

IN THE COURT OF APPEALS OF THE STATE OF OREGON

BRIAN STOVALL, JOHN OLMSTEAD, CONNIE KRUMMRICH,
and KAREN BROWN,
Plaintiffs-Appellants
Cross-Respondents,

v.

NORTHERN OREGON CORRECTIONS, dba NORCOR,
an intergovernmental corrections entity,
Defendant-Respondent
Cross-Appellant,

and

WASCO COUNTY,
Defendant-Respondent.

Wasco County Circuit Court
17CV31082

A170661

On appeal from Wasco County Circuit Court
Judgment entered April 22, 2019
The Honorable John A. Wolf

PLAINTIFFS-APPELLANTS' NOTICE UNDER ORAP 8.45

Plaintiffs-Appellants (“Plaintiffs”) submit this Notice pursuant to ORAP 8.45 to advise the Court of their belief that a recently enacted Oregon law, HB 3265-B, renders the appeal moot in its entirety.

Under ORAP 8.45, “when a party becomes aware of facts that probably render an appeal moot, that party shall provide notice of the facts to the court and to the other party or parties to the appeal, and may file a motion to dismiss the appeal.” The rule requires notice to the court “within a reasonable time” so the court can maintain awareness of the case and preserve the court’s resources. *Terhune v. Myers*, 342 Or. 376, 381 (2007).

On July 19, 2021, the Governor signed into law House Bill 3265-B (“HB 3265” or the “Bill”), which clarified and strengthened Oregon’s prohibitions on uses of public facilities and resources to assist in federal immigration enforcement. *See* Exhibit A. Section 11 of HB 3265-B contains an emergency clause, so it became effective on passage.

The Bill addresses the four related issues raised on appeal in this case. Plaintiffs appealed the trial court’s holding on summary judgment that Defendant-Respondent NORCOR’s Intergovernmental Services Agreement (“IGSA”) with United States Immigration and Customs Enforcement (“ICE”) and Booking Notifications to ICE did not violate *former* ORS 181A.820. NORCOR cross-appealed the trial court’s holding that Plaintiffs have standing as taxpayers to maintain this action. NORCOR also argued that, in any event, it

is not a “law enforcement agency” subject to the restrictions of *former* ORS 181A.820. HB 3265 addresses and resolves each of these issues.

IGSA. The dispute over NORCOR’s IGSA with ICE is moot under HB 3265-B. NORCOR argued in prior briefing that it had terminated the IGSA, and thus, according to NORCOR, the issue of its validity was moot. (Respondent NORCOR’s Response to Appellants’ “Notice of Additional Facts” filed November 13, 2020 (“NORCOR’s Response”).) Plaintiffs argued in response that the appeal was not moot based on the voluntary cessation doctrine, even if the IGSA had been terminated. (Plaintiffs-Appellants’ Reply – Reply to NORCOR’s Response to Notice of Additional Facts filed December 7, 2020 (“Plaintiffs’ Reply”).) HB 3265-B renders moot this dispute about mootness.

First, section 6(1) of HB 3265-B prohibits both a “public body” and a “law enforcement agency” from “entering into” or “renew[ing] an agreement that authorizes” it “to detain or house individuals for federal civil immigration violations.” Thus, NORCOR, either as a “law enforcement agency” or a “public body,” cannot now revive the terminated IGSA.¹ Second, section 3(1) states that “[p]ublic facilities, property, moneys, equipment, technology may not be used for the purpose of . . . detaining or holding individuals for immigration enforcement.” Thus, the things that Plaintiffs complained of NORCOR doing

¹ HB 3265-B defines “public body” by reference to ORS 174.109, meaning “state government bodies, local government bodies and special government bodies.” That plainly includes NORCOR.

under the IGSA are expressly prohibited by statute. These provisions grant Plaintiffs all the relief they could obtain as to the IGSA and make the question whether NORCOR is a “law enforcement agency” within the meaning *former* ORS 181A.820 irrelevant.

Booking Notifications. The dispute over booking notifications is moot. Section 2(c) of HB 3265-B prohibits a “law enforcement agency or public body’ from providing “information about an individual in [its] custody to a federal immigration authority for the purpose of civil immigration enforcement,” subject only to exceptions for information sought by subpoena or generally available to the public. Likewise, section 3(b)(A) prohibits the use of public funds or resources to provide immigration enforcement officials with “information, including but not limited to an individual’s contact information, country of birth, custody status, release date, parole, probation or post-prison appointment dates or times, or home or work address,” subject only to the exceptions in section 2. These provisions resolve the booking notification issue and, again, render moot the question whether NORCOR was a law enforcement agency under prior law.

Standing. NORCOR argued in earlier briefing that this Court should decide the standing issue even if it concluded that the merits of the appeal were moot. Plaintiffs disagree with that curious position, but HB 3265 also makes this argument irrelevant. Each of sections 2, 3, and 6 of the Bill provides that

“[a]ny person may bring a civil action” to enjoin violations of the provisions quoted above. There is no reason for this Court to address the issue of taxpayer standing to bring actions under *former* ORS 181A.820, even if that question remained justiciable.

DATED this 30th day of August 2021.

Respectfully submitted,

INNOVATION LAW LAB

OREGON LAW CENTER

By: s/Stephen W Manning
Stephen W. Manning, OSB 013373
Immigrant Law Group PC
333 SW 5th Avenue, Suite 525
PO Box 40103
Portland, OR 97240
Telephone: (503) 241-0035
Email: smanning@ilgrp.com

By: s/Stephen S. Walters
Stephen S. Walters, OSB 801200
David R. Henretty, OSB 031870
522 SW 5th Avenue, Suite 812
Portland, OR 97204
Telephone: (503) 473-8684
Email: swalters@oregonlawcenter.org
dhenretty@oregonlawcenter.org

Jordan Cunnings, OSB 182928
Innovation Law Lab
333 SW Fifth Ave., Suite 200
Portland, OR 97204
Telephone: (971) 277-2857
Email: jordan@innovationlawlab.org

**Attorneys for Plaintiff-
Appellant/Cross-Respondent Karen
Brown**

**Attorneys for Plaintiffs-
Appellants/Cross-Respondents
Brian Stovall, John Olmstead, and
Connie Krummrich**

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on August 30, 2021, I directed the original / to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon the following lawyers using the court's electronic filing system: Drew L. Eyman, Leland Baxter-Neal, Iván Resendiz Gutierrez, Bruce L. Campbell, Kristen Campbell, and Thomas M. Christ.

DATED this 30th day of August, 2021.

OREGON LAW CENTER

s/David R. Henretty

David R. Henretty, OSB 031870

dhenretty@oregonlawcenter.org

Attorneys for Plaintiff-

Appellant/Cross-Respondent Karen

Brown