS Consulting"⁵ is apparently a for-profit company. It is owned by Mr. Sizemore's wife, Cindy Sizemore. Cindy Sizemore testified that she does not run CBS Consulting, however. Bill Sizemore does. Cindy Sizemore has very little knowledge of CBS Consulting's business. For example, she knows little about ATRF, although ATRF paid CBS Consulting more than \$174,000 between February 2006 and February 2008 and paid her personally more than \$30,000. She testified she was unaware that CBS Consulting had done business with Hire Calling Public Affairs ("HCPA"), although CBS Consulting invoiced HCPA \$9,050 per month for July, August and September 2008.

CBS Consulting has filed no tax returns. Cindy Sizemore testified that her husband said that it was unnecessary for CBS Consulting to file its own tax returns because all of the information about CBS Consulting was reflected in their personal tax returns. (Mr. Sizemore testified that neither he nor his wife have filed personal tax returns for 2006 or 2007, however.) Cindy Sizemore testified that money held by CBS Consulting was the same as money in the family's personal checking account.

In this contempt hearing Mr. Sizemore testified that he used CBS Consulting as a conduit of payments to himself to make it more difficult for the plaintiffs to collect their judgments against him totaling approximately \$2.5 million. CBS Consulting has never issued a Form 1099 to Mr. Sizemore for the compensation it has paid him.

⁴ To avoid confusion with the original Oregon Taxpayers United or Oregon Taxpayers Union (referred to in early stages of the litigation as "OTU2") I will refer to the newest organization as "OTU3."

⁵ This entity is referred to sometimes as "CBS Consulting Inc." and at other times as "CBS Consulting Company." For simplicity I will refer to it as "CBS Consulting."

2. Democracy Direct

Democracy Direct is a for-profit organization whose primary business is gathering signatures for initiative petitions with the use of paid signature gatherers.⁶ It was formed in August 2005 by Timothy Trickey. Mr. Trickey described himself as young and with little experience. He worked very closely with Mr. Sizemore. Signature gathering for Mr. Sizemore's initiatives constituted 75% of Democracy Direct's business. Mr. Trickey was a co-chief petitioner with Mr. Sizemore on 17 initiatives in the 2008 election cycle (including one that made it to the ballot) and two initiatives (so far) in the 2010 election cycle. Democracy Direct gathered signatures for at least one of Mr. Sizemore's measures on the 2006 ballot.⁷ For the 2008 election cycle, Mr. Trickey also worked with Mr. Sizemore in drafting measures and gathering the sponsorship signatures required for an initiative to cross the first hurdle towards becoming a ballot measure.

Democracy Direct did the signature gathering for all six measures which Mr. Sizemore sought to put on the 2008 ballot. For four of those initiative petitions, Loren Parks was the sole source of the money for signature gathering. For the other two petitions, HCPA was the sole funding source.

Although Mr. Trickey was the sole owner of Democracy Direct, he never had contact with its largest clients, Loren Parks and HCPA. Mr. Sizemore made all arrangements with Mr. Parks and HCPA to send money to Democracy Direct. If more money was needed for signature gathering, Mr. Trickey called Mr. Sizemore, who in turn contacted the donors. Mr. Trickey testified that he occasionally sent an invoice to HCPA.

Money paid to Democracy Direct was placed in a savings account called a "client account." Mr. Trickey then transferred money from the client account to a checking account to pay expenses. Mr. Sizemore was a signer on the client account. Although two signatures were not required to withdraw or move funds, Mr. Sizemore could check on the status of the bank account. Mr. Trickey testified that this arrangement was

⁶ This is the same type of business conducted by Mr. Sizemore's company, I&R Petition Services, Inc. ("I&R"), which Judge LaBarre found had acted in concert and conspired with Mr. Sizemore, OTU-PAC and OTU-EF in their illegal activities. OTU successors were enjoined from doing any business with I&R or an I&R successor, the definition of which amounts to any petition signature gathering business in which Mr. Sizemore has a financial interest. Injunction ¶ 8. Plaintiffs have not alleged that Democracy Direct is an I&R successor.

⁷ Measure 42 ("Bans Insurance Discrimination") was the subject of Contempt #2. In that evidentiary hearing Mr. Sizemore testified that Loren Parks had agreed to pay Democracy Direct to gather signatures for that measure.

designed to "give comfort" to Mr. Parks and HCPA (who were sending checks in excess of \$200,000) that Mr. Trickey would not "run off with the money to Mexico."

There is no evidence that Mr. Sizemore used his signature authority to withdraw or transfer money from Democracy Direct's client account, but Mr. Trickey told Mr. Sizemore when money was to be transferred from the client account to the checking account and asked for his "blessing." Mr. Sizemore never said no. (Mr. Sizemore testified that "on a few occasions [Mr. Trickey] called me for approval to transfer money into the account from which it could actually be spent.") In other words, as to at least 75% of its business, Democracy Direct was overseen by Mr. Sizemore.

Timothy Rohrer, current president of ATRF (and personal friend of Mr. Sizemore for about 30 years), testified that he has been training with Democracy Direct and will soon be taking it over.

3. Initiative Resource Management

In October 2005 Mr. Sizemore formed Initiative Resource Management ("IRM") as a Nevada corporation. He used the services of Nevada Corporate Headquarters, Inc., which (for a fee) provides the necessary paperwork to form corporations in Nevada using information supplied by the client. In November 2005 Mr. Sizemore listed himself as the secretary, treasurer and director of IRM and listed "Cynthia M. Miller" as president.⁸ In March of 2006 Mr. Sizemore had Ms. Miller (Alexander) sign documents

⁸ "Cynthia M. Miller" is also known as Michaela Alexander, nka Michaela Rohrer. Her relationship with Mr. Sizemore and ATRF is described below. Ms. Alexander attempted to explain that "Cynthia" is her middle name and she used the name "Cynthia M. Miller" at the time of the formation of IRM because she was going through a divorce. I note, however, that she signed an *amended* list of officers and directors for IRM on March 6, 2006 using the name "Cynthia M. Miller," and listed herself by that name for every office. On surrounding dates, January 30 and March 15, 2006, she was listed on and signed ATRF documents as "Michaela Alexander." On February 22, 2008, Mr. Sizemore invited Ms. Alexander to stay on the ATRF board and wrote "If you wanted to be on the board as just a voting director, we might enter you simply as C. Webb, in case you wanted to go back to that name as a result of the divorce. The publicly filed papers would simply list your address as Las Vegas, Nevada." Three days later he asked her again if she wanted to be listed as "C. Webb" or "M. Alexander."

Michaela Alexander married Timothy Rohrer in February or March of 2008 (about the time of the reference to "C. Webb") and now uses Rohrer as her last name. Nevertheless, I will use the name Alexander in this opinion because that is the name by which she was known in connection with ATRF during most of the time that is relevant to this contempt proceeding.

to remove his name as an officer or director of IRM. Although she was president, Ms. Alexander did not know if IRM had a bank account or did any business. Mr. Sizemore testified that his wife owned IRM, although he also testified that IRM had never issued any stock and Cindy Sizemore testified that she did not own IRM. Mr. Sizemore opened a bank account (at least the second account) for IRM on March 31, 2008, and listed himself as "sole owner." Mr. Sizemore testified that he ran IRM's operations and I find that IRM was at all times run entirely by Mr. Sizemore.

4. American Tax Research Foundation

American Tax Research Foundation was established as a nonprofit corporation in Nevada on January 17, 2006. Mr. Sizemore again used the services of Nevada Corporate Headquarters, Inc. The stated purpose of the corporation is "to research and publish the fiscal impact of real and proposed ballot measures and initiatives."

The initial directors consisted of Michaela Alexander, Mr. Sizemore and Grace Foster. Grace Foster is Mr. Sizemore's mother. She usually goes by the first name "Gene" or "Imogene."⁹ Ms. Alexander has never met her and Mr. Sizemore did not tell Ms. Alexander that Grace Foster is his mother. Two weeks after the incorporation papers were filed Mr. Sizemore removed himself as a director. He testified that he did this because he expected to receive compensation from the organization. The document making that change was signed by Ms. Alexander on January 30, 2006, and filed with the Nevada Secretary of State on February 10, 2006.

In ATRF's initial listing of officers, Ms. Alexander is president and secretary; Ms. Foster is treasurer and director. Mr. Sizemore testified that his mother never assumed the duties of treasurer and that he had the checkbook and control of ATRF's finances from its formation until he relinquished control in late 2007 or early 2008. (I will discuss the events of late 2007 and early 2008 later in this opinion.) Mr. Sizemore used no accounting software or other bookkeeping tools. The only records of ATRF's financial affairs are the checkbook and bank statements. In this contempt hearing, Mr. Sizemore testified that he ran the operations of ATRF.

I find that Mr. Sizemore was in complete control of ATRF, without meaningful participation or control from its board of directors from its formation until at least early 2008, and that he remained largely in control of it to at least the time of this contempt hearing. He testified at the contempt hearing that he still had possession of the key to the safe deposit box where ATRF's investment gold pieces (purchased for nearly

⁹ In the annual list of officers filed with the Nevada Secretary of State on January 30, 2007, the treasurer is listed as "G. (Gene) Foster" and "T. Rohrer" was added as a director. Mr. Sizemore's mother used the name "Grace I. Sizemore" when she was co-chief petitioner on several of Mr. Sizemore's measures in the 2006 election cycle.

\$10,000) are stored, and his wife still had possession of the car purchased with ATRF funds.

Defendants have admitted that ATRF is an "OTU-EF successor."

5. Initiative Preservation Institute¹⁰

On January 16, 2008, Mr. Sizemore registered Initiative Preservation Institute with the Oregon Secretary of State as a non-membership public benefit nonprofit corporation. Mr. Sizemore testified that he intends to seek recognition of IPI as an educational tax-exempt organization under §501(c)(4) of the Internal Revenue Code. A certified public accountant prepared the filing for IPI's §501(c)(4) status in March 2008 and Mr. Sizemore picked it up, but has not yet filed it. That form, prepared with information provided by Mr. Sizemore, says "The organization will create a nationwide database of initiatives and efforts to enhance and weaken the initiative process." IPI has no board of directors or bylaws. Mr. Sizemore has received and spent money on behalf of IPI and is in sole and complete control of it.

6. Oregon Taxpayers United

On February 19, 2008, Mr. Sizemore registered Oregon Taxpayers United with the Oregon Secretary of State as a membership public benefit nonprofit corporation. Mr. Sizemore testified that, as with IPI, he intends to seek recognition of OTU3 as an educational tax-exempt organization under §501(c)(4) of the Internal Revenue Code. Again, he has not yet done so and OTU3 has no board of directors or bylaws. Mr. Sizemore has received and spent money on behalf of OTU3 and is in sole and complete control of it.

7. Parks Education Foundation

The record before me contains limited information about Loren Parks, his business and his foundation. The financial records in this and prior hearings show that Loren Parks has long been a supporter of Mr. Sizemore and many of his initiatives. Most recently, Mr. Parks gave most of the money to support Measure 42 on the 2006 ballot and he was the sole contributor of funds (totaling \$491,500) for the signature gathering to place Measures 58, 59, 60 and 64 on the ballot in 2008. Mr. Sizemore was

¹⁰ Defendants objected to evidence concerning IPI and OTU3 on relevance grounds since these entities were created after most provisions of the injunction expired in July 2008. I received the evidence for two purposes: (1) to assist in understanding the pattern of Mr. Sizemore's earlier conduct; and (2) to assess what remedies are necessary and appropriate if I found a contempt.

the chief petitioner for all of those measures. Mr. Parks also gave money to Mr. Sizemore to work on drafting ballot measures.

