



STATE OF OREGON  
Marion County Circuit Courts  
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**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION**

OREGON RIGHT TO LIFE, SUZANNE	)	Case No. <b>23CV18048</b>
WEBER, and EMILY McINTIRE,	)	
	)	
Plaintiffs,	)	
v.	)	<b>COMPLAINT FOR DECLARATORY</b>
	)	<b>AND INJUNCTIVE RELIEF</b>
LORI L. BROCKER, Secretary of the Senate,	)	
in her official capacity; DEXTER JOHNSON,	)	Claims Not Subject to Mandatory Arbitration
Legislative Counsel, in his official capacity;	)	
ROB WAGNER, President of the Oregon	)	
Senate, in his official capacity; DAN	)	
RAYFIELD, Speaker of the Oregon House of	)	
Representatives, in his official capacity; and	)	
TIMOTHY G. SEKERAK, Chief Clerk of the	)	
Oregon House of Representatives, in his	)	
official capacity.	)	
	)	
Defendants.	)	

Plaintiffs Oregon Right to Life, Suzanne Weber, and Emily McIntire (“Plaintiffs”) allege as follows for their Complaint against Defendants Lori L. Brocker, the Secretary of the Oregon Senate, in her official capacity, Dexter Johnson, the Oregon Legislative Counsel, in his official capacity, Rob Wagner, President of the Oregon Senate, in his official capacity, and Timothy G. Sekerak, Chief Clerk of the Oregon House of Representatives, in his official capacity (“Defendants”):

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1.

Plaintiffs seek declaratory and injunctive relief pursuant to ORS 28.020 against Defendants as administrative agents of the State of Oregon, directing the legislature to prepare the measure summary for HB 2002 B-Enrolled (“Summary”) as required by ORS 171.134, so that the measure’s “summary prepared by the Legislative Assembly shall be written in a manner that results in a score of at least 60 on the Flesch readability test or meets an equivalent standard of a comparable test.” (“Readability Standard”). Plaintiffs seek declaratory and injunctive relief pursuant to ORS 28.020 and Oregon Rule of Civil Procedure 79 against Defendants Brocker, Johnson, and Wagner, enjoining them from taking further action on HB 2002 B until the measure’s summary complies with ORS 171.134.

**JURISDICTION AND VENUE**

2.

This Court has jurisdiction pursuant to ORCP 4(A)(4) because all Defendants are engaged in substantial and not isolated activities within the State of Oregon.

3.

This is the proper venue pursuant to ORS 14.060 because Marion County is where the Oregon Legislative Assembly meets and where the cause of this suit arose.

**PARTIES**

4.

Plaintiff Oregon Right to Life, (“ORTL”) is an Oregon non-stock corporation with its principal place of business in Salem, Oregon. ORTL is organized and operated as a nonprofit membership organization that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. Declaration of Lois Anderson, ¶ 3, attached as Exhibit 1. (“Anderson Decl.”). ORTL was formed in 1970 to proclaim and advocate for the inherent dignity of human life and to promote respect and protection for human life in all its stages, regardless of

1 race, sex, age, development, or level of development of human life. *Id.* ORTL has more than  
2 25,000 members and supporters across Oregon, including many who reside in Marion County.

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5.

Plaintiff Suzanne Weber (“Senator Weber”) is an elected member of the Oregon State Senate, presently serving the 82<sup>nd</sup> Oregon Legislative Assembly. Declaration of Suzanne Weber, ¶¶ 1-2, attached as Exhibit 2. (“Weber Decl.”) On May 2, 2023, Senator Weber was recognized for a *Point of Order*<sup>1</sup> by the President of the Oregon Senate and voiced an objection that Senate Rule 13.02 was being violated in that the language in the HB 2002 B Summary accepted by the Secretary of the Senate was substantially higher than the statutorily required Readability Standard or the Oregon Constitution. Weber Decl., ¶ 6. Senator Weber’s objection (Point of Order) was made during the First Reading of HB 2002 B, and was proper in form, timely, and recognized by President Wagner. *Id.* Senator Weber succinctly stated that the measure’s summary violates Article IV, Section 21 of the Oregon constitution, ORS 171.134, and Senate Rule 13.02. *Id.* at Exhibit 1. After a recess, President Wagner ruled against Senator Weber’s *Point of Order*. *Id.* at ¶ 7. Senator Weber rose to *Appeal the Ruling of the Chair* to the body as a whole. *Id.* A vote was taken, with the majority of the body sustaining the ruling of the chair. *Id.*

6.

