

Judge Sheryl Bachart
Circuit Court Judge
Lincoln County Circuit Court
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September 23, 2019

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RE: *Rex Capri, Wakefield Farms, LLC v. Dana Jenkins, Lincoln County*
Lincoln County Case No. 17CV23360
Motion for Summary Judgment

Dear Mr. Chaimov, Mr. Belmont and Mr. Meek,

This matter came before the court on October 9, 2017 for hearing on Plaintiff's Motion for Summary Judgment, Defendant Lincoln County's Cross Motion for Summary Judgment and Intervenor Lincoln County Community Rights' Cross Motion for Summary Judgment. Plaintiff appeared personally and through counsel, Mr. Gregory Chaimov. Defendant Lincoln County appeared through County Counsel, Mr. Wayne Belmont. Intervenor Lincoln County Community Rights appeared through attorney Ms. Ann Kneeland. The court having heard arguments of counsel and reviewed the briefing submitted in support of and in response to the pending motions, the court makes the following findings:

In the May 2017 primary election, Lincoln County voters passed Measure 21-177, the "Freedom from Aerially Sprayed Pesticides Ordinance" (the Ordinance). As stated in the Purpose of the Ordinance, "our fundamental right to clean air, water and soil not contaminated by aerial spraying of pesticides cannot be achieved when that right is routinely overridden by corporate minorities claiming legal powers to engage in that contamination." The Ordinance's purpose was to create a ban on aerially spraying of pesticides because "current laws and regulations permit and protect the practice of aerial spraying of pesticides, threaten our public

health, violate our constitutionally-guaranteed right to safety, and interfere with our right of local community self-government.” Pursuant to the Ordinance, a resident of Lincoln County or the local government may bring a legal action to enforce the rights and prohibitions of the Ordinance. On June 5, 2017, Dana Jenkins, Lincoln County Clerk, certified the election results and the enactment of the Ordinance.

Prior to enactment of the Ordinance, the Measure faced two pre-election challenges. In *Bregman v. Branam*, Lincoln County Case No. 15CV19954, the court ruled on objections to the Ballot Title. In *Bregman v. Jenkins, et al*, Lincoln County Case No. 15CV19955, challenges to the measure included that it violated the Single Subject Rule and it failed to include the full text of proposed law. This court affirmed the determination of Dana Jenkins, Lincoln County Clerk, that the initiative did not violate the single subject requirement set forth in Article IV, section 1(2)(d) of the Oregon Constitution and it did not violate the full text requirement.

Plaintiffs move the court to find the Ordinance adopted in Measure 21-177 is void in its entirety because it was not validly adopted, and in the alternative, find sections 3(a)-(c), 4, 5 and 6 of the Ordinance invalid and enjoin the County from enforcing those sections. A copy of the Ordinance as enacted in Measure 21-177 is attached to this opinion as reference.

Plaintiff asserts he has standing to challenge the validity of the Ordinance under ORS 246.910(1). Plaintiff and Defendant County agree ORS 246.910(1) applies to decisions of county clerks in addition to decisions of the Secretary of State. Plaintiff alleges he is a registered voter of Lincoln County. That allegation is sufficient to establish he is a “person adversely affected” by an action of the county clerk. ORS 246.910(1). Plaintiff contends he was adversely affected by the acts of the county clerk in certifying the ballot measure in violation of the Single Subject Rule and that it failed to include the full text of the proposed law. The clerk’s evaluation of the proposed initiative that became Measure 21-177 is the act that is at issue in this case. ORS 250.168(1). Pursuant to ORS 250.168(4) any elector dissatisfied with a determination of the county clerk may petition the circuit court to overturn the determination of the clerk. A constitutional challenge must be made within seven business days after the written determination is made by the county clerk. Plaintiff’s challenge is untimely because it was not filed within seven days of the county clerk’s certification of the ballot title, as required by *Ellis v. Roberts*, 302 Or 6 (1986). As noted above, *Ellis* is equally applicable to determinations by the county clerk. “Respecting a challenge under ORS 246.910(1) to the Secretary of State’s constitutional evaluation of a proposed initiative measure, *Ellis* sets out a 60-day deadline, following certification of a ballot title.” *League of Oregon Cities v. State of Oregon*, 334 Or 645, 656 (2002). Plaintiffs in *League of Oregon Cities* had argued that the 60-day deadline only applied to challenges brought before an election. The court expressly rejected that argument. *Id.* at 657. The court found the filing of the action after the election did not save their challenge for jurisdictional purposes under ORS 246.910(1). The court finds *League of Oregon Cities* to be dispositive on the issue of the jurisdiction under ORS 246.910(1). The time for Plaintiffs to assert this challenge occurred prior the election, not in a post-election challenge. This court does not have jurisdiction to hear Plaintiff’s challenge under ORS 246.910(1) as it was filed long after the seven-day deadline, and therefore is not timely under *Ellis*.

