

1  
2  
3  
4  
5 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
6 FOR THE COUNTY OF COLUMBIA  
7

8 WENDI ABBOTT, NONI ANDERSON, RICH )  
9 BAILEY, JEFF CAMPBELL, SUSAN EASLY )  
10 CONN, ANNE COX, DAVE EHRENKRANZ, )  
11 PENNY EHRENKRANZ, CRAIG FRASIER, )  
12 BECKY FRAZIER, PRATITI FULLERTON, )  
13 DANIEL R. GARRISON, GIGI GORDON, )  
14 JOLENE JONAS, ERNIE KLOSTERMANN, )  
15 MARJORIE KUNDIGER, ROBERT LALIBERTE, )  
16 GARY LIAO, JUDY LITWIN, MIKE LITWIN, )  
17 TONY MANDELLA, JESUS OCHOA- )  
18 MADRUENO, HARRY MAURER, PALMER T. )  
19 OLSON, BRADY PREHEIM, RURAL )  
20 ORGANIZING PROJECT, KEVIN WAYNE )  
21 WALDING, MARCY WESTERLING and PAT )  
22 ZIMMERMAN, )

23  
24 Plaintiffs, )

25 v. )

26 COLUMBIA COUNTY, STEVE ATCHISON, )  
in his official capacity as District Attorney of )  
Columbia County, SARAH HANSON, in her )  
official capacity as County Counsel for Columbia )  
County, RITA BERNHARD, in her official )  
capacity as Columbia County Commissioner, )  
EARL FISHER, in his official capacity as )  
Columbia County Commissioner, TONY HYDE, )  
in his official capacity as Columbia County )  
Commissioner and the COLUMBIA COUNTY )  
BOARD OF COMMISSIONERS, )

27 Defendants. )

Case No. 08-2922

SECOND AMENDED  
COMPLAINT  
(Declaratory and Injunctive Relief)

ORS 28.010, 28.020, 203.060

NOT SUBJECT TO  
MANDATORY ARBITRATION

1 **I. NATURE OF CLAIMS**

2 1.

3 This is a Complaint seeking declaratory and injunctive relief from a flawed and  
4 unconstitutional initiative, Columbia County Measure 5-190 (the "Measure"), adopted by the  
5 voters of Columbia County on November 4, 2008, and Ordinance 2008-6 (the "Ordinance"),  
6 adopted by the Columbia County Board of Commissioners on December 17, 2008. Plaintiffs  
7 seek a declaration of this Court that 1) Measure 5-190 and Ordinance 2008-6 exceed the powers  
8 of the County granted by the Constitution and laws of Oregon; 2) Measure 5-190 and Ordinance  
9 2008-6 are preempted by ORS 455.040(1); 3) Measure 5-190 and Ordinance 2008-6 are  
10 preempted by ORS 701.325(5); 4) Measure 5-190 and Ordinance 2008-6 are preempted by  
11 Oregon's land use statutes and regulations; 5) Measure 5-190 and Ordinance 2008-6 violate the  
12 Oregon constitution by imposing criminal penalties and; 6) Measure 5-190 and Ordinance 2008-  
13 6 unconstitutionally direct a regulatory taking of private property under the Fifth and Fourteenth  
14 Amendments to the United States Constitution and Article I, Section 18, of the Oregon  
15 Constitution.

16 2.

17 Plaintiffs also seek declaratory and injunctive relief on the grounds that Measure 5-190  
18 was not a valid initiative measure, in that it violates the single subject rule of the Oregon  
19 constitution

20 **II. PARTIES**

21 3.

22 Plaintiff Wendi Abbott is a voter in Columbia County and owns real property in  
23 Columbia County. She anticipates needing to obtain building and land use permits in the future  
24 in order to enjoy the use of her property in the County.

25 //////////////

26 //////////////

1 4.

2 Plaintiff Noni Anderson is a voter in Columbia County and owns real property in  
3 Columbia County. She anticipates needing to obtain building and land use permits in the future  
4 in order to enjoy the use of her property in the County.

5 5.

6 Plaintiff Rich Bailey is a construction contractor and a voter within Columbia County,  
7 Oregon.

8 6.