Plaintiff Emily McIntire (“Representative McIntire”) is an elected member of the Oregon House of Representatives, presently serving the 82<sup>nd</sup> Oregon Legislative Assembly. Declaration of McIntire, ¶1, attached as Exhibit 3 (“McIntire Decl.”) On May 1<sup>st</sup>, 2023, Representative McIntire raised a *Point of Order* and was recognized by the Speaker of the House during the chamber’s floor session. McIntire Decl. ¶ 6. Representative McIntire voiced an objection that the

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<sup>1</sup> Black’s Law Dictionary defines “point of order” as a “request suggesting that the meeting or a

1 HB 2002 B Summary accepted by the Chief Clerk of the House is substantially different than  
2 required by the Readability Standard; to wit, that the HB 2002 B Summary is presently scored at  
3 a college graduate level when ORS 171.134 mandates an equivalent of an 8<sup>th</sup> grade reading level  
4 or below. Representative McIntire’s objection was proper in form, timely, and recognized by the  
5 Speaker. McIntire Decl. ¶¶ 6 – 12. Representative McIntire succinctly stated that the measure’s  
6 summary violates Article IV, Section 21 of the Oregon constitution, ORS 171.134, and House  
7 Rule 14.15. *Id.* at ¶ 7, Exhibits 1-3. After a recess, Speaker Rayburn ruled against Representative  
8 McIntire’s *Point of Order. Id.* ¶ 8. Representative Reschke rose to *Appeal the Ruling of the Chair*  
9 to the body as a whole. *Id.* A vote was taken, and the majority of the body sustained the ruling of  
10 the chair. *Id.*

13 7.

14 Defendant Lori L. Brocker (“Secretary Brocker”) currently serves as the Secretary of the  
15 Senate in the 82<sup>nd</sup> Oregon Legislative Assembly. On May 1<sup>st</sup>, 2023, Secretary Brocker caused  
16 HB 2002 B to be set for a First Reading before the Oregon Senate during the May 2, 2023  
17 morning session. When Secretary Brocker accepted HB 2002 B, the measure’s summary did not  
18 comply with ORS 171.134, which requires that a “summary prepared by the Legislative  
19 Assembly shall be written in a manner that results in a score of at least 60 on the Flesch  
20 readability test or meets an equivalent standard of a comparable test.” Secretary Brocker caused  
21 HB 2002 B to be brought to the floor of the Senate in contradiction to the requirements of ORS  
22 171.134, SR 13.02, and the Oregon Constitution.

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member is not following the applicable rules and asking the chair enforce the rules.”

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8.

Defendant Dexter Johnson (“Counsel Johnson”) currently serves as Oregon’s Legislative Counsel. His office drafted the summary for HB 2002 B. Counsel Johnson failed to score HB 2002’s summary as required by ORS 171.134, or he ignored the non-compliant score.

9.

Defendant Rob Wagner (“President Wagner”) is an elected member of the Oregon State Senate, presently serving the 82<sup>nd</sup> Oregon Legislative Assembly as President of the Senate. On May 2<sup>nd</sup>, 2023, President Wagner recognized Senator Weber who properly and respectfully objected to the First Reading of HB 2002 B because the bill’s summary is substantially below the minimum requirements of ORS 171.134. President and Chair Wagner ruled that Senator Weber’s Point of Order was inappropriate because the HB 2002 B Summary was written by the House, not Senate; therefore, he incorrectly reasoned, SR 13.02 and the requirements of ORS 171.134 do not apply. A vote was taken, and the majority of the body sustained the ruling of the chair.

10.

Defendant Dan Rayburn (“Speaker Rayburn”) is an elected member of the Oregon House of Representatives, presently serving the 82<sup>nd</sup> Oregon Legislative Assembly as Speaker of the House. On May 1<sup>st</sup>, 2023, Speaker Rayburn recognized Representative McIntire who properly and respectfully objected that the summary for HB 2002 B, accepted by the Chief Clerk of the House, was substantially below the minimum requirements of ORS 171.134. Speaker Rayburn did not sustain Representative McIntire’s objection. The ruling of the chair was appealed, a vote was taken by the House, and a majority of the body sustained the ruling of the chair.