As stated above, this Ordinance was the subject of a pre-election challenge. *Bregman v. Dana Jenkins, et al*, 15CV19955. The determinations of the county clerk were reviewed by this court and ultimately upheld. The court does not disturb any prior findings regarding the single subject rule and failure to include the full text of the proposed law. The court takes judicial notice of the prior record in *Bregman* and its ruling. The court denies Plaintiff's Motion for Summary Judgment as to Plaintiff's First Claim for Relief that Ballot Measure 21-177 does not violate the single subject rule or fails to include the full text of the law. This claim is not timely and the Court lack Subject Matter Jurisdiction in this post-election challenge under ORS 246.910. For the same reason, the court grants Defendant County's Cross Motion for Summary Judgment as to this claim.

Plaintiff asserts the Ordinance is beyond the power of the county to adopt. In other words, the Measure is not a matter of "county concern" and is void under ORS 203.035 and Section 10, Article VI of the Oregon Constitution. Defendant County correctly points out Lincoln County is a general law county, not a home rule county, and initiative and referendum powers are governed by Section 1, Article IV of the Oregon Constitution. This court does not find that ORS 203.035 makes Section 10, Article VI apply to General Law counties. Nevertheless, Plaintiff maintains the Ordinance is invalid because the Ordinance contains provisions which are not "matters of county concern" relying on *State v. Logsdon*, 165 Or App 28 (2000). In *Logsdon* Josephine County enacted an amendment to the County Charter which forbade police to search private property without prior written consent or a search warrant. The court examined whether the county exceeded its authority in enacting this amendment as it was not a "matter of county concern." The *Logsdon* court acknowledged this term had not previously been defined. However, it found "[a]lthough the perimeters of city and county home rule authority may defy easy delineation, certain qualifications of that authority may be stated with some confidence...whatever else local government authority may entail, it does not include governing the conduct of state and federal officials." *Id.* at 32. The court found section 29.4 of the Josephine County Charter to be invalid because it declared that no one—no individual group, or federal or state or local governmental body or agency—may enforce any law that is contrary to section 29.4. *Id.* at 33. The court found no county had such authority. *Id.* *Logsdon* made clear counties may not exercise control over state and federal government officials or agencies.

However, municipalities and counties are not deprived of authority to legislate in a particular area merely because their interest is not exclusively or uniquely local. The county's authority is circumscribed by the constitution and by ORS 203.035. *GTE Northwest Inc. v. PUC*, 179 Or App 46, 62 (2002). "From the statute comes a clear, express grant of authority that requires only a demonstration of a concern that is peculiar to the county's residents." *Id.* The legislative interests may overlap and the inquiry then is whether both policies may coexist, or whether one must give way. Aerial pesticide spraying is a matter of county concern. Measure 21-77 was properly placed on the ballot and legally enacted by the voters of Lincoln County. Consideration of preemption will be discussed below, but the court finds the Ordinance survived two pre-election challenges and was the proper subject of local initiative powers.