9 Plaintiff Jeff Campbell is a voter in Columbia County and owns real property in  
10 Columbia County. He anticipates needing to obtain building and land use permits in the future in  
11 order to enjoy the use of his property in the County.

12 7.

13 Plaintiff Susan Easley Conn is a voter in Columbia County and owns real property in  
14 Columbia County. She anticipates needing to obtain building and land use permits in the future  
15 in order to enjoy the use of her property in the County.

16 8.

17 Plaintiff Anne Cox is a voter in Columbia County and owns real property in Columbia  
18 County. She anticipates needing to obtain building and land use permits in the future in order to  
19 enjoy the use of her property in the County.

20 9.

21 Plaintiff Dave Ehrenkranz is a voter in Columbia County and owns real property in  
22 Columbia County. He anticipates needing to obtain building and land use permits in the future in  
23 order to enjoy the use of his property in the County.

24 10.

25 Plaintiff Penny Ehrenkranz is a voter in Columbia County and owns real property in  
26 Columbia County. She anticipates needing to obtain building and land use permits in the future  
in order to enjoy the use of her property in the County.

1 11.

2 Plaintiff Becky Frasier is a voter in Columbia County and owns real property in Columbia  
3 County. She anticipates needing to obtain building and land use permits in the future in order to  
4 enjoy the use of her property in the County.

5 12.

6 Plaintiff Craig Frasier is a voter in Columbia County and owns real property in Columbia  
7 County. He anticipates needing to obtain building and land use permits in the future in order to  
8 enjoy the use of his property in the County.

9 13.

10 Plaintiff Pratiti Fullerton is the proprietor of PBF Enterprises, Inc. dba St. Helens  
11 Bowenwork Clinic, and has a business license from the City of St. Helens. She is a voter in  
12 Columbia County and owns real property in Columbia County. She anticipates needing to obtain  
13 building and land use permits in the future in order to enjoy the use of her property in the County.

14 14.

15 Plaintiff Daniel R. Garrison is the proprietor of Daniel R. Garrison, CPA, PC, a business  
16 in Columbia County. Plaintiff Garrison has a business license from the City of St. Helens. He is  
17 a voter in Columbia County.

18 15.

19 Plaintiff Gigi Gordon is a voter in Columbia County and owns real property in Columbia  
20 County. She anticipates needing to obtain building and land use permits in the future in order to  
21 enjoy the use of her property in the County.

22 16.

23 Plaintiff Jolene Jonas is a voter in Columbia County and owns real property in Columbia  
24 County. She anticipates needing to obtain building and land use permits in the future in order to  
25 enjoy the use of her property in the County.

26 //////////////

////////////////

1 17.

2 Plaintiff Ernie Klostermann is a voter in Columbia County and owns real property in  
3 Columbia County. He anticipates needing to obtain building and land use permits in the future in  
4 order to enjoy the use of his property in the County.

5 18.

6 Plaintiff Marjorie Kundiger is a voter in Columbia County and owns real property in  
7 Columbia County. She anticipates needing to obtain building and land use permits in the future  
8 in order to enjoy the use of her property in the County.

9 19.

10 Plaintiff Robert La Liberte is a voter in Columbia County and owns real property in  
11 Columbia County. He anticipates needing to obtain building and land use permits in the future in  
12 order to enjoy the use of his property in the County.

13 20.

14 Plaintiff Gary Liao is the proprietor of whereexactly.com, a business in St. Helens. He  
15 holds a business license from the City of St. Helens, and is a voter in Columbia County.

16 21.

17 Plaintiff Judy Litwin is a voter in Columbia County and owns real property in Columbia  
18 County. She anticipates needing to obtain building and land use permits in the future in order to  
19 enjoy the use of her property in the County.

20 22.

21 Plaintiff Mike Litwin is a voter in Columbia County and owns real property in Columbia  
22 County. He anticipates needing to obtain building and land use permits in the future in order to  
23 enjoy the use of his property in the County.

24 23.

25 Plaintiff Tony Mandella is a construction contractor and a voter within Columbia County,  
26 Oregon.

///////

1 24.

2 Plaintiff Harry Maurer is a business owner and a voter within Columbia County, Oregon.

3 25.