11.

Defendant Timothy G. Sekerak (“Chief Clerk Sekerak”) currently serves as the Chief Clerk of the House in the 82<sup>nd</sup> Oregon Legislative Assembly. On May 1<sup>st</sup>, 2023, Chief Clerk Sekerak

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1 caused HB 2002 B to be brought to the floor of the House in violation of ORS 171.134, HR  
2 14.15, and the Oregon Constitution.

3  
4 **FACTUAL ALLEGATIONS**

5 12.

6 In 1970, the Voting Rights Act ended the use of literacy tests throughout our country  
7 because such tests were used to disqualify the poor, the uneducated, and minorities from  
8 meaningfully participating in our democracy. In 1979, Oregon legislators recognized that we  
9 must balance a governmental system that relies on literacy with the reality that many adults  
10 cannot read above an 8<sup>th</sup> grade level. (Declaration of Vance Day, attached as Exhibit 6,  
11 Testimony of Senator George Wingard, Senate Committee on Education, May 3, 1979) (“Day  
12 Decl.”). Accordingly, they enshrined “Readability requirements for legislative digests and  
13 summaries” into law to ensure a majority of Oregonians could meaningfully participate in our  
14 democracy. ORS 171.134 (began as SB 543 in the 1979 legislative session).  
15  
16

17 13.

18 **ORS 171.134 provides in its entirety, “Any measure digest or measure summary**  
19 **prepared by the Legislative Assembly shall be written in a manner that results in a score of**  
20 **at least 60 on the Flesch readability test or meets an equivalent standard of a comparable**  
21 **test.”** (emphasis added). The legislature did not include any limitations or exceptions to this  
22 statutory mandate.  
23

24 14.

25 The Flesch readability test was first used in 1948 to show how readable a text is. *See*  
26 <https://goodcalculators.com/flesch-kincaid-calculator/> (last accessed May 2, 2023, © 2015-2023  
27 goodcalculators.com). Obtaining this score may have been an arduous task in 1979, but today an  
28 online calculator quickly and easily shows how readable text is. The online calculator returns a

1 Flesch Readability Ease score and Flesch-Kincaid Grade Level for any inserted text. Scores  
2 around 100 mean the document is extremely easy to read, while scores around 0 mean that it is  
3 highly complex and difficult to understand. A score of 60, as required by ORS 171.134, is  
4 equivalent to approximately an 8<sup>th</sup> or 9<sup>th</sup> grade reading level.  
5

6 16.

7 When HB 2002 B’s measure summary<sup>2</sup> is entered into the Flesch online calculator, the  
8 following results are produced:

- 9 Flesch Kincaid grade level: **14.5**
- 10 Flesch Reading Ease Score: **15.5**
- 11 Reading Level: **College Graduate** (very difficult to read)

12 See Anderson Decl., ¶ 9 (emphasis added). A score of 15.5 *blatantly* exceeds the statutory  
13 mandate of 60. ORS 171.134. If fact, this score exceeds the reading level of approximately 65  
14

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16  
17 <sup>2</sup> HB 2002 B measure summary in its entirety: “Modifies provisions relating to reproductive  
18 health rights. Modifies provisions relating to access to reproductive health care and gender-  
19 affirming treatment. Modifies provisions relating to protections for providers of and individuals  
20 receiving reproductive and gender-affirming health care services. Creates crime of interfering  
21 with a health care facility. Punishes by maximum of 364 days’ imprisonment, \$6,250 fine, or  
22 both. Creates right of action for person or health care provider aggrieved by interference with  
23 health care facility. Makes statutory change to achieve gender neutral language with respect to  
24 unlawful employment discrimination because of sex. Declares public policy regarding interstate  
25 actions arising out of reproductive health care and gender-affirming treatment. Prohibits public  
26 body from participating in interstate investigation or proceeding involving reproductive health  
27 care and gender-affirming treatment. Creates exceptions. Prohibits clerk of court from issuing  
28 subpoena if foreign subpoena relates to reproductive health care or gender-affirming treatment.  
Declares that Oregon law governs certain actions arising out of reproductive health care or  
gender-affirming treatment provided or received in this state. Repeals criminal provisions  
relating to concealing birth. Appropriates moneys from General Fund to Higher Education  
Coordinating Commission for allocation to Office of Rural Health, for purposes of providing  
grants through rural qualified health center pilot project. Appropriates moneys from General  
Fund to Oregon Health Authority for specified expenses. Declares emergency, effective on  
passage.”