Defendant County argues because the state recognized and authorized some level of County authority to act under ORS 634.060, the subject matter of the Measure is a matter of county concern within the county's authority to legislate. The question for the court is first whether the

County is authorized to legislate in this area, and if so, whether the County is preempted under state law from regulation of pesticides. Preemption is a legal doctrine; it does not have an inherent political agenda. Preemption is a tool to help resolve the inevitable conflicts that arise between different levels of government in a multi-tiered system of government. Preemption is not an assault upon local self-government. If preemption was not applied, local governments could engage in discriminatory practices. It is preemption which prevents these types of practices from being implemented. For example, preemption has been used to strike down local policies which infringe on fundamental rights, like equal protection. Preemption is the same doctrine used against Sundown Towns, exclusionary zoning, and other systemic discrimination. However, it is also argued that state legislation to override or ban local ordinances and regulations can be a misuse of preemption. The court's analysis of preemption in this case is not one based on policy; it is a legal doctrine which must be applied to determine the legal effect of the Ordinance. Regardless of the subject matter of the Ordinance, it would subject to same legal scrutiny.

The issue of preemption is one that could not have been addressed prior to passage of the Measure. “[A] court will not inquire into the substantive validity of a measure—*i.e.*, into the constitutionality, legality or effect of the measure’s language—unless and until the measure is passed.” *Foster v. Clark*, 309 Or 464, 469 (1990). “[W]hen such a challenge does reach a court, the court’s decision must be derived from a constitutional standard, not from the court’s own view of competing public policies.” *LaGrande/Astoria v. PERB*, 281 Or 137, 147 (1978). In *LaGrande/Astoria* the court recognized municipalities and the state legislature may enact laws in pursuit of substantive objectives, “each well within its respective authority, that were arguable inconsistent with one another.” *Id.* at 148. The court found “in such cases, the first inquiry must be whether the local rule in truth is incompatible with the legislative policy, either because both cannot operate concurrently or because the legislature meant its law to be exclusive.” *Id.* The court goes onto state, “it is reasonable to interpret local enactments, if possible, to be intended to function consistently with state laws, and equally reasonable to assume that the legislature does not mean to displace local civil or administrative regulation of local conditions by a statewide law unless that intention is apparent.” *Id.* at 148-49. Here, the statewide law expressly and conclusively displaces any local ordinance regarding pesticide use. The intention of the legislature is apparent and unambiguous.

State law in the area of pesticide regulation is explicit in its provisions regarding preemption. ORS 634.055 provides:

“The Legislative Assembly hereby determines that the citizens of this state benefit from a system of safe, effective and scientifically sound pesticide regulation. The Legislative Assembly further finds that a uniform, statewide system of pesticide regulation that is consistent, coordinated, and comports with both federal and state technical expertise is essential to the public health, safety and welfare and that local regulation of pesticides does not materially assist in achieving these benefits.”

Oregon’s Pesticide Control Act is intended to regulate “the formulation, distribution, storage, transportation, application and use of pesticides.” ORS 634.005. In adopting the Act, the legislature made clear its preemptive intentions. *Advocates for Effective Regulation v. City of Eugene*, 160 Or App 292, 306 (1999). The statute prohibits “not merely *regulation* of pesticide

sale or use, but more broadly the adoption or enforcement of ‘any ordinance, rule or regulation *regarding*’ pesticide sale or use.” *Id.* at 307. There is no question Measure 21-177 is an adoption of an Ordinance regarding pesticide use. Therefore, the Measure is subject to the preemptive effect of the Oregon Pesticide Control Act.

ORS 634.057 provides:

“No city, town county or other political subdivision of this state shall adopt or enforce any ordinance, rule or regulation regarding pesticide sale or use, including but not limited to:

- (1) Labeling;
- (2) Registration;
- (3) Notification of use’
- (4) Advertising and marketing;
- (5) Distribution;
- (6) Applicator training and certification;
- (7) Licensing;
- (8) Transportation;
- (9) Packaging;
- (10) Storage;
- (11) Disclosure of confidential information; or
- (12) Product composition.

ORS 634.060 governs actions allowed by cities, towns, counties wherein it provides:

“Notwithstanding ORS 634.057, a city, town, county or other political subdivision of this state may adopt a policy regarding the use of pesticides on property owned by the city, town, county or other political subdivision adopting the policy.”