4 Plaintiff Jesus Ochoa-Madrueno is a resident of Columbia County and is ordinarily  
5 employed in construction work in the County. He is of Mexican national origin.

6 26.

7 Plaintiff Palmer T. Olson is the proprietor of a business in Scappoose and St. Helens. He  
8 holds business licenses from the City of Scappoose and the City of St. Helens. He is a voter in  
9 Columbia County and owns real property in Columbia County. He anticipates needing to obtain  
10 building and land use permits in the future in order to enjoy the use of his property in the County.

11 27.

12 Plaintiff Brady Preheim is the proprietor of Preheim Computers in Scappoose, Oregon.  
13 He holds a business license issued by the City of Scappoose and is a voter in Columbia County.

14 28.

15 Plaintiff Rural Organizing Project is an Oregon not-for-profit corporation that operates  
16 offices in Scappoose, Oregon. It has a business license from the City of Scappoose.

17 29.

18 Plaintiff Kevin Wayne Walding is a voter in Columbia County and owns real property in  
19 Columbia County. He anticipates needing to obtain building and land use permits in the future in  
20 order to enjoy the use of his property in the County.

21 30.

22 Plaintiff Marcy Westerling is a voter in Columbia County and owns real property in  
23 Columbia County. She anticipates needing to obtain building and land use permits in the future  
24 in order to enjoy the use of her property in the County.

25 31.

26 Plaintiff Pat Zimmerman is a voter in Columbia County and owns real property in  
Columbia County. She anticipates needing to obtain building and land use permits in the future

1 in order to enjoy the use of her property in the County.

2 32.

3 Defendant Columbia County is a municipality of the State of Oregon. It does not have a  
4 home rule charter.

5 33.

6 Defendant District Attorney Steve Atchison is the Columbia County District Attorney and  
7 in sued in his official capacity as District Attorney. He may be charged with carrying out the  
8 provisions of Measure 5-190.

9 34.

10 Defendant Sarah Hanson is the County Counsel for Columbia County and is sued in her  
11 official capacity as County Counsel. She may be charged with carrying out the provisions of  
12 Measure 5-190, and is charged with carrying out Ordinance 2008-06.

13 35.

14 Defendants Rita Bernhard, Earl Fisher and Tony Hyde are Columbia County  
15 Commissioners and are sued in their official capacities as County Commissioners. Collectively,  
16 they constitute the Defendant Columbia County Board of Commissioners. As such, they are  
17 responsible for carrying out the provisions of Measure 5-190, and/or Ordinance 2008-06.

18 **III. FIRST CLAIM (Measure Exceeds Statutory Home Rule Powers)**

19 36.

20 Plaintiffs hereby re-allege paragraphs 1 through 35, and incorporate them by reference as  
21 though set forth in full.

22 37.

23 On November 4, 2008, the electors of Columbia County voted affirmatively to enact  
24 Measure 5-190, a copy of which is attached to this Amended Complaint as Exhibit 1, and  
25 incorporated by reference as though set forth in full.

26 //////////////

1 38.

2 On December 17, 2008, the Columbia County Board of Commissioners enacted  
3 Ordinance 2008-06, a copy of which is attached to this Amended Complaint as Exhibit 2, and  
4 incorporated by reference as though set forth in full.

5 39.

6 Employment of aliens who are not authorized to work in the United States is not a matter  
7 of county concern.

8 40.

9 Employment practices of employers outside of Columbia County are not matters of  
10 county concern.

11 41.

12 None of the incorporated cities in Columbia County have approved Measure 5-190.

13 42.

14 Columbia County has no official entitled "County Attorney."

15 43.