Mr. Parks in some capacity controls and signs checks for Parks Medical Electronic Sales, the Parks Foundation and the Parks Education Foundation. The Parks Foundation and Loren Parks as its president and director were among the defendants in an action brought by the State of Oregon in 2000. The State alleged that the Parks Foundation had violated Oregon law governing nonprofits by "expending funds for taxable expenditures." The defendants in that action denied any wrongdoing, but the matter was resolved by a stipulated judgment and injunction. In addition to paying \$50,000 to the State, Mr. Parks and the Parks Foundation agreed to an injunction that provided, in part:

"4. The Parks Foundation is enjoined from engaging in the following conduct so long as such conduct is prohibited by law:

- a. The Parks Foundation will not make contributions or payments to political action committees;
- b. The Parks Foundation will not make contributions to for profit or nonprofit organizations not described in IRC §4945(d)(4)(A) unless it exercises expenditure authority pursuant to IRC §4945(d)(4)(B) and IRC §4945(h);
- c. The Parks Foundation will not make contributions/payments to individuals for research projects unless (i) it is pursuant to a procedure which is approved in advance as provided in IRC §4945(g) or (ii) it is compensation for personal services in assisting the Parks Foundation in planning, evaluating or developing projects or areas of program activity."

I cannot tell from the record before me if the Parks Foundation and the Parks Education Foundation are separate entities. Even assuming they are, if Loren Parks is a substantial contributor to the Parks Education Foundation and director of it, the following provision of the injunction may be relevant:

"6. The injunctive provisions contained in Paragraph 4 herein shall apply to each individual defendant, but only to the following extent. With respect to any private foundation, in existence now or in the future, if he is a substantial contributor to that foundation as defined in IRC §507(d)(2), and if he is a director of the foundation, he shall not vote to approve or authorize an action described in Paragraph 4 to be taken on behalf of such private foundation."

8. Hire Calling Public Affairs

Hire Calling Public Affairs ("HCPA") is a for-profit Oregon Corporation headquartered in Klamath Falls, Oregon. It has nine or 10 employees. John Courtney, an Oregon attorney, has been the president of HCPA for about two and a half years. HCPA is a division of Hire Calling Holding Company, which is owned by Dick Wendt. A §501(c)(3) organization, the American Institute for Full Employment is housed in the same building as HCPA and 80% of HCPA staff time is donated to the institute. The other 20% of their time HCPA staff work on public policy issues such as the "Jobs Plus" program in Oregon, Social Security issues, legislative matters and initiative campaigns.

In the 2008 election cycle, HCPA worked on Measures 63 and 78, for which Mr. Sizemore was a chief petitioner. HCPA was also the sole contributor of funds for signature gathering to get those two measures on the ballot and it paid Democracy Direct \$325,000 for that effort.

HCPA is related to the similarly-named organization "Hire Calling," which is involved in the temporary employee business using the name SOS Staffing. SOS Staffing provides accounting services to HCPA and is headquartered in Salt Lake City, Utah. As a result of this arrangement, HCPA checks may actually come from Salt Lake City.

C. The Shifting Money Path

1. Sizemore is Paid by Parks through Democracy Direct and IRM

In the fall of 2005, Mr. Sizemore began working on initiatives that he hoped would appear as measures on the November 2008 ballot. He ultimately filed 46 initiatives on which he was a chief petitioner. During this time he also worked on his measures for the 2006 ballot. He used various strategies to structure his relationships with financial and political supporters and associates to support himself and his family while doing his political work.

On August 31, 2005, Americans for Tax Reform Foundation¹¹ sent a check for \$33,750 to CBS Consulting. Mr. Sizemore testified that he could not recall what that money was for.

¹¹Although it has the same initials, this entity is not to be confused with the ATRF that is the subject of this contempt proceeding. Americans for Tax Reform Foundation is a Washington, D.C. foundation. According to Mr. Sizemore it is concerned with education and reform of taxation systems.

Later in 2005, Mr. Sizemore used Democracy Direct and IRM to channel funds from Loren Parks to himself to support his political work. In the last two months of 2005, Loren Parks gave \$100,000 to Mr. Sizemore through Democracy Direct and IRM: \$70,000 in November and \$30,000 in December. The \$70,000 was the opening deposit for IRM's first checking account on November 1, 2005. The money was nominally from Democracy Direct. Mr. Trickey testified that the \$70,000 was a consulting fee for Mr. Sizemore's "vast knowledge" working on initiatives and his ability to speak on behalf of Democracy Direct to potential employees and petition circulators. Mr. Sizemore testified that Democracy Direct did not have the petition circulators to "finish the 2006 measure drives" and he provided those lists and contacts through IRM. According to Mr. Trickey, the \$70,000 was prorated and reported as an expense on the C&Es of all the political committees working on the measures in the 2006 election cycle. In early 2006, Mr. Sizemore also helped Mr. Trickey prepare contracts for Democracy Direct's signature gatherers. The \$30,000 was paid to Mr. Sizemore to draft initiatives to be circulated for sponsorship signatures for the 2008 election cycle.¹²

Mr. Trickey gave more than one version of the source of the \$100,000 paid to Mr. Sizemore through IRM in late 2005.¹³ He testified at one point that the entire amount was "profit" from the 2006 election cycle. At another point he acknowledged that the \$30,000 came from Loren Parks, to be used to get initiatives for the 2008 cycle ready to go. At a third time, Mr. Trickey said that Mr. Parks had sent Democracy Direct a check for \$30,000, but testified that the money was simply part of the funding for signature gathering for the 2006 election cycle, some of which was "left over". In this version, Mr. Trickey decided on his own to use the money to have Mr. Sizemore start on the next cycle, but it was not intended as a pass-through from Mr. Parks to Mr. Sizemore.

¹² In April 2007, Mr. Sizemore was deposed in a separate action he brought challenging the injunction on constitutional grounds. When asked whether he had "ever done any work for Democracy Direct for which you've been paid," his answer was "No, not that I recall." In *this* contempt hearing, Mr. Sizemore testified that when he read the transcript of the April 2007 deposition to prepare for his deposition in July 2008, he concluded the quoted answer was not accurate or complete and so notified his attorney. He never explained why he said it in the first place. Mr. Sizemore further testified in the April 2007 deposition that he was working two or three hours per month for Democracy Direct as an unpaid volunteer.

¹³ In more than one instance it appeared that Mr. Trickey was attempting to conform his testimony to what Mr. Sizemore had said in prior testimony. For example, in his deposition taken in June 2008, Mr. Trickey testified that Democracy Direct had never made any payments to Mr. Sizemore. That was consistent with Mr. Sizemore's testimony in 2007, but not his testimony in this contempt hearing.

Mr. Trickey's testimony on the source of the \$100,000 is contradicted by other evidence. The \$30,000 check to IRM says on its face "MEMO: FROM LOREN PARKS." Mr. Trickey testified that he was the one who directed that the language be included, but said it must have been a mistake, although he could not explain it. Democracy Direct had been in business less than four months when it made these payments to IRM. That was hardly enough time to have accumulated \$100,000 in profits when it had expenses and its practice was to take draws as signatures were gathered.¹⁴ In this instance, I credit Mr. Sizemore's testimony (which corresponds in part to one of Mr. Trickey's versions) that the \$30,000 was from Loren Parks, part of a larger payment to Democracy Direct and intended to be passed on to Mr. Sizemore to begin drafting his next set of ballot measures. It is highly likely that the \$70,000 was from Mr. Parks as well, and intended to be passed through Democracy Direct to Mr. Sizemore for his political activities.

Mr. Sizemore continued to use IRM for a few financial transactions. For example, in 2007 he used it as a conduit for some of the money he took from ATRF to purchase real property in his wife's name – discussed further below. Also, Mr. Sizemore used IRM to receive the money for polling or analysis of polling results for various proposed ballot measures in January 2007 and to receive money from Democracy Direct for some "petition processing" for which he also received a "late payment bonus" in August 2007. For the most part, however, in early 2006 Mr. Sizemore shifted the money path once again – this time through ATRF.

2. Sizemore Creates ATRF as a Vehicle for Payments from Parks and HCPA

Michaela Alexander was a friend of Mr. Sizemore from their college days in the 1970's. She said she reconnected with him in recent years and now considers him her best friend. She testified that in the last several months she has had some medical problems and is taking powerful medications. She said that those circumstances, together with the turmoil in her life at the time of relevant events, cause her to have some memory impairment. Whatever the reason, she did not provide very reliable testimony.

Ms. Alexander testified that it was her idea to create a website providing information so that taxpayers could see how their tax money was spent and how ballot measures would be implemented affecting those tax dollars. Because of Mr. Sizemore's work with the original OTU, Ms. Alexander thought she should approach him with this idea, so he could put it into action. Ms. Alexander testified that Mr. Sizemore knew how to start a foundation, including the required paperwork, knew how to raise money,

¹⁴ The close margin on which Democracy Direct operated is shown by an email from Mr. Trickey to Mr. Sizemore dated May 1, 2007, with the subject "Financial Situation", stating the need for immediate cash to continue operating as a business.

knew a person to do the website and knew how to do the accounting and bookkeeping. She entrusted all of those matters to him.

Although Mr. Sizemore concurred with this version of the origins of ATRF, I find that Ms. Alexander was, at best, mistaken. While she may have shared Mr. Sizemore's concerns about tax matters, Mr. Sizemore was already aware of an organization with a remarkably similar name and stated mission: Americans for Tax Reform Foundation, from which he had received \$33,750 in August of 2005. Ms. Alexander also testified that ATRF used Nevada Corporate Headquarters, Inc. to prepare the paperwork in connection with its formation because she had heard a lot of radio ads for their service. In fact, Mr. Sizemore had used Nevada Corporate Headquarters, Inc. to form IRM almost three months earlier. I find that the formation of ATRF was Mr. Sizemore's idea. His plan was to use it as a conduit for payments from Loren Parks (and later HCPA) to himself or for the benefit of his family.

Mr. Sizemore's original plan was that he would be executive director of ATRF. He drafted a four page "Employment Offer and Contract" setting out the terms of his proposed employment as executive director, including the scope of his duties and his compensation. He presented the document to Ms. Alexander who signed it on March 15, 2006, and returned it to him. Mr. Sizemore was having second thoughts about the arrangement, however. He decided that if he was salaried his pay would be subject to garnishment by the plaintiff unions and that the money would be better protected if ATRF paid the money to CBS Consulting. This change was agreeable to Ms. Alexander, who testified in her deposition that CBS Consulting "pretty much" was Mr. Sizemore. Both Mr. Sizemore and Ms. Alexander testified that the provisions of the "Employment Offer and Contract" otherwise still defined the terms of the relationship.

