

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

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

JOHN S. FOOTE,
MARY ELLEDGE, and
DEBORAH MAPES-STICE,

Plaintiffs,

v.

STATE OF OREGON,

Defendant.

Case No. _____

**COMPLAINT FOR DECLARATORY
RELIEF**

Not subject to Mandatory Arbitration
Filing Fee: \$265.00 (ORS 21.135(2)(f))

Plaintiffs allege:

NATURE OF THE ACTION

1. This is an action for a judicial declaration that House Bill 3078 (2017), purportedly enacted as chapter 673, Oregon Laws 2017 (“HB 3078”), was not lawfully enacted and thus is void and unenforceable.

2. HB 3078 passed both chambers of the legislature by less than two-thirds majorities. It passed the House of Representatives on July 5, 2017, by a vote of 33 ayes and 26 nays, and passed the Oregon Senate on July 6, 2017, by a vote of 18 ayes and 11 nays.

3. The Governor signed HB 3078 into law on July 18, 2017.

4. HB 3078 amends sections of the Oregon Revised Statutes related to sentencing

1 for property crimes. Some of those sections contained sentences previously approved by the
2 voters, when they passed Ballot Measure 57 in 2008 (“Measure 57”). To that extent, HB 3078,
3 violates Article IV, section 33, of the Oregon Constitution, enacted as Ballot Measure 10 in 1994
4 (“Measure 10”), which provides:

5 “Notwithstanding the provisions of section 25 of this Article, a two-thirds
6 vote of all the members elected to each house shall be necessary to pass a bill that
7 reduces a criminal sentence approved by the people under section 1 of this
8 Article.”

9 **IDENTITY AND INTERESTS OF PLAINTIFF FOOTE**

- 10 5. Foote is a resident of Oregon, an elector, and a taxpayer.
- 11 6. Foote was involved in creating, and voted for, Measure 57. He also voted for
12 Measure 10, which, as noted, created Article IV, section 33.
- 13 7. Foote is the District Attorney for the County of Clackamas.
- 14 8. Foote serves as District Attorney subject to an oath of office that requires him to,
15 among other things, support the Oregon Constitution and faithfully and honestly discharge the
16 duties of his office.
- 17 9. Foote thus has an interest in defending the integrity of the Oregon Constitution,
18 including the provisions that relate to initiatives and amendments, the imposition of prison
19 sentences, and the rights of crime victims.
- 20 10. One of the duties of Foote’s office is to make sentencing recommendations. In
21 order to faithfully and honestly discharge this duty, he must follow Oregon’s sentencing
22 guidelines and statutes, including the sentences approved by Measure 57 and purportedly
23 amended by HB 3078. As such, HB 3078 will directly affect the duties of Foote’s office.
- 24 11. On the other hand, supporting the Oregon Constitution requires Foote to give
25 effect to all its provisions, including Article IV, section 33, which, as noted, requires a two-thirds
26 vote of both houses of the Oregon legislature in order to reduce a criminal sentence approved by

1 initiative petition.

2 12. The conflict between HB 3078 and Article IV, section 33, creates uncertainty
3 about the duties of Foote’s office and his ability to honor his oath. As an elector, and in
4 particular as an elector who voted in favor of both Measure 10 and Measure 57 and an elector
5 who was involved in the creation of Measure 57, Foote has an interest in the enforcement of each
6 measure and in reconciliation, if possible, of the conflict between them and HB 3078.

7

8 **IDENTITY AND INTERESTS OF PLAINTIFF MARY ELLEDGE**

9 13. Elledge is a resident of Oregon, an elector, and a taxpayer.

10 14. Elledge voted for Measure 57, which passed. She was a leading proponent of and
11 also voted for Measure 10, which also passed and created Article IV, section 33, of the Oregon
12 Constitution.

13 15. Elledge’s son was murdered in Oregon in 1986. After his murder Elledge became
14 leading member of the Oregon Chapter of Parents of Murdered Children and a member of Crime
15 Victims United. As a member of Crime Victims United she participated in generally prompting
16 criminal law changes that favored crime victims and continues to do so today. As an elector, a
17 proponent of Measure 10, the victim of a crime, and a proponent of crime victims’ rights,
18 Elledge has an interest in the enforcement of Measure 10 and Measure 57 and in the
19 reconciliation, if possible, of the conflict between them and HB 3078.

20

21 **IDENTITY AND INTERESTS OF PLAINTIFF DEBORAH MAPES-STICE**

22 16. Mapes-Stice is a resident of Oregon, an elector, and a taxpayer.

23 17. Mapes-Stice was the victim, together with her husband, of a crime that almost
24 destroyed their family business, Trail Pals Horse Trailer Accessory Store. The perpetrator of this
25 crime was sentenced to five years in prison based in part on ORS 137.717. It is uncertain
26 whether HB 3078 would have led to a reduced overall sentence in her case. However, HB 3078

1 would have caused reduced sentences for some of the crimes the perpetrator was convicted of.

2 18. Mapes-Stice voted for both Measure 10 and Measure 57.

3
4 **FIRST CLAIM**

5 19. In passing Measure 57, the voters approved sentences for various crimes,
6 including 24 months of incarceration for identity theft under ORS 165.800, and 18 months for
7 theft in the first degree under ORS 164.055. These voter-approved sentences were later codified
8 in ORS 137.717.

9 20. HB 3078 amends ORS 137.717 to reduce the sentence for identity theft and theft
10 in the first degree to 13 months of incarceration.

11 21. HB 3078 was not passed by two-thirds votes of the elected members of both
12 houses of the legislature. Accordingly, HB 3078 did not comply with Article IV, section 33, of
13 the Oregon Constitution, which provides that two-thirds votes of each house “shall be necessary
14 to pass a bill that reduces a criminal sentence approved by the people” through the initiative
15 process.

16 22. Because HB 3078 did not comply with Article IV, section 33, it did not in fact
17 pass and thus does not have the force of law. Alternatively, the parts of HB 3078 that reduce the
18 sentences for identity theft and theft in the first degree under ORS 137.717 did not pass and do
19 not have the force of law.

20
21 **SECOND CLAIM**

22 23. Plaintiffs bring this action to defend the integrity of the initiative and amendment
23 processes, and the Oregon Constitution. This action will therefore benefit all Oregonians, not
24 just themselves. Accordingly, they are entitled to recover their attorney fees, if they prevail. *See*
25 *Swett v. Bradbury*, 335 Or 378 (2003); *Armatta v. Kitzhaber*, 327 Or 250 (1998); *Deras v. Myers*,
26 *272 Or 47* (1975).

PRAYER FOR RELIEF

24. NOW, THEREFORE, plaintiffs pray for a judgment that:

(a) declares that HB 3078 (2017) is invalid and unenforceable;

(b) in the alternative, declares that the provisions of HB 3078 (2017) which purport to reduce the sentences for identity theft and theft in the first degree are invalid and unenforceable;

(c) awards plaintiffs the costs, disbursements, and attorney fees they incur in this action; and

(d) awards such further relief as the court deems proper.

Dated this 15th day of November, 2017.

Respectfully submitted,

s/ Thomas M. Christ

Thomas M. Christ, OSB No. 834064
Cosgrave Vergeer Kester LLP

John A. Bennett, OSB No. 750407
Bullivant Houser Bailey PC

For Plaintiffs