ORS 634.063 carves out very limited exceptions to state preemption:

“Nothing in ORS 654.057 shall limit the authority of a city, town, county or other political subdivision of this state to adopt or enforce a local ordinance, rule or regulation strictly necessary to comply with:

- (1) The Uniform Building Code published by the International Conference of Building Officials, as amended and adopted by the Director of the Department of Consumer and Business Services;
- (2) A uniform fire code; or
- (3) Any requirement of a state or federal statute or regulation pertaining to pesticides.”

As previously stated, the Ordinance specifically seeks to ban the aerial spraying of pesticides within Lincoln County. Therefore, the Ordinance imposes regulations on the use of pesticides. The Ordinance must be reconciled with the preemptive provisions of ORS 634.055, ORS 634.057 and ORS 634.063. Defendant County contends that preemption does not completely preclude county regulations because Oregon’s Pesticide Control Act contains an exception to the prohibitions allowing a county to regulate use of pesticides on property owned by the county pursuant to ORS 634.060. Defendant County maintains the court cannot

completely invalidate the Measure based on preemption under ORS Chapter 634, but the court may limit its regulatory capacity by declaring the extent of regulatory preemption.

The County's argument relies on an interpretation of ORS 634.060 which grants a county the authority to regulate pesticides. This court does not interpret ORS 634.060 to grant the county the authority to *regulate* or to adopt ordinances, rules or regulations. ORS 634.060 grants a county the authority to *adopt a policy* regarding the use of pesticides on property owned by the county. There is a difference between adopting an *ordinance, rule or regulation* and adopting a *policy*.

ORS 174.010 guides the court in statutory interpretation. ORS 174.010 provides:

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.”

The plain language of ORS 634.060 does not include any reference to adoption of ordinances, rules or regulations. ORS 634.057 includes an express prohibition against adopting or enforcing any *ordinance, rule or regulation*. ORS 634.063 carves out three exceptions to state pesticide regulation by stating nothing in ORS 634.057 shall limit the authority of a county to *adopt or enforce a local ordinance, rule or regulation* strictly necessary to comply with the building code, fire code or any state or federal statute regulation pertaining to pesticides. ORS 634.060 includes the term *policy* rather than *ordinance, rule or regulation*. The term “policy” is only used in ORS 634.060, it is not used in ORS 634.057 or in ORS 634.063. Therefore, when identifying an action allowed by a city, town or county, it may only adopt a *policy* regarding the use of pesticides on its own land. Nowhere within ORS 634.060 does it provide that a county may adopt an *ordinance, rule or regulation* as the County argues. Put simply, the court cannot insert what the legislature has left out, nor can the court ignore the plain language of the statute.

To further assist the court in statutory interpretation, the court must apply ORS 174.010(1)(b) which provides: “When a general and a particular provision are inconsistent, the latter is paramount to the former so that the particular intent controls a general intent that is inconsistent with the particular intent.” ORS 634.060 contains a specific provision regarding adoption of a policy. In those sections of the statute immediately preceding and following ORS 634.057 the legislature used the terms “ordinance, rule and regulation.” The more specific provision contained within ORS 634.060 must control. If the legislature desired to grant cities, town and counties the authority to adopt ordinances, rules and regulations regarding pesticide use, it would have so stated. In order to find as the County argues, that ORS 634.060 provides an exception for counties to adopt ordinances regarding the use of pesticides on properties owned by the county, the court has to insert what has been omitted which is expressly prohibited by ORS 174.010. The court has no such authority. Therefore, as a matter of statutory construction, the court does not find ORS 634.060 grants the county the authority to adopt an ordinance regarding pesticide use. ORS 634.060 grants the county only the authority to adopt *a policy*.