Several provisions in the agreement are relevant to this contempt proceeding. Mr. Sizemore's duties are described as:

- Mr. Sizemore was to raise funds for ATRF, open a checking account at Wells Fargo Bank, invest surplus funds not immediately needed in a secure, interest-bearing investment account, and make other "prudent, low risk investments of ATRF funds, upon approval of the President or ATRF or its Board of Directors";
- "As soon as it is reasonably possible to do so" Mr. Sizemore was to open an ATRF office in Klamath Falls;
- Mr. Sizemore was to "oversee the construction and design of a website" and contract and oversee the performance and publication of studies regarding the fiscal impact of ballot measures on government budgets and taxpayers, starting in the Western states "particularly in Oregon", and expand as resources allowed; and

- Mr. Sizemore was to “review or oversee the review of the official ballot titles and ballot language of tax related measures to insure that the descriptions appearing on the ballot are accurate and free of bias and as funding allows [] authorize court challenges to be filed as necessary in the appropriate venues, if ballot titles are not fair and accurate.”¹⁵

Another set of provisions described Mr. Sizemore’s compensation:

- A salary of \$84,000 per year, increased by 8% per year the first two years;
- Health insurance or the equivalent in cash;
- A car allowance and reimbursement of all ATRF-related travel and entertainment expenses;
- A “company car” purchased (for not more than \$30,000) and maintained with ATRF funds – not to be used by Mr. Sizemore for his personal use;
- Reimbursement of Mr. Sizemore’s moving expenses in relocating his family from Beaver Creek to Klamath Falls;
- A loan, not to exceed \$150,000, to remodel the Beaver Creek home and put it on the market;¹⁶
 - Part of the remodeling loan could be used to secure a new building lot in Klamath Falls, but Mr. Sizemore was to secure his own financing to build a new residence.
 - The loan, plus interest at 6% per annum, was to be repaid to ATRF from escrow upon the sale of the Beaver Creek property.
 - Mr. Sizemore was to raise the funds for ATRF to make the loan to himself.

¹⁵ This work on ballot titles was not mentioned in the application to the IRS for recognition as a §501(c)(3) organization. The words bear a striking resemblance to the words Mr. Sizemore used in his April 23, 2007, deposition. He said the work he was doing for CBS Consulting related to ballot initiatives currently circulating. He described that work as “helping with getting fair and honest and unbiased accurate ballot titles for measures.”

¹⁶ Mr. Sizemore represented in the agreement that the approximate value of the home was \$1.5 million.

- A "signing bonus" equal to 15% of the money Mr. Sizemore raised for ATRF during the first two years of the contract (minus the expenses of fundraising, such as advertising and mailing if necessary to ensure that fundraising expenses did not exceed 20% of revenue); and
- Severance of six month's salary and health benefits if ATRF terminated Mr. Sizemore's employment less than two years after he moved to Klamath Falls.

From the very beginning of ATRF's existence, Mr. Sizemore used it to pass money to himself and his family from Mr. Parks and used ATRF's bank accounts as his personal piggy bank. On February 1, 2006, Mr. Sizemore opened a checking account for ATRF with \$100. On February 15, 2006, Mr. Parks deposited \$39,200 into the account by cashier's check and on the same date Mr. Sizemore caused ATRF to write a cashier's check for \$46,800 to CBS Consulting.¹⁷ In this contempt hearing, Mr. Sizemore testified:

"Q: Matter of fact, you had made an agreement, hadn't you, with Loren Parks that he was going to make a contribution to ATRF, and that you were going to turn around and use it for family expenses; is that correct?"

A: That's correct."

Mr. Sizemore had no official role with ATRF as officer, director, employee or contractor at the time and he could not recall if he ever told Ms. Alexander that he had caused ATRF to pay CBS Consulting \$46,800 in February 2006.

Mr. Sizemore immediately applied to the IRS for ATRF to be recognized as a tax-exempt §501(c)(3) organization. (Some of the misrepresentations he made in connection with that application are set forth in Appendix A to this opinion.) Mr. Sizemore drafted a letter dated May 31, 2006, for Ms. Alexander to sign and send in response to a request from the IRS for more information about the application. In it he wrote:

"Some donors we have contacted regarding donations to help with start-up costs have asked that we provide them with a letter from the IRS regarding our nonprofit status. It will be very helpful to have that letter

¹⁷ While the records do not show where the money came from, Mr. Sizemore testified that the source was Mr. Parks. Nothing in the record explains the source of the other money necessary to make up the difference between Mr. Parks' initial donation and the first check to CBS Consulting.

sooner rather than later. Please let me know if there is any additional information you require before making your determination. We are anxious to get things up and running at full steam before the end of July, if that is possible."

Mr. Sizemore testified in the contempt hearing that it was Loren Parks who was asking for the letter from the IRS. Mr. Sizemore further testified that he showed the letter to Mr. Parks when he received it.

The next "donation" received by ATRF was a check for \$55,000 from the Parks Education Foundation signed by Loren Parks, dated June 8, 2006 and deposited in ATRF's account on June 9. If the minutes of the 2007 annual meeting are correct on this point, ATRF did not yet have its letter from the IRS confirming its nonprofit status at the time Mr. Parks sent the check. Those minutes say the IRS letter was dated June 15, 2006.

Perhaps Mr. Sizemore couldn't wait because money for ATRF and Mr. Sizemore was running low by that date. Mr. Sizemore had spent almost \$54,000 of ATRF's money by June 8, 2006, including \$46,800 to CBS Consulting, \$5,000 to the IRS for the Sizemores' personal taxes, \$1,208 in cash withdrawals and a check for \$307.02 that Mr. Sizemore wrote on ATRF's account to himself. The day the Parks Education Foundation check was deposited, Mr. Sizemore caused ATRF to issue a cashier's check for \$16,800 to CBS Consulting.

In the two months following the June deposit from the Parks Education Foundation, Mr. Sizemore spent more than \$47,000 of ATRF's money. In addition to the \$16,800 to CBS Consulting just mentioned, he spent \$15,000 for a down payment on a lot purchased in his wife's name, took \$6,900 in cash withdrawals and sent a cashier's check for \$8,000 to Democracy Direct. On August 11, 2006, Parks Medical Electronic Sales Inc. issued ATRF a check (signed by Loren Parks) for \$400,000. Five days later Mr. Parks paid \$200,000 to Democracy Direct for signature gathering on initiatives.

The Parks Education Foundation made another \$60,000 "donation" to ATRF on November 1, 2006 (five days before Mr. Parks paid \$291,500 to Democracy Direct for more signature gathering), and \$200,000 on May 23, 2007. One day after ATRF incurred three overdraft charges, the Parks Education Foundation made another deposit of \$19,000. On December 11, 2007, it deposited \$10,000 in ATRF's account. (On December 28, 2007, ATRF paid attorney James M. Brown \$10,000 for a legal challenge to the special session of the legislature called for January 2008.) The final Parks Foundation "donation" to ATRF was in the amount of \$130,000 deposited on January 21, 2008. As discussed below, this money went to pay the plaintiffs' judgment against Mr. Sizemore in an effort to extricate ATRF from the plaintiffs' fraudulent conveyances action.

At least by early 2006, Mr. Sizemore was also in discussions with Dick Wendt about Mr. Wendt's desire to support Mr. Sizemore, his family and his political work. When these discussions began is unclear. Mr. Courtney of HCPA testified that he was aware of these discussions in the spring or summer of 2006. Given the language about moving to Klamath Falls in the employment agreement that Mr. Sizemore proposed to Ms. Alexander, I conclude that Mr. Sizemore's discussions with Mr. Wendt began before mid-March 2006. Mr. Sizemore testified in his deposition that his family's move to Klamath Falls was prompted by his wife's desire for a sunnier climate. When asked in this contempt hearing why ATRF should pay for that relocation, Mr. Sizemore said "Because there was a party there that would – was willing to pay an amount to ATRF roughly equal to what my salary would have been as an executive director under this agreement, and that was in their best financial interests for me to be in Klamath Falls."

Mr. Courtney said that Mr. Wendt was interested in hiring Mr. Sizemore as an employee of HCPA and had encouraged him to move to Klamath Falls. Mr. Courtney was opposed to an employment relationship because some of the things Mr. Sizemore was doing were not consistent with the mission of HCPA. Mr. Wendt still wanted to find a way to provide financial support for Mr. Sizemore. Mr. Courtney discussed the matter with Mr. Sizemore, who recommended that HCPA pay him through ATRF. Mr. Sizemore told Mr. Courtney that ATRF was a nonprofit incorporated in Nevada and founded by Michaela Alexander. Mr. Sizemore led Mr. Courtney to believe that ATRF was active in many states. Mr. Sizemore never told Mr. Courtney that he was in complete control of ATRF.

Mr. Courtney was concerned that Mr. Sizemore not be an employee of HCPA and not be seen as involved with that organization. His concerns were shared by Jon Hobbs, another HCPA employee with whom he exchanged emails about the "Bill issue" or the "Sizemore issue." They agreed that there should be a "wall" between Mr. Sizemore and the American Institute for Full Employment (HCPA's nonprofit arm). Even more, it is apparent that they were concerned about creating deniability for HCPA, which would in fact be paying Mr. Sizemore \$8,850 per month, specifically calculated as the equivalent of the value of an annual salary of \$80,000 per year plus, benefits (with an additional gross up for taxes) and office rent¹⁸. Mr. Courtney wrote to Mr. Hobbs in an email dated August 10, 2006, and copied to two other HCPA employees:

"We should all be versed in the following, in case asked.

- Bill Sizemore is not employed by AIFE, HCPA or JELD-WEN
- Bill is an independent contractor with a nonprofit tax research organization outside of Oregon (Nevada)

¹⁸ Mr. Sizemore got a raise and the monthly payment increased to \$9,050 in May 2007.

- The Nevada company leases space from HCPA in HCPA's building, separate from AIFE, HCPA, etc. (the space is in Transitionsweat, sep. entrance and sep. space)
- Dick is not on the board of the Nevada company (and as a nonprofit, by definition, he is not an owner)
- There is more than one funder of the Nevada company and we do not know who they all are
- Bill lives in Klamath Falls
- Bill's work address is a P.O. box, his mail is diff from our and his phone is diff from ours"

On August 15, 2006, Mr. Courtney and Mr. Sizemore exchanged emails confirming the calculation and payment to be made. The emails also confirmed that the payments would be made monthly in advance and not, in Mr. Sizemore's words, "after delivery of services." Mr. Sizemore wrote two checks to himself from ATRF's account on August 17 and 22, 2006, totaling \$6,500. The first check from HCPA, in the amount of \$15,938, was deposited in ATRF's account on August 24, 2006. On August 25, 2006, Mr. Sizemore used \$20,171 of ATRF's funds to buy a Pontiac Grand Am. He turned that car over to his wife who used it as her personal vehicle and still had possession of it as of the date of the contempt hearing. From August 24, 2006, through March 31, 2008, HCPA gave \$151,507.78 to ATRF. Records and invoices are not complete, but it appears that at least \$132,788 of that amount was for Mr. Sizemore's "consulting services." HCPA reimbursed Mr. Sizemore for some expenses he incurred, but had no guidelines for that practice.

