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

CITY OF CORVALLIS, an Oregon )  
Municipal Corporation, )  
 )  
Plaintiff, )  
 )  
V. )  
 )  
STATE OF OREGON, KATE BROWN, Governor of )  
Oregon, JEANNE P. ATKINS, Secretary of State, )  
JIM RUE, as Director, Oregon Department Land )  
Conservation and Development, )  
CALDWELL FARMS, LLC, )  
MICHAEL GALPIN, PATRICIA GALPIN, )  
GEORGE STOVALL, EDWARD TRUEBLOOD )  
JAVIER IXTLAHUAC, EVA IXTLAHUAC, )  
LARRY DESAULNIERS, THERESA DESAULNIERS, )  
 )  
Defendants. )

Case No. 16CV17878  
PLAINTIFF'S COMPLAINT  
(Declaratory Relief,  
Injunction)  
NOT SUBJECT TO  
ARBITRATION

COMES NOW the City of Corvallis, by and through its attorney, James K. Brewer,  
and alleges:

**Nature of Action**

1.

This is an action by the City of Corvallis against the State of Oregon, certain state  
officials, and owners of property currently seeking to annex their property to the City  
of Corvallis, for declaratory relief from the State of Oregon's unconstitutional  
enactment of Oregon Law, Chapter 51, 2016, commonly known as Senate Bill 1573.  
Senate Bill 1573 is intended to prevent cities like the City of Corvallis from submitting  
annexation decisions to the voters of the City. Senate Bill 1573 does not comply with  
provisions of the Oregon Constitution limiting legislative authority and reserving the  
right of initiative and referendum, and the right of local voters to enact and amend  
their own city charters. This lawsuit seeks declaratory relief that Senate Bill 1573 is  
unconstitutional on its face and as applied to the City of Corvallis.

**Parties**

2.

Plaintiff, the City of Corvallis, is a lawfully formed and existing municipal

1 corporation of the State of Oregon.

2 3.

3 The State of Oregon is a duly formed and existing state, organized by the people  
4 under and according to the Oregon Constitution. For purposes of this lawsuit, the State  
5 of Oregon acts through its Legislative Assembly, Governor, Secretary of State and  
6 subordinate officers and agents. At all relevant times, and currently, the Governor of  
7 the State of Oregon is Kate Brown, the Secretary of State is Jeanne P. Atkins, and the  
8 Director of the Department of Land Conservation and Development is Jim Rue.

9 4.

10 Defendants Caldwell Farms, LLC, Michael Galpin, Patricia Galpin, George Stovall,  
11 Edward Trueblood, Javier Ixtlahuac, Eva Ixtlahuac, Larry Desaulniers and Theresa  
12 Desaulniers, are owners of property within the Corvallis Urban Growth Boundary,  
13 adjoining the City limits of the City of Corvallis and currently seeking annexation to the  
14 City of Corvallis.

#### 15 **Jurisdiction and Venue**

16 5.

17 The Circuit Court of the State of Oregon has subject matter jurisdiction pursuant  
18 to ORS 28.010 and 28.020 and ORS 30.315.

19 6.

20 The Benton County Circuit Court has personal jurisdiction over the defendants.

21 7.

22 Venue is proper in the Benton County Circuit Court because one or more of the  
23 defendants owns real property in Benton County, within the Corvallis Urban Growth  
24 Boundary adjoining the Corvallis city limits, and because one or more the defendants  
25 transact business, engage in substantial activities or perform official acts in Benton  
26 County.

#### 27 **Factual Allegations**

28 8.

29 Oregon Constitution, Article I, § 1, states:

30 We declare that all men, when they form a social compact are equal in right: that  
31 all power is inherent in the people, and all free governments are founded on  
32 their authority, and instituted for their peace, safety, and happiness; and they  
33 have at all times a right to alter, reform, or abolish the government in such

1 manner as they may think proper.

2 9.

3 Oregon Constitution, Article IV, § 1(1) states:

4 The legislative power of the state, except for the initiative and referendum  
5 powers reserved to the people, is vested in a Legislative Assembly, consisting of  
6 a Senate and a House of Representatives.

7 10.

8 Oregon Constitution, Article IV, § 1 (2)(a) states:

9 The people reserve to themselves the initiative power, which is to propose laws  
10 and amendments to the Constitution and enact or reject them at an election  
11 independently of the Legislative Assembly.

12 11.