See <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2002>

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1 percent of Oregonians, including Oregon legislators and lobbyists who are *not* college graduates.  
2 See <https://www.census.gov/quickfacts/OR> (2017-2021 census data).

3  
4 15.

5 A Flesch Reading Ease Score of 15.5 for the HB 2002 B summary violates the statutory  
6 minimum of “a score of at least 60 on the Flesch readability test or meets an equivalent standard  
7 of a comparable test.” ORS 171.134.

8  
9 16.

10 Legislative Counsel Johnson has not taken any action to comply with the readability  
11 requirement in ORS 171.134. Current Senate Rule 13.02 (Measure Summary) recognizes and  
12 reiterates that “All summaries must comply with ORS 171.134.”<sup>3</sup> (emphasis added). Legislative  
13 Counsel is tasked with drafting a measure’s initial summary.<sup>4</sup> Senate Rule 13.02 further requires  
14 Legislative Counsel “shall” provide a *corrected* summary when any material errors are found, or  
15 when a measure is amended. (13.02(3)(4)).

16 **FIRST CLAIM FOR RELIEF**

17 **Declaratory Judgment - HB 2002 B Violates Or. Rev. Stat. 171.134**

18  
19 17.

20 Plaintiffs reallege and incorporate by reference all allegations in all preceding  
21 paragraphs.

22  
23 18.

24 Plaintiffs seek a declaratory judgment that ORS 171.134 requires that “[a]ny measure  
25 digest or measure summary prepared by the Legislative Assembly shall be written in a manner

26 \_\_\_\_\_  
27 <sup>3</sup> See [www.oregonlegislature.gov/secretary-of-](http://www.oregonlegislature.gov/secretary-of-senate/Documents/Oregon%20Senate%20Rules%202023.pdf)  
28 [senate/Documents/Oregon%20Senate%20Rules%202023.pdf](http://www.oregonlegislature.gov/secretary-of-senate/Documents/Oregon%20Senate%20Rules%202023.pdf). (Rules of the Senate, Adopted  
January 9, 2023).  
<sup>4</sup> See <https://www.oregonlegislature.gov/lc/PDFs/draftingmanual.pdf> (Legislative Counsel’s



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1 that results in a score of at least 60 on the Flesch readability test or meets an equivalent standard  
2 of a comparable test” and that defendants have breached their obligation under ORS 171.134.

3 **SECOND CLAIM FOR RELIEF**

4 **Declaratory Judgment - HB 2002 B Violates Or. Const. art. 4, § 21**

5  
6 19.

7 Plaintiffs reallege and incorporate by reference the allegations of the prior Paragraphs as  
8 though fully set forth herein.

9 20.

10 The Oregon Supreme Court has said this Court “can determine and declare that the  
11 legislature failed to act in accordance with [a] constitutional mandate.” *Pendleton Sch. Dist 16R*  
12 *v. State*, 345 Or 596, 610, 200 P3d 133, 141 (2009).

13 21.

14 HB 2002 B violates the constitutional mandate that “Every act, and joint resolution shall be  
15 plainly worded, avoiding as far as practicable the use of technical terms.” Or. Const. art. 4, § 21  
16 (“§ 21”) (“Section 21. Acts to be plainly worded.”).

17 22.

18 On its face, § 21 is intended to serve an informational purpose. The plain-language  
19 mandate is designed to provide both legislators and the general public with information about  
20 what the law is by requiring transparency through non-technical language. That purpose and  
21 means are required by the due-process duty to give notice of the law. They enable understanding  
22 of and compliance with the law. They allow legislators to know what they are voting on and  
23 whether more research is required to decide whether to support or oppose legislation. They  
24 enable members of the public to know whether to exercise their First Amendment rights of free  
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“Bill Drafting Manual,” 2019 ed., p. 27).