From September 3, 2006, (after the first deposit from HCPA) through February 9, 2008, ATRF paid CBS Consulting \$110,650 directly by check. In that same period ATRF paid an additional \$162,502.33 to William Sizemore or Cindy Sizemore and \$296,115.59 for items that were indisputably for the personal benefit of Mr. Sizemore and his family, including remodeling costs for their house in Beaver Creek and the acquisition of property in Klamath Falls, discussed later in more detail.¹⁹

During this time period Mr. Sizemore also caused ATRF to purchase a timeshare in Mexico. Mr. Sizemore testified in this contempt proceeding about the purpose of ATRF acquiring a timeshare:

"Because these kind of time shares you have to reserve generally six months to a year in advance, and this would force the board to actually

¹⁹ These expenditures, totaling more than \$569,000, do not include transactions at Fred Meyer, Albertson's and Safeway (over \$2,400), restaurants and convenience stores (more than \$5,000), gas stations (over \$6,300) or many other expenditures harder to categorize, the vast majority of which I find were for the personal benefit of Mr. Sizemore and his family and not for any legitimate purpose of ATRF.

set a board meeting date and everybody put it on their calendars and everybody get together so they had some more lengthy discussions of the organization and its future. That was the reason for doing so."

As of the date of the contempt hearing, the board had not used the timeshare, but Mr. Sizemore and his family had, without reimbursement to ATRF. According to the record before me, ATRF spent nearly \$11,000 in connection with the timeshare between February 2007 and June 2008.

In October 2006, ATRF made a \$200,000 investment in a real estate development in California. Ms. Alexander was an assistant to one of the principals in Rancon Group, the company acting as developer.

3. Sizemore is Paid by HCPA through IPI

As described in more detail elsewhere in this opinion, in his April 23, 2007, deposition Mr. Sizemore testified falsely about his relationship with ATRF and his knowledge of its operations. On October 2, 2007, Mr. Sizemore signed a declaration in which he swore that he had been offered the position of executive director of ATRF, but had declined to take it because he believed that "ATRF provides research that would be 'of value' to political committees supporting or opposing ballot measures." On November 6, 2007, plaintiffs printed out the content of ATRF's website, which contained limited contact information about who was involved in creating it.

On November 9, 2007, Ms. Alexander sent an email to Mr. Sizemore requesting ATRF's records so its tax return could be prepared. (There was no response or follow-up to this request.) In late 2007 or early 2008, plaintiffs brought a fraudulent transfer action challenging the arrangement of payments from ATRF to CBS Consulting to Mr. Sizemore. Plaintiffs allege that they attempted to contact ATRF and those efforts failed (which defendants admit), but there is no evidence of when those attempted contacts occurred.

Something was also creating concern for HCPA. On November 14, 2007, Mr. Courtney sent an email to Mr. Sizemore with the subject "CBS." He wrote: "If you are free tomorrow, I want to get a few details on Am Tax etc. to refresh my memory so I can brief Rod on our arrangement." Mr. Courtney also advised Mr. Sizemore that he had checked the Oregon Secretary of State's records concerning CBS and saw that it had been administratively dissolved. ATRF made no payments to CBS Consulting in November or December 2007, or in January 2008. During that period, ATRF made payments directly to Cindy Sizemore in amounts roughly comparable to what it had been paying CBS Consulting. As described above, Mr. Courtney had other email exchanges with another HCPA employee in November and December 2007 about how HCPA had characterized its payments to ATRF.

In January 2008 the shift of activity from ATRF accelerated. On January 14, 2008, Mr. Sizemore emailed Ms. Subramaniam, who was doing all of the work on ATRF's website, as described below. In that email Mr. Sizemore was giving advice to Ms. Subramaniam on how to get rid of people who were trying to get money from her. He wrote: "Tell them the unions are now garnishing my wages and I can no longer pay you. It is true that they are garnishing my wages, though they are not getting anything for their troubles." As previously noted, Mr. Sizemore formed IPI on January 16, 2008.

On January 22, 2008, Mr. Sizemore sent an email to Ms. Alexander and Mr. Rohrer, requesting their consent for three actions: (1) convening ATRF's annual board meeting; (2) having ATRF restructure the terms of the Sizemore loan and its repayment; and (3) extricating ATRF from a lawsuit the unions had brought. On the third subject, Mr. Sizemore wrote:

"Third, as you know, my political enemies have not let me perform m[y] duties with ATR in peace. They have sued my wife, me, my wife's company, and even named the foundation in the lawsuit. They are wanting all of ATR's records, most of which are none of their business. The amount they are seeking in the lawsuit is approximately \$130,000. My attorney advises me that the best way to make this lawsuit go away is to bond the debt to the two teachers unions that initiated the lawsuit. I have found a donor that will donate the money for the bond with the stipulation that the money will be returned if and only if the appeal of the case is successful.

With the approval of you and the board, we will accept the donation, bond the lawsuit, and get ATRF extricated from the lawsuit."

Ms. Alexander and Mr. Rohrer both indicated their approval for all three of the proposals. The Parks Foundation already had deposited the \$130,000 in ATRF's account the day before Mr. Sizemore sent his email. ATRF paid \$133,250 by cashier's check to the trust account of defendants' attorney, Mr. Byrne, on February 28, 2008. According to the testimony in the contempt hearing, this money was used to pay the judgment for attorney fees awarded against Mr. Sizemore and in favor of the plaintiffs in Contempt #1

Ms. Alexander resigned as president of ATRF on or about January 23, 2008, although she agreed to stay on as a member of the board.²⁰ Mr. Sizemore attempted

²⁰ Ms. Alexander wrote to Mr. Sizemore: "I was originally removed as of November, but you needed me one more time. So, I would like very much to consider my time as completed." This statement was never explained, although it may relate to Mr. Sizemore's false story about an offer of employment by ATRF in his action to have the injunction set aside.

to allay Ms. Alexander's concerns about potential personal liability for actions by ATRF and the fact that her name was on the internet in connection with ATRF. He wrote to her:

"ATRF is not doing anything illegal, so you have nothing to worry about. The unions are after me, not ATRF. They have not even been served in the lawsuit. A donor has put up the money to cover what the unions are demanding from me, but we do not intend to give it to them unless we have to and I don't think we will."

Mr. Sizemore continued:

"I do not see you as having any vulnerability to worry about. If there was vulnerability, it would only be financial and the foundation would cover that and has the money to do so. So don't worry about any of this."

On February 15, 2008, plaintiffs' attorney, Mr. Hartman, wrote a "to whom it may concern" letter to ATRF at the address listed in ATRF's corporate filings in Nevada. The letter asked for ATRF's Form 990s, exempt status application materials and "notice of status under section 527(I)." Mr. Rohrer responded to that letter on April 14, 2008. He wrote that the accountant ATRF had been working with had died unexpectedly, but he expected the Form 990 to be ready for filing within a few days. He also wrote "we have completed our work in Oregon and are now focusing on other states."

ATRF held its annual meeting in Klamath Falls two days later, on February 17, 2008. There was clearly an effort to cover up and clean up, since plaintiffs were inquiring too closely into ATRF. Mr. Sizemore began writing the minutes from the 2006 and 2007 ATRF annual meetings. The 2008 minutes recite that "the minutes of the previous minutes [sic] were read and approved." Mr. Rohrer was elected president. He agreed to find an office in Nevada for ATRF. The board ratified the Sizemore loan restructure and purported repayment by means of the conveyance of real property. It also ratified Mr. Sizemore's purchase of a timeshare.

Mr. Sizemore wrote in the 2008 minutes "the accountant who had been working on ATRF fiscal impact studies and was going to help with our tax returns had unexpectedly passed away. The board agreed that getting tax returns filed was now a top priority and that the 2006 return needed to be filed right away and that the 2007 return needed to be filed on time. Bill said he would help find a new accountant to work on fiscal impact studies." At the end of the meeting, Mr. Sizemore's mother withdrew from the board and his sister was added as a member.

Mr. Sizemore also purported to withdraw from ATRF. He wrote in the minutes:

"The board discussed Bill Sizemore's personal political efforts in Oregon and decided that he should not work further with the foundation, at least during 2008, because his efforts would be so public and so political, which would not be in keeping with ATRF's policies. Bill agreed and the arrangement with CBS Consulting was terminated. Bill offered to continue to work on the website as a volunteer and the board agreed to accept his offer due to his relationship with the company entering data into the website."

I find that in making that statement in the minutes Mr. Sizemore was trying to protect CBS Consulting and his stream of income, not ATRF. It made no sense to say he would not "work further with the foundation" and at the same time that he would "continue to work on the website as a volunteer." In truth, his efforts had already been very political and oftentimes very public. He had filed 46 initiative measures, worked on ballot title challenges and raised money for signature gathering, among other things.

Mr. Sizemore was anxious to keep the records of ATRF out of plaintiffs' hands. He turned them over to Mr. Rohrer and drove with Mr. Rohrer to take the records to Nevada. When he was asked to produce ATRF's records in this contempt proceeding, Mr. Sizemore took the position that he did not have them in his custody or control. When this court required him to request them from whoever did possess them, he responded that he had done so but that Mr. Rohrer declined to turn them over.²¹ They were eventually disclosed.

This was a ruse. Mr. Sizemore remained in control of ATRF. He kept the key to ATRF's safe deposit box. Except for a brief period and one check written by Mr. Rohrer, Mr. Sizemore retained control of ATRF's checkbook. He still had ATRF's debit card, and continued to use it for personal and family expenses and his wife kept the car purchased with ATRF's money. Mr. Sizemore's intent with respect to ATRF, and his continuing control over it, is more accurately reflected in his email to Ms. Alexander on February 25, 2008, eight days after the annual meeting:

"We had our annual board meeting this week and formally accepted your resignation as of the day your letter was addressed. We elected a new president and secretary/treasurer. We have room for one more voting director on the board. This person would have no responsibilities, except to attend the annual board meeting either in person or by phone. We

²¹ The sham nature of Mr. Rohrer's board presidency was revealed by his own testimony. He had seen neither ATRF's articles of incorporation nor its bylaws until his deposition in this contempt matter was taken in the summer of 2008. At the time of his deposition, Mr. Rohrer had no idea how much money ATRF had raised.

plan to have the next board meeting in Cabos San Lucas [sic] or Puerta Viarta [sic] in Mexico or maybe in Hawaii, all expenses paid by the foundation. It would be great if you could be a member of the board and attend.

. . . I thought it would be fun to get together with the rest of us sometime and visit at some exotic place. We might even do it in Europe the next year.

The ATRF website will expand about 10 times in size over the next few months with the people I have working on gathering and entering data. It will contain a wealth of information. I have several people working on gathering and entering info.

* * *

. . . Other than the board meetings every year, I would email you updates on our activities from time to time, so you would know what was going on, but those would be like once every two or three months and maybe a paragraph long. I am continuing as volunteer executive director of ATRF, but drawing a salary from another organization where I am now a paid executive. . . ."

In February 2008, Mr. Sizemore began sending invoices to HCPA from IPI, instead of from ATRF. Mr. Courtney suggested that IPI be a §501(c)(4) organization, and HCPA paid the fees of Thomas Romig, an accountant, to prepare the paperwork for that filing with the IRS. As noted previously, that paperwork was prepared by the accountant and Mr. Sizemore picked it up in March 2008, but he never filed it.

Mr. Sizemore invoiced HCPA for consulting services by IPI in March, April, May and June of 2008. For July, August and September 2008, the invoices to HCPA were from CBS Consulting – always in the same amount, \$9,050.

