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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, BECKY FRASIER,)
12 CRAIG FRASIER, 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, PALMER T. OLSON, BRADY)
19 PREHEIM, RURAL ORGANIZING PROJECT,)
20 KEVIN WAYNE WALDING, MARCI)
21 WESTERLING, PAT ZIMMERMAN,)
22)

23 Plaintiffs,)
24)
25)
26)

v.)

18 COLUMBIA COUNTY, STEVE ATCHISON,)
19 District Attorney of Columbia County, SARAH)
20 HANSON, County Counsel for Columbia)
21 County, RITA BERNHARD, Columbia County)
22 Commissioner, JOE CORSIGLIA, Columbia)
23 County Commissioner, TONY HYDE,)
24 Columbia County Commissioner, and the)
25 COLUMBIA COUNTY BOARD OF)
26 COMMISSIONERS)

Defendants.)

Case No.

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 relief from a flawed and unconstitutional
4 initiative, Columbia County Measure 5-190, recently adopted by the voters of Columbia County.
5 Plaintiffs seek a declaration of this Court that 1) Measure 5-190 exceeds the powers of the
6 County granted by the Constitution and laws of Oregon; 2) Measure 5-190 is pre-empted by ORS
7 455.040(1); 3) Measure 5-190 is pre-empted by ORS 701.325(5); 4) Measure 5-190 is preempted
8 by Oregon's land use statutes and regulations; and 4) Measure 5-190 was not a valid initiative
9 measure, in that it violates the single subject rule of the Oregon constitution.

10 **II. PARTIES**

11 2.

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

15 3.

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

19 4.

20 Plaintiff Rich Bailey is a construction contractor and a voter within Columbia County,
21 Oregon.

22 5.

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

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1 6.

2 Plaintiff Susan Easley Conn 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 7.

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

9 8.

10 Plaintiff Dave Ehrenkranz 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 9.

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

17 10.

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

21 11.

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

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12.

Plaintiff Pratiti Fullerton is the proprietor of PBF Enterprises, Inc. dba St. Helens Bowenwork Clinic, and has a business license from the City of St. Helens. She 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 in order to enjoy the use of her property in the County.

13.

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

14.

Plaintiff Gigi Gordon 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 in order to enjoy the use of her property in the County.

15.

Plaintiff Jolene Jonas 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 in order to enjoy the use of her property in the County.

16.

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

17.

Plaintiff Marjorie Kundiger 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 in order to enjoy the use of her property in the County.

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18.

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

19.

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

20.

Plaintiff Judy Litwin 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 in order to enjoy the use of her property in the County.

21.

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

22.

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

23.

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

24.

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

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25.

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

26.

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

27.

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

28.

Plaintiff Marcy Westerling 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
in order to enjoy the use of her property in the County.

29.

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

30.

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

31.

Defendant District Attorney Steve Atchison is the Columbia County District Attorney. He
may be charged with carrying out the provisions of Measure 5-190.

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32.

Defendant Sarah Hanson is the County Counsel for Columbia County. She may be charged with carrying out the provisions of Measure 5-190.

33.

Defendants Rita Bernhard, Joe Corsiglia, and Tony Hyde are Columbia County Commissioners. Collectively, they constitute the Defendant Columbia County Board of Commissioners. As such, they are responsible for carrying out the provisions of Measure 5-190.

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

34.

Plaintiffs hereby reallege paragraphs 1 through 33, and incorporate them by reference as though set forth in full.

35.

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

36.

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

37.

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

38.

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

39.

Columbia County has no official entitled "County Attorney."

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

- a. It exceeds the legislative authority granted by ORS 203.035 in that it seeks to legislate as to matters that are beyond county concern;
- b. It purports to regulate matters within the incorporated cities of the County, even though none of the governing bodies of those cities has authorized the application of Measure 5-190 within the jurisdiction of those cities, in violation of ORS 203.040;
- c. It purports to strip the legislative powers of the County Board of Commissioners by prohibiting the Commission from amending Measure 5-190 without submitting the amendments to a vote of the people, in violation of ORS 203.035;
- d. It unlawfully interferes with the lawful functions of the district attorney, in violation of ORS 8.610-.852;
- e. It purports to alter the definition of and penalties for official misconduct under state law;
- f. It purports regulate building permits and land use decisions in a manner inconsistent with state law;
- g. It purports to enlarge the statutory powers of the justice court in violation of ORS 51.080 and ORS 34.020;
- h. It creates an excessive criminal fine beyond that permitted by ORS 203.065;
- i. It allocates money collected in fines to specific purposes, rather than to the county general fund, as required by ORS 203.065(4);
- j. It was not adopted in accordance with the requirements of ORS 203.045;

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

5 41.

6 Plaintiffs have no adequate remedy at law. They seek declaratory and injunctive relief
7 pursuant to ORS 28.010, ORS 28.020, and ORS 203.060, invalidating Measure 05-190.

8 42.

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

12
13 **IV. SECOND CLAIM (Measure Is Preempted by the Oregon Building Code)**

14 43.

15 Plaintiffs hereby re-allege paragraphs 1 through 33, 35 and 42, and incorporate them by
16 reference as though set forth in full.

17 44.

18 Measure 5-190 is preempted under ORS 455.040(1).

19 45.

20 Petitioners have no adequate remedy at law. They seek declaratory and injunctive relief
21 pursuant to ORS 28.010 and 28.020 invalidating Measure 05-190.

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1 **PRAYER**

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

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

7 Northwest Workers' Justice Project

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10 _____
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