13 Oregon Constitution, Article IV, § 1(5) states:

14 The initiative and referendum powers reserved to the people by subsections (2)  
15 and (3) of this section are further reserved to the qualified voters of each  
16 municipality and district as to all local, special and municipal legislation of every  
17 character in or for their municipality or district. The manner of exercising those  
18 powers shall be provided by general laws, but cities may provide the manner of  
19 exercising those powers as to their municipal legislation.

20 12.

21 Oregon Constitution, Article XI, § 2 states:

22 Corporations may be formed under general laws, but shall not be created by the  
23 Legislative Assembly by special laws. The Legislative Assembly shall not enact,  
24 amend or repeal any charter or act of incorporation for any municipality, city or  
25 town. The legal voters of every city and town are hereby granted power to enact  
26 and amend their municipal charter, subject to the Constitution and criminal  
laws of the State of Oregon, and the exclusive power to license, regulate, control,  
or to suppress or prohibit, the sale of intoxicating liquors therein is vested in  
such municipality; but such municipality shall within its limits be subject to the  
provisions of the local option law of the State of Oregon.

13 13.

14 On or about November 2, 1976, by general election, the people of the City of  
15 Corvallis exercised the initiative power granted by the people of the State of Oregon  
16 and lawfully adopted an amendment to the City Charter, which states:

17 Unless mandated by State law, annexation, delayed or otherwise, to the City of  
18 Corvallis may only be approved by a prior majority vote among the electorate.

19 ///

14.

On or about November 7, 2006, by general election, the people of the City of Corvallis adopted a Charter provision which states:

The Charter shall be liberally construed to the end that the City may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to the laws and to the municipal home-rule provisions of the Constitution of the State of Oregon.

15.

By local ordinance, acknowledged by the State of Oregon through its Land Conservation and Development Commission, Plaintiff adopted land use regulations, consistent with its Charter, generally requiring voter approval before land may be annexed into the boundaries of the municipality.

16.

On or about March 3, 2016, the Oregon Legislative Assembly, in its 2016 Regular Session, passed a bill commonly called Senate Bill 1573 ("SB 1573"); on March 15, 2016, Oregon Governor Kate Brown signed Senate Bill 1573 into law; Secretary of State Jeanne Atkins filed the law in the office of the Secretary of State of Oregon; and the law became effective that day as Oregon Law, Chapter 51, 2016.

17.

Oregon Law, Chapter 51, 2016, Section 2(1) states:

This Section applies to a city whose laws require a petition proposing annexation of territory to be submitted to the electors of the city.

18.

Oregon Law, Chapter 51, 2016, Section 2(2) states:

Notwithstanding a contrary provision of the city charter or a city ordinance, upon receipt of a petition proposing annexation of territory submitted by all owners of land in the territory, the legislative body of the city shall annex the territory without submitting the proposal to the electors of the city if:

- (a) The territory is included within an urban growth boundary adopted by the city or Metro, as defined in ORS 197.015;
- (b) The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;
- (c) At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; and
- (d) The proposal conforms to all other requirements of the city's ordinances.

///

19.

Oregon Law, Chapter 51, 2016, Section 2(4) states:

When the legislative body of the city determines that the criteria described in subsection (2) of this section apply to territory proposed for annexation, the legislative body may declare that the territory described in subsections (2) and (3) of this section is annexed to the city by an ordinance that contains a description of the territory annexed.

20.

Defendant, State of Oregon, by and through its Legislative Assembly, Governor and Secretary of State, respectively, enacted, authorized and filed Oregon Law, Chapter 51, a law that is contrary to and exceeds the authority granted by the people of Oregon, through their enactment of the Constitution of Oregon, to the Legislature. These Defendants are state officials having an interest in this proceeding and the issues involved.

21.

Defendant Jim Rue, as Director of the Department of Land Conservation and Development, caused or allowed an April 18, 2016, memorandum to be sent from the Department of Land Conservation and Development to local governments, including Plaintiff, which described SB 1573 as 2016 land use legislation that would require Plaintiff to modify its acknowledged land use regulations to comply with Oregon Law, Chapter 51, 2016. The memorandum also stated that "SB 1573 may also affect city charters and other codes." Defendant is a state official having an interest in this proceeding and the issues involved.

22.

On or about April 28, 2016, Defendant Caldwell Farms, LLC, petitioned Plaintiff to annex into the corporate boundaries certain real property, which Defendant Caldwell Farms, LLC, asserts is qualified to be annexed under the provisions of SB 1573 (Oregon Law, Chapter 51, 2016). Defendant's assertion is contrary to Plaintiff's Charter and land use regulations, which require voter approval for defendant's proposed annexation.

23.