D. The "Loans" from ATRF and the Purchase of Property in Klamath Falls

One of the more difficult transactions to untangle involves Mr. Sizemore's use of ATRF funds to purchase property in Klamath Falls, and later use of some of that property to "repay" ATRF's loan to him and his family. As previously described, ATRF's agreement with Mr. Sizemore called for payment of relocation expenses and a loan of not more than \$150,000 for the remodeling of the Sizemore home in Beaver Creek so that it could be sold. Some of the loan could be used to acquire a lot in Klamath Falls for a new home to be built. The loan, plus interest at 6%, was to be repaid from the

proceeds of the sale of the Beaver Creek house.²² Mr. Sizemore had stated that the value of the Beaver Creek property was \$1.5 million.

Plaintiffs contend that the Sizemores borrowed at least \$235,000 from ATRF. Mr. Sizemore himself used that figure in his January 22, 2008, email to Ms. Alexander. In his testimony in this contempt hearing he said that the amount was actually \$15,000 to \$20,000 less, but he did not explain the discrepancy. In the email Mr. Sizemore wrote:

"I was to repay the loan after the sale of the Portland property. Given the state of the real estate market at the time, the sale of the Portland property did not go well. We borrowed money on a home equity line of credit to buy a building lot in Klamath Falls and when the Portland property did not sell for anywhere near what we expected, we were suddenly not able to come up with the cash to repay for the extensive remodeling that we did and the money we borrowed to buy the building lot.

The amount owed to ATR Foundation is \$235,000. We own a 10-acre building lot in a gated community overlooking a golf course in Klamath Falls. We estimate its value, based on professional opinions and familiarity with the local market, as approximately \$300,000. Given the state of the real estate market, however, we have listed it for only \$269,000. I have had my wife sign the lot over to the foundation as security for repayment of the loan and recorded the transfer. I would like for the board to approve the transfer as payment for the loan. We can continue to market the lot and sell it this Spring or Summer for what should be for the foundation a reasonable return on investment."

The minutes of the February annual meeting give a slightly different version of the arrangement:

"Bill Sizemore informed the board that he had sold his family property in Beavercreek at a very discounted price. The board formally approved an earlier memo accepting Sizemore owned real estate as payment of the relocation loan with the stipulation that the Sizemores would repay the difference, if the property sold for less than the stated amount or would

²² The agreement did not call for ATRF to pay rent for the Sizemores in Klamath Falls, but Mr. Sizemore apparently deemed this to be a cost of relocation. ATRF paid over \$43,000 in house rent for the Sizemores between September 7, 2006, and February 5, 2008.

receive a tax deductible receipt if the property sold for more than the stated amount.”

Documents in Mr. Sizemore’s own handwriting and his testimony show that he purchased two lots in Klamath Falls. Both were in his wife’s name. The lot that was transferred to ATRF in “repayment” of the loan had a purchase price of \$200,000. Twelve thousand dollars of that purchase price was paid by ATRF.

Mr. Sizemore did not explain why a lot purchased for \$200,000 in mid-2006 would be worth \$300,000 (or even \$269,000) in early 2008 “given the state of the real estate market.” Nor did he explain how he could repay a \$235,000 loan, plus interest, with a lot purchased for \$200,000, when \$12,000 of the purchase price was ATRF’s money to begin with. The ambiguity about whether the Sizemores gave ATRF only a security interest in the lot, deeded it outright in satisfaction of the debt or made some other arrangement is not resolved in the record in this contempt hearing.

In summary, the Sizemores borrowed money from ATRF for things having nothing to do with the mission of ATRF and for things which were not permitted under the agreement between ATRF and Mr. Sizemore. The amount of the loan exceeded what the agreement allowed. Mr. Sizemore then “repaid” ATRF’s \$235,000 loan by conveying to it a lot that was purchased for \$200,000, of which \$12,000 was ATRF’s own money.

E. The Never-Filed Form 990s and CT-12s

The curious history of ATRF’s Form 990 for 2006 is also very telling as to Mr. Sizemore’s motives and intent to evade detection of his violations of the injunction. As previously noted, plaintiffs’ poking around not only caused Mr. Sizemore to shift his money path away from ATRF, but stirred up activity concerning ATRF’s tax filings. I will repeat some of the significant timeline events for a clearer understanding of this issue. ATRF’s Form 990 for 2006 was due May 15, 2007.²³ The first indication in the record that anyone was concerned about ATRF’s 2006 Form 990 was an email from Ms. Alexander to Mr. Sizemore. She wrote: “Please send to me immediately all of the bank statements and the check register and invoices, etc. so the accountant can prepare the foundation’s tax return.” The email is dated November 9, 2007, three days after plaintiffs printed out the contents of ATRF’s website and apparently began making inquiries. There is no evidence that Mr. Sizemore ever responded to Ms. Alexander’s request. I find that this was not a genuine effort to see that ATRF’s tax returns were prepared.

²³ An extension could have been obtained to November 15, 2007, but there is no evidence ATRF sought such an extension.

The next mention of ATRF's Form 990 was in an email from Mr. Sizemore to Ms. Alexander dated January 29, 2008, (other subjects in this email are described above). Mr. Sizemore wrote: "My only concern for ATRF is that they need to file tax returns. They do not pay taxes, but have to file an informational return. I will work on getting that done before March." Plaintiffs' attorney requested the Form 990, among other documents in his February 15, 2008, "to whom it may concern" letter to ATRF. According to the minutes of the February 17, 2008, annual meeting written by Mr. Sizemore: "The board agreed that getting tax returns filed was now a top priority and that the 2006 return needed to be filed right away and that the 2007 return needed to be filed on time."

Mr. Sizemore wrote to Mr. Rohrer in an email dated February 26, 2008: "I am working on the minutes of our last meeting and formalizing the minutes from the year before. I may break away from that to get the tax return for last year prepared so we will be up to date, at least until the May 15th one is due. Fear not. I will get it done."²⁴

On April 14, 2008, Mr. Rohrer signed a letter to plaintiffs' attorney, responding to the latter's February 15, 2008 "to whom it may concern" letter requesting ATRF documents. Mr. Rohrer testified that he did not write the letter and did not know who did. He did not remember seeing it before his deposition in this contempt matter, but testified that he signed it. The style and language is similar to that in the minutes of the 2007 annual meeting minutes and other documents authored by Mr. Sizemore. I find that Mr. Sizemore wrote the letter for Mr. Rohrer's signature. With regard to the tax returns, the letter says:

"Our 2006 form 990 has not yet been filed with the IRS for our first year of operation, which was 2006. We will forward you a copy of the return after it has been filed with the IRS. We have had several problems getting this return filed. The accountant we were working with died unexpectedly. Our former president became quite ill and was not able to attend to matters with her usual zeal and competence. I was elected president and have assumed her duties and can tell you that we expect the 2006 form 990 to be ready for filing within a few days."

Sometime in March 2008 Mr. Sizemore contacted Thomas Romig, the CPA previously mentioned in connection with the preparation of IPI's application for recognition as a §501(c)(4) organization. Mr. Sizemore asked Mr. Romig to prepare ATRF's Form 990 at about the same time he was working on the IPI paperwork. The Form 990 preparation was also at HCPA's expense. Mr. Romig's only sources of information about ATRF, its finances and its activities were Mr. Sizemore and the internet. Mr. Sizemore gave Mr. Romig two pages of handwritten notes about ATRF's

²⁴ The minutes of the 2007 annual meeting were supposedly "read and approved" at the 2008 annual meeting on February 17, 2008 – nine days before Mr. Sizemore's email.

finances. Mr. Romig looked at ATRF's website to get information about its purpose and how it spent its money.

In the notes he gave to Mr. Romig, Mr. Sizemore described 2006 contributions of \$600,000 to ATRF from the Parks Foundation as a "special one-time start up endowment." He also listed \$55,087.30 as a contribution from HCPA. Mr. Sizemore described ATRF's "program services" as "begin building a national database and website of all state tax systems" at a cost of \$70,695, and "fiscal impact studies of Tabor measure and Measure 41 (Oregon)" for \$17,000. He listed fundraising expenses of \$21,888.35, rent, utilities, office furniture and equipment, office supplies, postage, auto insurance, legal expenses for start-up, bank fees and "conference, travel, entertainment" (\$11,756.55). Mr. Sizemore also listed a "loan to executive to relocate part of recruitment package repaid following year after house sold" in the amount of \$116,444.34. He listed a real estate investment in the amount of \$220,000 and a Wells Fargo Investment Account with \$123,160.61.

Mr. Romig prepared a draft Form 990 and sent it to Mr. Sizemore for corrections. The draft did not include information about Mr. Romig as the preparer and Mr. Romig did not sign it as such. Mr. Sizemore responded with several requested changes, among them:

- Changing the address of ATRF from Klamath Falls, Oregon to Reno, Nevada;
- Expanding the description of program services;
- Adding his name and that of "Gene Foster" to those who were officers or directors in 2006, and deleting D. Anderson;
- Stating that the books are in care of Mr. Rohrer instead of Mr. Sizemore;
- Having the form signed by Mr. Rohrer instead of Mr. Sizemore;
- Adjusting the interest received figure slightly;
- Listing CBS Consulting as a subcontractor paid \$71,899;
 - Mr. Sizemore wrote that the company is owned by his wife and "we performed and oversaw research for the data base and website and the fiscal impact studies and did fundraising."
- Answering "yes" to questions about lending of money and furnishing of goods, services or facilities by ATRF because ATRF had lent the Sizemores money to relocate and paid the rent on their home in Klamath Falls;

- Mr. Sizemore wrote: "the amount was \$14,489.80 and was declared by us as income on our personal return for 2006."
- Changing the addresses of the donors – Mr. Romig had listed the Parks Foundation with an Aloha, Oregon address and Hire Calling Public Affairs with a Klamath Falls, Oregon address;
 - Mr. Sizemore wrote: "Parks foundation is in Nevada and Hire Calling Public Affairs money all came out of Utah. The addresses are important if I am going to claim that we did not raise money in Oregon for 2006."
- Stating that the loan was repaid in 2007 "as agreed 'after Sizemores' former residence in Beavercreek was sold.'"; and
- Taking out the office furniture as a separate item and not listing it as a depreciated item.
 - Mr. Sizemore wrote: "Can we not add that in as something else? I want to maintain that we did not have an office in Oregon in 2006. Indeed, we moved into the office in Klamath Falls in Feb. of 2007 and the organization paid rent for the first time then."

Many of those statements by Mr. Sizemore were false, and he knew it. He asked that the changes be made because he knew plaintiffs would obtain the Form 990 and he did not want them to know the truth, including that he had violated the injunction. At least some of the changes that would appear to inculpate, rather than exculpate him (such as his early role as an officer), were necessary only because he knew the plaintiffs had seen the records of ATRF's incorporation publicly available from the Nevada Secretary of State.

Mr. Sizemore still controlled ATRF and was operating it in Klamath Falls. ATRF's bank records show that it paid CBS Consulting \$94,450 in 2006 (not \$71,889). The Sizemores had not filed a tax return for 2006, let alone declared the house rent paid by ATRF as income on that return. The Sizemores did not repay the loan from ATRF in 2007 – it was not "repaid" until the phony restructuring of the loan described above occurred in early 2008. Office furniture was just that and it was used in an office for ATRF in Oregon.