16 The enactment of Measure 5-190 by the electors of Columbia County exceeds the  
17 legislative power of the County in each of the following respects:

- 18 a. It exceeds the legislative authority granted by ORS 203.035 in that it seeks  
19 to legislate as to matters that are beyond county concern;
- 20 b. It purports to regulate matters within the incorporated cities of the County,  
21 even though none of the governing bodies of those cities has authorized  
22 the application of Measure 5-190 within the jurisdiction of those cities, in  
23 violation of ORS 203.040;
- 24 c. It purports to strip the legislative powers of the County Board of  
25 Commissioners by prohibiting the Commission from amending Measure  
26 5-190 without submitting the amendments to a vote of the people, in



1 violation of ORS 203.035;

2 d. It unlawfully interferes with the lawful functions of the district attorney, in  
3 violation of ORS 8.610-.852;

4 e. It purports to alter the definition of and penalties for official misconduct  
5 under state law;

6 f. It purports to regulate building permits and land use decisions in a manner  
7 inconsistent with state law;

8 g. It purports to enlarge the statutory powers of the justice court in violation  
9 of ORS 51.080 and ORS 34.020;

10 h. It creates an excessive criminal fine beyond that permitted by ORS  
11 203.065;

12 i. It allocates money collected in fines to specific purposes, rather than to the  
13 county general fund, as required by ORS 203.065(4);

14 j. It was not adopted in accordance with the requirements of ORS 203.045;

15 k. It is unreasonable and fraught with procedural errors, in that it assigns  
16 functions to county officials that do not exist, is incomplete, vague and  
17 confusing, and fails to afford reasonable notice to the public of its  
18 requirements.

19 44.

20 The enactment of Ordinance 2008-06 by the Board of Commissioners of Columbia  
21 County exceeds the legislative power of the County in each of the following respects:

22 a. It exceeds the legislative authority granted by ORS 203.035 in that it seeks  
23 to legislate as to matters that are beyond county concern;

24 b. It purports to regulate matters within the incorporated cities of the County,  
25 even though none of the governing bodies of those cities has authorized  
26 the application of Ordinance 2008-6 within the jurisdiction of those cities,

1 in violation of ORS 203.040;

2 c. It unlawfully conflicts with state statutes relating to the office of the  
3 district attorney, in violation of ORS 8.610-.852, and relating to the  
4 appointment of county counsel in violation of ORS 203.145;

5 d. It purports to alter the definition of and penalties for official misconduct  
6 under state law;

7 e. It purports to regulate building permits and land use decisions in a manner  
8 inconsistent with state law;

9 f. It purports to enlarge the statutory powers of the justice court in violation  
10 of ORS 51.080 and ORS 34.020;

11 g. It creates an excessive criminal fine beyond that permitted by ORS  
12 203.065; and,

13 h. It allocates money collected in fines to specific purposes, rather than to the  
14 county general fund, as required by ORS 203.065(4).

15 45.

16 Plaintiffs have no adequate remedy at law. They seek declaratory and injunctive relief  
17 pursuant to ORS 28.010, ORS 28.020, and ORS 203.060, invalidating Measure 05-190 and  
18 Ordinance 2008-06.

19 46.

20 In order to vindicate their rights, Plaintiffs have been required to obtain the services of  
21 attorneys. They should be awarded reasonable attorneys fees pursuant to the court's equitable  
22 powers.

23 **IV. SECOND CLAIM (Measure and Ordinance Are Preempted by the Oregon**  
24 **Building Code)**

25 47.

26 Plaintiffs hereby re-allege paragraphs 1 through 35, 37, 38 and 46, and incorporate them

1 by reference as though set forth in full.

2 48.

3 Measure 5-190 and Ordinance 2008-06 are preempted under ORS 455.040(1).

4 49.

5 Plaintiffs have no adequate remedy at law. They seek declaratory and injunctive relief  
6 pursuant to ORS 28.010 and 28.020 invalidating Measure 05-190 and Ordinance 2008-06.

7  
8 **V. THIRD CLAIM (Measure and Ordinance are Preempted By the Construction  
Contractors and Contracts Statute)**

9 50.

10 Plaintiffs hereby re-allege paragraphs 1 through 35, 37, 38 , 46 and 49, and incorporate  
11 them by reference as though set forth in full.

12 51.

13 Measure 5-190 and Ordinance 2008-06 are preempted under ORS 701.325(6).

14  
15 **VI. FOURTH CLAIM (Measure and Ordinance are Preempted by Oregon Land  
Use Law)**

16 52.

17 Plaintiffs hereby re-allege paragraphs 1 through 35, 37, 38, 46 and 49, and incorporate  
18 them by reference as though set forth in full.