On or about April 25, 2016, Defendants Michael Galpin, Patricia Galpin, George Stovall, Edward Trueblood, Javier Ixtlahuac, Eva Ixtlahuac, Larry Desaulniers and

1 Theresa Desaulniers, having petitioned Plaintiff to annex certain real property into the  
2 corporate boundaries, asserted that the property of Defendants Galpin *et. al.* should be  
annexed under the provisions of SB 1573 (Oregon Law, Chapter 51, 2016).

3 Defendants' assertion is contrary to Plaintiff's Charter and land use regulations, which  
4 require voter approval for defendants' proposed annexation.

5 24.

6 By Resolution 2016-14, adopted May 2, 2016, Plaintiff has directed its  
7 employees, officials and representatives to comply with its Charter provisions  
8 regarding voter approval of annexations and to disregard contrary interpretations of  
Oregon Law, Chapter 51, 2016.

9 25.

10 Pursuant to ORS 28.020, Plaintiff seeks a declaration that Oregon Law, Chapter  
11 51, 2016, is contrary to the initiative power that the people of the State of Oregon, in  
12 adopting and amending the Oregon Constitution, reserved to themselves, and that  
13 Oregon Law, Chapter 51, 2016, is contrary to the initiative power the Oregon  
14 Constitution reserves to the qualified voters of each municipality as to all local, special  
and municipal legislation.

15 26.

16 Pursuant to ORS 28.020, Plaintiff seeks a further declaration that Defendant  
17 State of Oregon, its Legislative Assembly, Governor, Secretary of State and subordinate  
18 officers and agents, acted in a manner contrary to the authority expressly reserved by  
19 the Oregon Constitution to the legal voters of cities, including the legal voters of  
20 Plaintiff, the City of Corvallis, to enact and amend their municipal charters and to  
21 initiate local, special and municipal legislation. Accordingly, as applied to the City of  
22 Corvallis, Oregon law, Chapter 51, 2016, is contrary to the Oregon Constitution and to  
23 Corvallis City Charter provisions, adopted through initiative, that require an  
annexation proposal to be approved by a prior majority vote among the electorate.  
Each of these state officials has an interest in this proceeding and the issues involved.

24 27.

25 Pursuant to ORS 28.020, Plaintiff seeks a further declaration that Oregon law,  
26 Chapter 51, 2016, is unconstitutional on its face and as applied to Plaintiff, City of

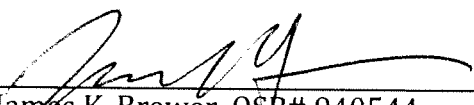
1 Corvallis, and therefore is inapplicable, ineffective and without force of law to Plaintiff,  
2 and that Plaintiff is not required to comply with its terms and provisions or the  
3 demands of defendants who are owners of real property within the Corvallis Urban  
4 Growth Boundary, that are or may be asserted in reliance on the terms of Oregon Law,  
Chapter 51, 2016.

5 WHEREFORE, Plaintiff prays for a judgment:

- 6 1) Declaring that the question of whether and how to include or exclude property  
7 from the corporate boundaries of home-rule municipal corporations is a  
8 fundamental matter of local, special and municipal concern; and  
9 2) Declaring that the power of the Oregon Legislature is limited by the language of  
10 the Oregon Constitution, which expresses the intent of the people as it was  
11 enacted and amended by initiative, referendum and referral; and  
12 3) Declaring that Oregon Law Chapter 51, 2016, does not aid or facilitate Oregon  
13 Constitution, Articles: I, § 1, IV, § 1(1), IV, § 1 (2)(a), IV, § 1(5), or XI, § 2; and  
14 4) Declaring that Oregon Law, Chapter 51, 2016, constitutes an unconstitutional  
15 exercise of legislative power contrary to and inconsistent with the express  
16 language of the Oregon Constitution, and therefore is invalid as applied to the  
17 City of Corvallis and its home-rule Charter provisions regarding annexation,  
18 which were enacted by initiative, and which require prior approval of  
19 annexations by a majority vote of the electorate; and  
20 4) Enjoining Defendants from asserting or demanding that Plaintiff conform its  
local government processes, charter or regulations in order to submit to Oregon  
21 Law, Chapter 51, 2016; and  
22 5) Upon further petition, for any other supplemental relief this court deems  
23 necessary and proper.

24 DATED this 2<sup>nd</sup> day of June, 2016.

25 FEWEL, BREWER & COULOMBE  
26 CORVALLIS CITY ATTORNEYS

By:   
James K. Brewer, OSB# 940544  
Corvallis City Attorney  
Of Attorneys for Plaintiff