The issue of ATRF having an office in Klamath Falls warrants further elaboration. Mr. Sizemore wrote into his agreement with ATRF in the first months of ATRF's existence "As soon as it is reasonably possible to do so, Sizemore shall open, furnish and equip an ATRF office in Klamath Falls, open a post office box, and have phone and computer lines installed as needed." In 2006, office rent was explicitly included in the

calculation of the amount HCPA was paying to ATRF. Mr. Courtney wrote in an email on August 10, 2006 that "the Nevada company leases space from HCPA in HCPA's building." Mr. Courtney testified that "the Nevada company" was ATRF.

Mr. Sizemore wanted to hide the existence of ATRF's office in Oregon, however. He wrote to Mr. Courtney on August 18, 2006, when HCPA's financial arrangements with ATRF were being finalized:

"I think we need to proceed with payment to Amer Tax Res as planned. However, I think it would be better to rent the office space where I work, not to them, but to CBS Consulting, my wife's company. That way, no one can claim that the foundation is paying for the rent on the office where Bill Sizemore writes ballot measures, etc. It is legal for me to do all of the things I do under the umbrella of a foundation, but it would avoid questions, if the foundation was not paying all of the rent on the space where I work.

The only change necessitated by this suggestion would be to make the lease out in the name of a company, CBS Consulting, rather than the foundation. I will do enough foundation work for my wife's company to justify the money her company is paid. I am preparing to set up a national website to publish fiscal impact studies on the affect of ballot measures on state budgets and will continue to file comments on an[d] monitor ballot titles to insure accuracy and freedom from overt bias."

In preparing the 2006 Form 990, Mr. Sizemore wished to contend that the Parks Foundation was in Nevada because that was where Mr. Parks was located – and indeed there is a Las Vegas address on the checks to ATRF. On the other hand, however, he wanted to contend that the money from HCPA "all came out of Utah" solely because that was where SOS Staffing cut the checks, notwithstanding that HCPA was located in Oregon. Furthermore, if the source of the checks were the determining factor, that would place the Parks Foundation back in Oregon -- at least two of the checks from the Parks Foundation were drawn on a bank in Aloha, Oregon.

Mr. Romig made the changes to the Form 990 that Mr. Sizemore had requested. (He recharacterized the office furniture as "supplies.") On the final version of the form Mr. Romig listed himself as preparer and signed as such. He mailed the form to Mr. Sizemore on April 17, 2008. Instead of proceeding with the "corrected" form, on August 15, 2008, Mr. Rohrer signed the *draft* Form 990 that Mr. Romig had prepared in March. No Form 990 was ever filed.

Mr. Romig discussed with Mr. Sizemore whether ATRF would need to file a CT-12 in Oregon for 2006. As shown by Mr. Sizemore's comments in his requested "corrections," he did not want to do so. He lied to Mr. Romig about ATRF's actual

activities in Oregon in order to obtain the advice that no CT-12 was required. If Mr. Sizemore had been truthful with Mr. Romig about ATRF's activities, Mr. Romig would have told him that a CT-12 was required for 2006. Defendants have acknowledged in this contempt proceeding that ATRF should have filed a CT-12 for 2006.

F. What was ATRF Doing?

Defendants contend that ATRF was a legitimate charity, doing non-political educational work. They further contend that Mr. Sizemore was appropriately compensated by ATRF for his work on its behalf raising money and guiding the development of the website. Plaintiffs argue that ATRF did so little in furtherance of its stated mission that one must conclude that Mr. Sizemore was actually being paid to do something else, namely work in support of his initiatives. Under plaintiffs' theory, ATRF's payments to Mr. Sizemore, whether through CBS Consulting or any other entity, amounted to in-kind contributions to the political committees (whether chief petitioner committees or measure committees) working for the passage of Mr. Sizemore's initiatives.

What did ATRF do during the first two years of its existence? Did it carry out its purported mission to "research and publish the fiscal impact of real and proposed ballot measures"?²⁵ The only evidence of what ATRF accomplished is reflected in the printouts of the content of ATRF's website as of November 6, 2007 and January 3, 2008. The earlier printout is the most probative because it reflects what ATRF was doing before the flurry of activity after plaintiffs started investigating it. Furthermore, most of the content added by January 3, 2008, concerns initiative *processes* in various states (not tax systems or the fiscal impact of ballot measures) and it is undisguised cut and paste – most of it from the Initiative and Referendum Institute at the University of Southern California School of Law.

Twenty-two months after ATRF was formed, and after it had spent over \$1,000,000, its website contained almost no analysis of the fiscal impact of any real or proposed ballot measure. The website contained quite a bit of information about Oregon's tax structure and its history, but provides a summary analysis of only one ballot measure by name or number – Measure 41, which was on the ballot in November 2006. That analysis, if it is not drawn completely from materials created in connection with the measure campaign, could have taken no more than a few hours to prepare. In addition, one chart, accessible through several pages, describes what the impact on tax

²⁵ Mr. Sizemore testified in this contempt hearing that the mission of ATRF changed when HCPA began paying him through ATRF and CBS Consulting and he began doing "think tank type work" for them. This is inconsistent with his testimony in April 2007, as discussed below. Tim Rohrer, who became president of ATRF in the spring of 2008, testified that the primary purpose of ATRF was to develop its website.

revenue would be of numerous changes to the tax system. One of the changes listed is making federal taxes fully deductible on Oregon tax returns, the subject of one of Mr. Sizemore's initiatives in the 2008 election cycle (it was also the subject of an earlier initiative by Mr. Sizemore that was rejected by the voters). There is no *detailed* analysis of the effects of any of the measures for the 2008 election cycle.

Denise Subramaniam began doing work for ATRF in October 2006. At that time ATRF had a website that Mr. Sizemore had put up from free build-a-website-yourself material available on the internet. No party presented evidence of the content of the website before October 2006, but the implication from both Mr. Sizemore's and Ms. Subramaniam's testimony was that there was very little content. It had so little value that Ms. Subramaniam took the original website down and started from scratch.

Ms. Subramaniam is a software engineer. She has worked in the software industry for 15 years. Ms. Subramaniam has known Mr. Sizemore for approximately four years. After a health crisis during which she was unemployed, she was having financial difficulty and saw her car insurance premiums double even though her driving record was perfect. She learned of Mr. Sizemore's Bans Insurance Discrimination initiative, contacted him and asked if she could put up a website in support of that measure. Ms. Subramaniam also put up a website for Mr. Sizemore personally and did some work for Mr. Sizemore's organization Oregon Homeowners Association.

By the time Ms. Subramaniam started, ATRF had paid Mr. Sizemore (or for his benefit or the benefit of his family) more than \$165,000 for work that had no value. In contrast, while Ms. Subramaniam worked in excess of 2,000 hours for ATRF and her normal billing rate is \$75 per hour, she received less than \$15,000 from ATRF through the end of 2007.

Although she was often struggling financially, Ms. Subramaniam testified that she did not ask for more money from ATRF and would not have accepted it if Mr. Sizemore had offered. She gave two reasons: (1) she didn't think she had made as much progress on the website as she should have; and (2) the software she was designing for ATRF would be useful for other clients from whom she could ultimately recoup some of the development costs. The software design work by Ms. Subramaniam allows the website user to link to navigate around and link to articles and their sources. I have no doubt that she put substantial time into it. The parties debate the value of the work, but neither side presented expert testimony about it.

The actual value of Ms. Subramaniam's work is largely irrelevant, however. What is relevant in this contempt proceeding is the value of *Mr. Sizemore's* work. In evaluating what efforts ATRF made to carry out its stated purpose and the value of Mr. Sizemore's efforts on behalf of ATRF, I have considered the original website he created, the time he spent recruiting Ms. Subramaniam and supervising her efforts and the efforts of others, what she was paid, her description of her work and what she

produced. I find that the amount of work done by Mr. Sizemore in furtherance of the legitimate work of ATRF was negligible and did not justify a fraction of the money Mr. Sizemore caused ATRF to pay him or pay to benefit his family. The website was a fig leaf.

Mr. Sizemore's own words tell the story. In an undated email to "garcono@consumer.org" he wrote:

"ATRF website up. We are keeping a low profile for the time being, but have launched the website for American Tax Research Foundation. It can be found at www.americantaxresearch.com <<http://www.americantaxresearch.com/>>. It is nothing special, just something I put together to put out some brief studies of the fiscal impact of two Oregon measures. Don't talk it up yet, okay?"

Why, then, was ATRF paying Mr. Sizemore such large sums of money? The inescapable conclusion is that ATRF was a sham charitable organization set up to pass money provided by Loren Parks and Dick Wendt to compensate Mr. Sizemore for his work on initiative measures. The arrangement potentially provided:

- a tax exemption for the donors, especially Mr. Parks and his organizations;
- a mechanism for Loren Parks and the Parks Foundation to violate the injunction against them in *State of Oregon v. Parks Foundation, et al.*, Marion County Circuit Court No. 00017224 without easy detection;
- a cover for Dick Wendt's support for Mr. Sizemore's initiative work without employing him in his own organization and providing deniability of the very close relationship between HCPA and Mr. Sizemore;
- a means for Mr. Sizemore to evade his creditors, especially the plaintiffs in this case; and
- a mechanism for Mr. Sizemore and ATRF as a successor organization to OTU-EF to violate the injunction in this case by transferring assets without easy detection.

While only the last purpose is at issue in this contempt proceeding, the others are relevant to show a pattern of behavior, shed light on Mr. Sizemore's motive and intent, and illuminate what remedial sanctions may be appropriate and necessary.

To recap: before the formation of ATRF, Loren Parks gave \$100,000 to Mr. Sizemore through Democracy Direct in November and December 2005. The purpose was to support Mr. Sizemore so he could write initiatives. When ATRF was

formed, Mr. Parks channeled his support for Mr. Sizemore through that entity. As soon as ATRF had obtained its letter from the IRS recognizing its tax-exempt status as a §501(c)(3) organization, Mr. Sizemore provided that letter to Mr. Parks. The next money sent to ATRF was \$55,000 from the Loren Parks Educational Foundation. Over the next nineteen months, Mr. Parks sent an additional \$419,000 to ATRF through his foundation plus \$400,000 from a for-profit company. In total, Mr. Parks and his organizations sent \$913,200 to ATRF between February 15, 2006, and January 21, 2008. During the same time period, Mr. Parks also paid \$491,500 to Democracy Direct for signature gathering.

Mr. Parks paid \$25,000 directly to Mr. Sizemore on July 31, 2008, -- six days after many of the provisions in the injunction expired by their terms. The money was for Mr. Sizemore to write initiatives for the 2010 election cycle. There is no evidence in the record before me that Mr. Parks or any of his organizations made any payments to ATRF thereafter. Defendants objected to this evidence at the hearing on the grounds that actions after the expiration of the injunction are irrelevant. As I said when I overruled that objection, the pattern of transactions between Mr. Parks and Mr. Sizemore are relevant to show their intent during the time the injunction was in effect. That pattern shows that Mr. Parks was not supporting the stated purpose of ATRF, but that he intended to provide financial support for Mr. Sizemore so he could *and would* continue his work on numerous initiative measures.