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1 speech, association, and petition to support or oppose legislation. So, such informational  
2 transparency is fundamental to the rule of law and the functioning of a democratic republic.

3  
4 23.

5 The Legislature interpreted and implemented § 21’s informational purpose and  
6 transparency mandate by enacting the plain-language statute at ORS 171.134, which requires as  
7 follows: “171.134 Readability test for legislative digests and summaries. Any measure digest or  
8 measure summary prepared by the Legislative Assembly shall be written in a manner that results  
9 in a score of at least 60 on the Flesch readability test or meets an equivalent standard of a  
10 comparable test.” ORS 171.134 doesn’t require such readability testing for legislation in general,  
11 only for digests and summaries, indicating that those are uniquely in need of such transparency  
12 to serve the informational purpose and enable legislators and the public to readily discern from a  
13 summary what a bill is about to enable their functioning in our democratic republic.  
14

15  
16 24.

17 The Senate interpreted and implemented § 21 and ORS 171.134 in Senate Rule 13.02  
18 (titled “Measure Summary”), which requires (inter alia) that “[n]o measure shall be accepted by  
19 the Secretary of the Senate for introduction without an impartial summary of the measure’s  
20 content,” that “summaries of measures may be compiled and published,” and that “all summaries  
21 must comply with ORS 171.134.” Eighty-Second Oregon Legislative Assembly, *Rules of the*  
22 *Senate* 33 (Jan. 9, 2023).<sup>5</sup> The fact that summaries may be used separately from bills as  
23 descriptors of what the bills say and do highlights the need for them to fulfill the informational  
24 purpose and transparency means of § 21.  
25  
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28 <sup>5</sup> [www.oregonlegislature.gov/secretary-of-senate/Documents/Oregon%20Senate%20Rules%202023.pdf](http://www.oregonlegislature.gov/secretary-of-senate/Documents/Oregon%20Senate%20Rules%202023.pdf).

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25.

Under the Legislature’s own interpretation, in ORS 171.134, of the constitutional plain-language requirement in § 21, the Summary violates § 21 because placing the Summary’s operative text<sup>6</sup> in the Flesch Kincaid Calculator<sup>7</sup> yields a Flesch Reading Ease Score of 15.4. That score is far from “a score of at least 60.”

**THIRD CLAIM FOR RELIEF**

**The HB 2002 B Summary Violates the Right to Petition, U.S. Const. amend. I.**

26.

Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

27.

The Summary also violates the First Amendment right to petition. U.S. Const. amend. I.

28.

The First Amendment protects a bundle of free-expression rights, including rights to free speech, association, and petition. Those are vital rights because they are essential means by which Americans participate in our democratic republic. The right to petition in particular, provides protection for addressing legislators and other governing authorities concerning things the petitioner seeks to accomplish.

29.

As applicable here, would-be petitioners seeking to petition legislators to support or oppose bills on particular issues can’t be aware of the need for such petitioning absent a proper plain-language Summary which would alert them to bills they wish to investigate and about

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<sup>6</sup> Excluding “SUMMARY: The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor’s brief statement of the essential features of the measure.” This introductory language is not substantive to the Summary and therefore is not included in the Flesch calculation.

1 which they might wish to petition their legislative representatives. With the many bills  
2 introduced in each legislation, the summaries are the legislature’s chosen means of  
3 communicating bills’ contents to the public. And the legislature has judged that to do that  
4 effectively, a summary must meet the statutory plain-language criterion.  
5

6 30.

7 ORTL monitors legislation for bills related to its pro-life mission and supports or opposes  
8 bills based on that mission, in particular by petitioning legislators for support or opposition.  
9

10 31.

11 ORTL’s Executive Directors declares that she could not understand the bill behind the  
12 Summary from the language of the Summary. *See* Anderson Decl., ¶ 7. Thus, the Summary did  
13 not give her the notice that the legislature itself decided was required by enacting ORS 171.134.  
14

15 32.

16 ORTL’s Executive Director, Lois Anderson, also declares that she could not understand  
17 the bill behind the HB 2002 B Summary from its language. *Id.* Thus, the HB 2002 B Summary  
18 did not give her the notice that the legislature itself decided was required by enacting ORS  
19 171.134.  
20

21 33.