19 53.

20 Measure 5-190 and Ordinance 2008-06 are preempted by Oregon's land use planning  
21 laws.

22  
23 **VII. FIFTH CLAIM (Measure and Ordinance Violate the Fifth and Fourteenth  
Amendments to the United States Constitution and Article I, Section 18, of the Oregon  
Constitution)**

24 54.

25 Plaintiffs hereby re-allege paragraphs 1 through 35, 37, 38, 46 and 49, and incorporate  
26

1 them by reference as though set forth in full.

2 55.

3 Because plaintiffs seek to vindicate an important constitutional right, they are entitled to  
4 attorney fees.

5 56.

6 Measure 5-190 and Ordinance 2008-6 unconstitutionally direct a regulatory taking of  
7 private property under the Fifth and Fourteenth Amendments to the United States Constitution  
8 and Article I, Section 18, of the Oregon Constitution.

9  
10 **VII. SIXTH CLAIM (Measure Violates Article I, Section 11 of the Oregon  
Constitution)**

11 57.

12 Plaintiffs hereby re-allege paragraphs 1 through 35, 37, 38, 46 and 49, and incorporate  
13 them by reference as though set forth in full.

14 58.

15 Measure 5-190 and Ordinance 2008-6 violate Article I, Section 11 of the Oregon  
16 constitution by imposing criminal penalties.

17 59.

18 Because plaintiffs seek to vindicate an important constitutional right, they are entitled to  
19 attorney fees.

20 **VII. SEVENTH CLAIM (Measure Violates Article IV, section 1(d) of the Oregon  
Constitution)**

21 60.

22 Plaintiffs hereby re-allege paragraphs 1 through 35, 37,38, 46 and 49, and incorporate  
23 them by reference as though set forth in full.

24 //////////////

25 //////////////

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

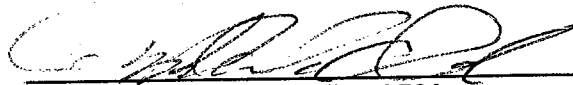
Measure 5-190 deals with at least two principal subjects, employment of unauthorized aliens and allocation of county resources, in violation of Article IV, section 1(d) of the Oregon Constitution.

**PRAYER**

Plaintiffs respectfully request that the Court grant them judgment as follows:

1. Declaring Measure 5-190 and Ordinance 2008-06 invalid;
2. Enjoining Defendants from enforcing Measure 5-190 or Ordinance 2008-06;
3. Awarding Plaintiffs reasonable attorneys' fees and costs;
4. Providing such further relief as the Court deems just and equitable.

Northwest Workers' Justice Project



MEG HEATON, OSB # 052780  
D. MICHAEL DALE, OSB # 771507  
STEVEN GOLDBERG, OSB #751341  
Emails: meg@nwjp.org  
michael@nwjp.org  
steven@stevengoldberglaw.com

STEPHEN MANNING, OSB No. 013373  
Immigrant Law Group LLP  
333 S.W. 5th Ave., Suite 525  
PO Box 40103  
Portland OR 97240  
Tel: (503) 241-0035  
Fax: (503) 241-7733  
Email: smanning@ilgrp.com

BRUCE L. CAMPBELL, OSB No. 925377  
ELISA J. DOZONO, OSB No. 063150  
Miller Nash LLP  
111 S.W. 5th Ave., Suite 3400  
Portland, OR 97204  
Tel: (503) 224-5858

NORTHWEST WORKERS' JUSTICE PROJECT  
917 SW Oak, Suite 412  
Portland, Oregon 97205  
(503) 525-8454 FAX: (503) 946-3029  
michael@nwjp.org

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Fax: (503) 224-0155  
Emails: elisa.dozono@millernash.com  
bruce.campbell@millernash.com

On behalf of the ACLU Foundation of Oregon Inc.

CHIN SEE MING, OSB No. 944945  
ACLU Foundation of Oregon Inc.  
920 S.W. 5th Ave., Suite 910  
Portland, OR 97204  
Tel: (503) 227-6928  
Fax: (503) 227-6948  
Email: chinsming@aclu-or.org

Attorneys for Plaintiffs