The pattern with HCPA's payments is similar, with the notable exception that HCPA did not pretend for long that its transfers to ATRF were charitable contributions. The nature of the payments and what HCPA expected to receive for them was the subject of conflicting evidence. Mr. Courtney first testified in the contempt hearing that the money HCPA paid to ATRF was a donation or contribution for which nothing was expected in return. That testimony was directly contradicted by an email exchange Mr. Courtney had with another HCPA employee. On November 20, 2007, Mr. Courtney asked "Can you check with SOS to find out exactly how we are accounting for payments to American Tax Research Foundation (the company Bill has worked for)?" The response on December 4, 2007 was: "It's a business expense and is paid directly to American Tax Research. Nothing directly to him or CBS." On December 5, 2007, Mr. Courtney wrote for confirmation: "Does that mean we have not been treating it as contribution to a nonprofit, but instead as a business expense?" He received his answer the same day: "When I asked Jamie about it, he said it is listed as a business expense. He didn't say anything about a contribution to a nonprofit." Mr. Courtney did not explain this inconsistency.

Mr. Sizemore testified that he was being hired -- through CBS Consulting -- to provide consulting services to HCPA. Mr. Courtney, however, continued his attempt to distance himself and HCPA from Mr. Sizemore. Mr. Courtney first testified in the contempt hearing that HCPA had no expectation of consulting services from Mr. Sizemore, other than what he had been doing all along for HCPA (before HCPA

began paying him the equivalent of a salary of \$80,000 per year or providing him office space). That testimony was not credible. I also find not credible Mr. Courtney's testimony that HCPA expected only that Mr. Sizemore would "continue to do good public policy work in Oregon to the benefit of all Oregonians."

Throughout his testimony Mr. Courtney was exquisitely evasive.²⁶ Ultimately, however, he acknowledged that if Mr. Sizemore had a change of heart and started working to defeat the measures he had written and placed on the ballot, HCPA would probably not continue to pay him \$9,050 per month. After being confronted by the court about his evasions, Mr. Courtney testified:

"When this litigation began, I made a very purposeful effort not to give Mr. Sizemore any suggestions about any work or have any expectations of him. But it's absolutely true, if he were not working on these types of issues we would not consider – if he were working on things that were counter to these types of issues, we would consider those not to be in good public policy."

Mr. Hartman then asked:

"So the intent from the outset of Hire Calling Public Affairs making payments first to ATRF then to Initiative Preservation Institute and finally to CBS Consulting was to promote the kind of public policy which are part of these particular ballot measures, which are pending for the 2008 election?"

Mr. Courtney answered: "I would say that is accurate if I understood your question."

The evidence from HCPA's records, including meeting agendas and emails, reveal the story Mr. Courtney was unwilling to tell. Mr. Sizemore's agenda items were heavily dominated by the progress of his initiatives, polling about them, the status of the budgets to get them on the ballot, raising money to get them on the ballot and approved by the voters, fighting about ballot titles and working on campaign pieces to support them. Although Mr. Sizemore certainly did work on projects not directly related to his initiatives, such work would have taken only a fraction of his time compared to the initiatives.

²⁶ I cannot do justice to his ability not to answer questions without quoting his testimony in such detail that it would unduly lengthen this already-long opinion. It was the kind of obfuscation that lamentably gives lawyers such a bad reputation among many people.

Mr. Sizemore's explanation that he was doing work on his initiatives solely as a volunteer and spending the majority of his time on other projects and policy issues is not credible. It is worth repeating here the large number of initiatives Mr. Sizemore authored. The record shows that he wrote and filed 46 in the 2008 election cycle, twelve of which were approved to circulate for signatures and six of which made it to the ballot. In the earlier part of the period covered by this contempt proceeding (after February 12, 2006), Mr. Sizemore was working hard on measures he had on the 2006 ballot. Mr. Sizemore not only drafted the initiatives and arranged to get the necessary signatures for initial approval, he was intimately involved in the ballot title process, which involved drafting comments to the Oregon Attorney General and often challenges to the Oregon Supreme Court. He directed polling to see which measures or which ballot titles were most likely to succeed. He closely advised Democracy Direct on the signature gathering. He raised all the money for the signature gathering. He worked on strategy for the campaigns. He caused ATRF to spend its money on attorney fees for ballot title challenges.

What Mr. Sizemore was doing (and was being paid to do) is also reflected in a letter he wrote to Mr. Wendt on June 27, 2007. In the letter Mr. Sizemore was trying to convince Mr. Wendt to back his Initiative 78, the subject of which was "Requires Legislative Supermajority to Declare Emergency." Mr. Sizemore wrote:

"We have our choice to do nothing or respond while we have (1) time to act, (2) a measure ready to roll, and (3) someone willing to pay half the cost. You recruited me to deal with such matters and give you sound advice. Well, that's what I'm doing. I advise you to reconsider and commit the \$[redacted] we need to get this measure on the ballot. It's that important.

In all honesty, I would rather you withdrew your support for the measure that makes it bribery for unions to donate to someone they will bargain with and spend that money dealing with the emergency clause issue. It's even cheaper. Going with the emergency clause measure would cost a \$[redacted] less than the \$[redacted] you committed for the bribery measure.

Just so you have the background in front of you, we have one union dues measure already in the works. It is a very strong one and the signature drive is almost finished. We can concentrate on passing that one."²⁷

²⁷ Ultimately, HCPA did provide all of the funding for signature gathering for Initiative 78, but it did not qualify for the ballot. The "bribery" initiative could refer to one of three of Mr. Sizemore's initiatives – 13, 75 or 80. Initiatives 13 and 75 were approved for signature gathering, but neither made it to the ballot.

Mr. Sizemore's testimony that all of his efforts to raise money from Mr. Parks and Mr. Wendt for signature gathering in the 2008 election cycle took no more than a couple of hours in total is not credible and is contradicted by an abundance of documentary evidence.

In essence, Mr. Sizemore was doing the core work of the chief petitioner and political committees for his measures and being paid by Mr. Parks (and his organizations) and HCPA to do so. HCPA also provided office space and supplies for Mr. Sizemore's political work. Some of this activity was not required to be reported on C&Es, but much of it was. Mr. Sizemore was chief petitioner and treasurer of each chief petitioner committee. He was therefore responsible for the truthful reporting of contributions to the work of those committees.

IV. Specific Provisions of the Injunction at Issue

In their Amended Motion for Order to Show Cause re: Contempt, plaintiffs alleged specifically that Mr. Sizemore and ATRF violated paragraphs 5, 6, 7, 9 and 13 of the injunction. Those paragraphs provide:

"5. OTU-EF successor organizations are hereby enjoined from making any contributions or providing anything of value, including loans or in-kind contributions, to any political action committee and are so enjoined for a period of five years from the date the judgment is entered in this action. An 'OTU-EF successor organization' is defined as any educational foundation, or similar organization, that is eligible for IRC § 501(c)(3) tax exempt status in which Bill Sizemore is a manager, officer, director, trustee, or controlling person of the successor organization or otherwise participates, directly or indirectly, in the direction or control of the OTU-EF successor organization.

6. OTU-PAC and its successor political action committees are hereby enjoined from receiving any contributions of anything of value from any IRC § 501(c)(3) organization, including but not limited to OTU-EF or any OTU-EF successor organization, and are so enjoined for a period of five years from the date the judgment is entered in this action. An 'OTU-PAC successor political action committee' is defined as a political action committee in which Bill Sizemore is a director or treasurer or chief petitioner of the successor political action committee, or otherwise participates, directly or indirectly, in the direction or control of the activities of the successor political action committee, and shall include, but not be limited to the Committee to Restore Freedom in the Workplace, No More Political Fund-raising at Taxpayer Expense, Just Compensation for Regulatory Takings Committee, Committee to Preserve Self-Government,

Committee for Teacher Merit Pay, No New Taxes Without a Vote Committee, and Oregonians Against Double Taxation.

7. OTU-PAC and OTU-EF and their successor organizations and successor political action committees which are jointly referred to herein as "OTU successors" are hereby enjoined from transferring or destroying any of their assets, whether cash, personal property or real property, and including documents, computers, and computer hardware, software and files, and are so enjoined until the judgment in this action is fully satisfied or until further order of this Court.

* * *

9. OTU-PAC and its OTU successor political action committees are hereby enjoined from any violations of Oregon law in connection with their reporting on Contributions and Expenditure Reports ("C&E Reports") of any kind of in-kind and direct contributions from OTU-EF or any other nonprofit corporation, or other corporation, entity or person.

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13. OTU-PAC and OTU-EF and their OTU successors are hereby enjoined from any violations of Oregon law in connection with the filing or submission of CT-12 Reports, Form 990s and C&E Reports."

Pursuant to paragraph 14 of the injunction, paragraphs 9 and 13 were effective April 30, 2003, and continue for five years from the date of the judgment. As earlier noted, the judgment was entered on July 25, 2003.

As noted above, the Oregon Court of Appeals issued its opinion that paragraphs 6 and 9 of the judgment should be reversed, paragraph 13 should be reversed and paragraph 7 vacated as to OTU-PAC with instructions for the trial court to determine if it would impose that injunctive relief based on OTU-PAC's liability on count one only. Although the Oregon Supreme Court issued its *opinion* affirming, those decisions were not effective and the entire original injunction remained in effect until an appellate *judgment* was entered on November 18, 2008. ORAP 14.05(2).

V. Conclusions of Law

Defendants are in contempt of court for violating the injunction as alleged by plaintiffs:

- ATRF, an OTU-EF successor organization, provided in-kind support, in the form of Mr. Sizemore's compensated services, to several political action committees, in violation of paragraph 5 of the injunction;
- ATRF has transferred assets in violation of paragraph 7 of the injunction;
- Mr. Sizemore failed to accurately report in-kind contributions by ATRF of his compensated services to his chief petitioner committees in violation of paragraph 9 of the injunction; and
- ATRF failed to file CT-12 reports and Form 990s in violation of paragraph 13 of the injunction.

VI. Remedies

The violations of the injunction are troubling in and of themselves. But they are even more disturbing because, together with Mr. Sizemore's willingness to lie under oath, they reflect not merely contempt of court in the legal sense, but contempt *for* the court, the judicial branch of government and its processes and judgments – indeed for the rule of law. Mr. Sizemore is so blinded by his hatred of the unions who are plaintiffs in this case that he seems to have concluded that he is not required to follow the law.

Mr. Sizemore's acts of contempt are also troubling because they mirror the very abuse of a nonprofit organization that led to the original verdict and injunction. And he committed those abuses for similar reasons: to facilitate fundraising because of tax deductibility and to permit his supporters to shield their personal support of Mr. Sizemore and his activities from public scrutiny.²⁸ Mr. Sizemore once again selected as board members for his nonprofit people who exercised no meaningful oversight. I conclude that this on-going disregard for the laws governing nonprofits calls for a continuation of the injunction in order to protect the public.

The provisions of the injunction applicable to any OTU-EF successor organization, as defined in the original injunction that expired in July 2008, are extended for an additional five years, beginning on December 1, 2008.

²⁸ The emails among HCPA employees about the "Bill issue" make this very obvious.