22 Plaintiff McIntire also declares that she could not understand the bill behind the HB 2002 B  
23 Summary from its language. *See* McIntire Decl., ¶¶ 3, 5, 10. Thus, the HB 2002 B Summary did  
24 not give her the notice that the legislature itself decided was required by enacting ORS 171.134.  
25

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<sup>7</sup> at <https://goodcalculators.com/flesch-kincaid-calculator/>

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34.

Plaintiff Weber also declares that she could not understand the bill behind the HB 2002 B Summary from its language. *See* Weber Decl., ¶¶ 5-6. Thus, the HB 2002 B Summary did not give her the notice that the legislature itself decided was required by enacting ORS 171.134.

35.

That failure to comply with the constitutional and statutory plain-language requirement regarding the Summary violated ORTL’s, Senator Weber’s, and Representative McIntire’s petition rights by depriving Plaintiffs of the required information essential to the exercise of Plaintiffs’ right to petition.

**FOURTH CLAIM FOR RELIEF**

**ORCP 79 A.(1)(a)(b)**

**Temporary Restraining Order and Preliminary Injunction**

36.

Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

37.

Immediate and irreparable injury, loss, or damage will result to the Plaintiffs before the Defendants or their attorney can be heard in opposition. To wit: HB 2002 B may pass in violation of ORS 171.134, leaving Plaintiffs no means to challenge the unlawful summary. See *City of Damascus v. State by & through Brown*, 367 Or 41, 54, n.6 (2020) (dicta suggesting there is no remedy for a violation of ORS 171.134 after bill becomes law). The bill has already passed the House and is scheduled for a second reading in the Senate on May 3, 2023. Day Decl., ¶ 8). There are no other vehicles to enforce the requirements of ORS 171.134, other than this Court issuing a temporary restraining order. *Id.* A third reading and passage is imminent, likely by May 4, 2023.

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**ATTORNEY FEES**

38.

Plaintiffs claim a right to recover reasonable attorney fees and costs pursuant to ORCP 68 and the Court’s inherent equitable authority under the constitutional and substantial benefit theories and any other applicable provision of law. *De Young v. Brown*, 368 Or 64 (2021).

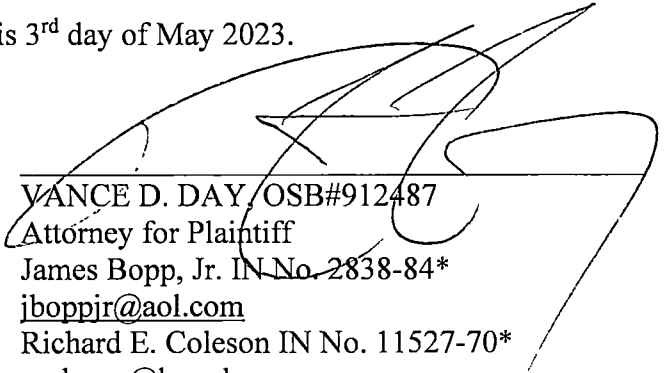
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request judgment against Defendants as follows:

1. For entry of Judgment against Defendants.
2. On Plaintiffs’ First Claim for Relief, for entry of a declaration under the Oregon Uniform Declaratory Judgment Act that the Summary is invalid on its face pursuant to ORS 171.134, and entry of an injunction enjoining Defendants Brocker, Johnson, and Wagner, and their officers, agents, and employees from proceeding with HB 2002 B in its entirety, until such time as the Summary conforms to the Flesch readability requirements of ORS 171.134.
3. On Plaintiffs’ Second Claim for Relief, for entry of a declaration under the Oregon Uniform Declaratory Judgment Act that the Summary is invalid on its face pursuant to Article 4, Section 22 of the Oregon State Constitution, and entry of an injunction enjoining Defendants Brocker, Johnson, and Wagner, and their officers, agents, and employees from proceeding with HB 2002 B in its entirety, until such time as the Summary conforms to the Flesch readability requirements of ORS 171.134.
4. Plaintiffs’ reasonable attorney fees and costs pursuant to ORCP 68 and this Court’s inherent equitable authority under the constitutional and substantial benefit theories; and
5. Any other relief as this Court may deem just and proper.

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RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of May 2023.



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