The remedy for ATRF's violation of the injunction by transferring assets is a judgment against ATRF and Mr. Sizemore (who caused the transfers) for the amount transferred in violation of the injunction (in other words, not for comparable value subject to execution). ATRF's records are so incomplete that further litigation may be required to determine the amount. Because Mr. Sizemore has demonstrated a near-total disregard for the oath, plaintiffs will need to rely heavily on documentary evidence to learn the truth and I will allow very broad discovery by plaintiffs into the records of ATRF, CBS Consulting, IRM, IPI, Timothy Rohrer, Michaela Alexander, Cindy Sizemore and William Sizemore (as well as any other individuals or entities who are shown to have participated in or benefitted from such transfers) in connection with that determination.

ATRF is ordered to file full and complete Form 990s and CT-12s for 2006 and 2007. Mr. Sizemore is ordered to sign those documents.

At this contempt hearing, Mr. Sizemore promised to file the 2006 documents by October 10, 2008, then withdrew that promise for the reason that he might incriminate himself because the Department of Justice could conclude that the reports are not truthful. There is no such excuse from one's legal duties. The injunction requires only that Mr. Sizemore comply with state and federal law. So long as the documents filed are truthful, any problems Mr. Sizemore may face would be civil, not criminal, in nature.

Mr. Byrne's analogy in closing argument was apt:

"As I explained to Mr. Sizemore earlier today, well, you're like the guy pulled over for the DUII. If you blow into the breathalyzer, you're taking your chances; if you don't you lose your license. You just lost your license."

Of course, one is only taking one's chances in taking a breath test if one is actually driving under the influence.

Because Mr. Sizemore has acknowledged his obligation but has stated that he will not comply, I order him jailed until he purges himself of the contempt by signing the required forms and reports and filing them, or until June 1, 2009, whichever is sooner.

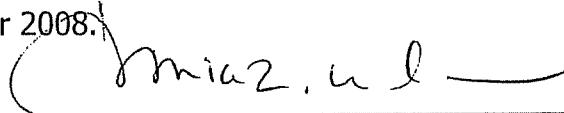
ATRF and Mr. Sizemore are ordered to pay the reasonable costs and attorney fees plaintiffs incurred in bringing this contempt proceeding.

I have found a violation of paragraph 9 of the injunction because that provision remained in effect until an appellate judgment issued. Nevertheless, in light of the rulings of the Oregon Court of Appeals and the Oregon Supreme Court that paragraph 9

should be reversed, I do not believe there is any appropriate remedial sanction for that contempt.

Plaintiffs requested the opportunity to seek other remedies after the court made its findings concerning contempt. They shall have until December 12, 2008, to file and serve their motions for additional remedies. Service shall be by hand-delivery or fax. Defendants shall have until December 29, 2008, to respond. No reply briefs will be permitted. Oral argument will be held in January 2009 at a date and time to be arranged with counsel.

SO ORDERED this first day of December 2008.

A handwritten signature in black ink, appearing to read "Janice R. Wilson", written over a horizontal line.

Janice R. Wilson
Circuit Court Judge

APPENDIX A

Examples of Deceit by Mr. Sizemore

ATRF's 2006 annual meeting minutes purport to be from a meeting on January 29, 2006, yet they discuss a proposal to contract with CBS Consulting. In fact, on January 29, 2006, Mr. Sizemore's only proposal was to be executive director of ATRF. Mr. Sizemore admitted that he did not prepare these minutes (or the minutes of ATRF's 2007 annual meeting) until early 2008 and acknowledges that they could not be correct on this point. He attributes this error to a "faulty recollection."¹

ATRF applied with the IRS for recognition of exemption from taxation as a §501(c)(3) organization by submitting a Form 1023. The form was prepared by Mr. Sizemore, or with information supplied by him, and was signed by Ms. Alexander under penalty of perjury on February 7, 2006. It omits Mr. Sizemore's name and anticipated compensation in the section requiring the listing of officers, directors, employees or independent contractors who are expected to be paid more than \$50,000. Mr. Sizemore admitted in his testimony that at the time the form was prepared and signed he expected to receive more than \$50,000 from ATRF either as its executive director or as a consultant. The form also omits the required attachment showing Mr. Sizemore's qualifications, average hours worked and duties.

The Form 1023 states that no officer or director was related to the most highly compensated employee or independent contractor. This was false because Mr. Sizemore was the most highly compensated employee or independent contractor and his mother was an officer and director.

The Form 1023 states that no officer, director, highest compensated employee or highest compensated independent contractor received compensation from any other organization related to ATRF through common control. This was false because IRM and ATRF were related by common control. There was common control both nominally -- because Michaela Alexander was president of both (albeit using different names) -- and in fact because Mr. Sizemore was in complete charge of both. IRM had paid Mr. Sizemore \$100,000 in the preceding three months and six days.

The Form 1023 states that ATRF would not compensate its highest compensated employee or highest compensated independent contractor through "non-fixed payments such as discretionary bonuses or revenue-based payments." This was false because

¹ Ms. Alexander testified in her deposition that she saw the minutes in 2006, which could not have happened. She explained that her memory was "foggy."

Mr. Sizemore knew he would be paid a "signing bonus" and also would receive a "commission" on funds he raised for ATRF.²

The Form 1023 stated that ATRF would not have any loan agreements with its highest compensated employee or highest compensated independent contractor. This was false because Mr. Sizemore was planning to have ATRF loan him money.

The IRS requested additional information from ATRF in connection with its request for recognition as a §501(c)(3) organization. Among the many items requested was an explanation of the qualifications of the individuals operating the organization to provide the services it purported to offer and "detailed resumes of those involved in the operation of [ATRF]." Mr. Sizemore prepared the response for Ms. Alexander's signature. That response, dated May 31, 2006, stated "We have not yet determined the identity of the research team. The two individuals we are most likely to hire . . . are currently tracking measures for us at no charge." This was false because, by May 31, 2006, ATRF had paid Mr. Sizemore, through CBS Consulting, \$46,800 (all in one cashier's check dated February 15, 2006).

Mr. Sizemore drafted another letter to the IRS for Ms. Alexander to sign on June 1, 2006.³ In an attachment to that letter, Mr. Sizemore also falsely stated that Ms. Alexander's duties for ATRF were to "help determine priority of measures for fiscal impact studies" and that his mother's duties for ATRF were "phones, secretarial, organizing bookkeeping records." Mr. Sizemore knew full well that neither Ms. Alexander nor his mother was to have the duties listed.

In his April 23, 2007, deposition (taken in the action he brought to challenge the constitutionality of the injunction), Mr. Sizemore testified:

"There was an opportunity for me to work for a foundation that exists currently, American Tax Research Foundation, and I have – I have been offered a job working for them as executive director. I have not – I have not been employed by them yet. And they – but they have made – they

² Mr. Sizemore testified that he didn't know of any understanding that he would be so compensated when he provided information for the Form 1023, although he did "eventually agree to that." That explanation is not credible in light of the fact that Mr. Sizemore unilaterally made all of the decisions about how he would be compensated.

³ Mr. Sizemore first testified that he believed he drafted this letter, then said he thought an attorney or accountant had done so – or probably Nevada Corporate Headquarters. I find that he drafted the letter. This letter and the letter of May 31, 2006, are identical in format, style and phrasing of language. In any event, Mr. Sizemore could have been the only source of the information.

made a specific offer to me. They do fiscal impact studies of the effect of ballot measures nationwide. Their research is as according to their mission statement, is totally unbiased, factual, not opinion, not politically slanted, no agenda, and they have asked me to and I have – to take the job. I have not taken the job, and I don't recall the specifics. But a couple of cases where I was exploring working for them, I signed a letter or something that – where I put executive director after my name, though, I am not an executive director yet."

In the same deposition, Mr. Sizemore was asked "Are you currently or have you at any time since the conclusion of the trial in the first case been a manager of a 501(c)(3) tax exempt organization?"⁴ He answered "No."

Mr. Sizemore's feigned ignorance of ATRF's founding and funding when he was deposed in April 2007 is also astonishing. He testified that he did not know specifically when it was founded and ultimately said "between the last two years." He was asked "Do you know where American Tax Research gets its funding?" He answered, "Some of it but I don't know where they get all of it. I believe that's an ongoing thing." After some colloquy between counsel, Mr. Sizemore restated the pending question as "Where does American Tax Research get some of their money that I know about," and began his answer "I'm racking my brain for specifics." He went on to say, "I believe – [Hire Calling] Public Affairs and I don't know what kind of entity that is." When he was asked specifically whether Loren Parks gave money to ATRF, Mr. Sizemore answered, "I believe Parks has made a donation to them, maybe more than one"

In truth, as of April 23, 2007, when he gave that testimony under oath, Mr. Sizemore had completely controlled ATRF and its finances for over 16 months. He had engaged in hundreds of transactions totaling more than three-quarters of a million dollars on ATRF's account, the vast majority of the money going for his financial benefit or that of his family. ATRF had received over \$500,000 from Loren Parks or one of his organizations (in four separate payments) and over \$60,000 from Hire Calling Public Affairs – all solicited by Mr. Sizemore.

Asked in the April 2007 deposition whether he had any current intention of becoming a manager of a 501(c)(3) tax exempt organization, Mr. Sizemore answered "I'd like to, yes." When he was asked for more detail about what he would like to do, he began his answer "I haven't thought that through completely." After mentioning a foundation that helps homeless people, Mr. Sizemore continued "And I would like to be

⁴ Mr. Sizemore was first asked whether he had "set up" any §501(c)(3) organizations, but said he did not know how to answer the question and asked to consult with his attorney. After that consultation, his attorney objected to the phrase "set up" and Mr. Hartman began asking questions about Mr. Sizemore's being a manager of a 501(c)(3).

involved in a foundation that does research on ballot measures, the kind of research that would be clearly in the realm of 501(c)(3) educational, nonpolitical."

In his October 2, 2007, declaration (also given in the action he brought to challenge the constitutionality of the injunction) Mr. Sizemore stated under penalty of perjury, "I have been offered the position of executive director of American Tax Research Foundation, ATRF. I have declined the offer" In truth, as noted above, Mr. Sizemore testified in the contempt hearing, he "ran the operations of the organization." On October 2, 2007, Mr. Sizemore had been in sole control of ATRF's bank account and had spent approximately a million dollars of ATRF's funds by checks, cash, cashier's checks, transfers and debit card transactions. He wrote in the minutes for ATRF's 2007 annual meeting (purportedly held on January 17, 2007 – eight and a half months before he swore to his declaration) that he had been appointed "as acting executive director of ATRF so he could open an interest bearing investment account, raise money, sign an office lease and do other business on behalf of the foundation."

Mr. Sizemore attempted to explain in the contempt hearing that he thought he was not the executive director because he "wasn't being paid as a paid position as executive director." The more likely explanation, given that he had also denied *managing* a 501(c)(3) organization even though he now admits he ran ATRF, was that he was simply lying on the witness stand.

Any doubt on that point is put to rest by the following exchange in the April 23, 2007, deposition:

"Q: Setting aside this executive director position for the moment, have you been active in *working with* the American Tax Research Foundation? [Italics mine.]

A: No. I work for CBS Consulting only."

He then falsely testified that he was not the controlling person of CBS Consulting.

At his judgment debtor examination on October 19, 2007, Mr. Sizemore was asked, "Other than reimbursement, are you permitted to write checks from [the ATRF] account for payment for services rendered?" He answered "No." This was false because, as of that date, as shown by ATRF's bank records, he personally had written ATRF checks (not including cashier's checks) totaling over \$100,000 to CBS Consulting alone.