Defendant County agrees the Court has jurisdiction over Plaintiff's second claim for relief under ORS 28.010, Oregon's Uniform Declaratory Judgments Act and under ORS 28.020 to determine the validity of the Measure. Plaintiffs are persons whose rights, status, or other legal relations are adversely affected by the Measure and, as such, are entitled to a determination of the validity of the Measure under ORS 28.020. Plaintiff argues that Oregon's Pesticide Control Act, ORS Chapter 634, preempts enactment of the Ordinance and the Measure is void and unenforceable. As previously explained, the court finds the County is preempted under state law from regulation of pesticides. The court grants Plaintiff's Motion for Summary Judgment as to this claim and Denies Defendant County's Cross Motion for Summary Judgment to declare under ORS 28.020 certain provisions within the Ordinance to be exempt from preemption. Since the Ordinance seeks by its very terms to regulate pesticide use, the County is completely preempted under state law from adopting any Ordinance regarding pesticide use. Oregon's State Pesticide Control Act conclusively prohibits this action by any county.

Defendant County points out that a state law must be shown either to "expressly" or "clearly" preempt local regulation. Preemption by the state can occur where "both [state and local law] cannot operate concurrently." *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or App 457 (2010). As Defendant County argues, "the bar is set for very high for a state law to have fully preemptive effect on a local enactment." In enacting Oregon's Pesticide Control Act, the legislature cleared that "high bar," in fact, it cleared it by feet, not inches. The preemption language contained within the statute make it impossible for any city, town or county to adopt *any* regulations, rules or ordinances regarding pesticide use or control. Regardless of the local impact of pesticide use, cities, towns and counties are expressly prohibited from adopting any meaningful regulation of pesticide use. It is unusual for a statute to have such a conclusive preemptive affect, but the legislature expressly preempted local regulation of pesticide use when it enacted ORS 634.055 *et seq.* Defendant County maintains the legislature provided an exception to the prohibitions allowing a county to regulate use of pesticides on property owned by the County. It did not even create this exception. The legislature merely created an exception for counties to adopt "policies" regarding pesticide use on its own properties. Therefore, the County may adopt a policy against aerial spraying of pesticides on its own property, but the policy cannot contain regulatory authority. The court agrees with the County that is extremely rare for a state law to have such a comprehensive preemptive affect on local enactment, but it appears to be the legislature's intent with respect to pesticide regulation.

Therefore, the court finds the Measure is preempted in its entirety under ORS Chapter 634, Oregon's Pesticide Control Act. In fact, the County does not have the authority to legislate as it contends. Its authority is to enact a policy, not a grant of authority to enact an ordinance, rule or regulation. The Court need not examine individual provisions of the Measure nor severability of those provisions because the court finds the preemptive affect of Oregon's Pesticide Control Act invalidates the entire Measure as enacted. The court agrees with Plaintiffs that ORS 634.057 preempts not only the Ordinance's direct ban on aerial spraying, but all provisions of the Ordinance regarding pesticides. Because the court finds that Oregon's Pesticide Control Act invalidates the Ordinance, the court does not need to analyze whether the Oregon Forest Practices Act also preempts provisions within the Ordinance.

Defendant-Intervenor Lincoln County Community Rights (LCCR) also moves the court for an order granting summary judgment. Defendant LCCR argues that the people of Lincoln County possess an inherent and inalienable right of local community self-government reserved by the Ninth Amendment under Article I, Sections 1 and 33 of the Oregon Constitution. Defendant LCCR contends that the lawmaking rights of the people of Lincoln County are infringed upon by enforcement of state preemptive laws and state statutes limiting county authority.

Lincoln County is a general law county; not a county of home rule. The authority granted counties under ORS 203.035 is the same as the authority granted home rule counties under the Oregon Constitution, Article IV, Section 10. *Allison v. Washington County*, 24 Or App 571 (1976). Both Defendant County and Plaintiff agree the County's power to make laws derives solely from the legislature. A county "derive[s its] legislative power from specific statutory grants and the broad general statutory grant in ORS 203.035 of authority 'over matters of county concern.'" *Id.* at 581. The statutory grant of authority is set forth within the provisions of ORS 230.035: ORS 203.035 provides:

- (1) "[T]he governing body or the electors of a county may by ordinance exercise authority within the county over matters of county concern, to the fullest extent allowed by Constitutions, and laws of the United States and of this state, as fully as if each particular power comprised in that general authority were specifically listed in ORS 203.030 to 203.075."
 - (2) "The power granted by this section is in addition to other grants of power to counties, shall not be construed to limit or qualify any such grant and shall be liberally construed, to the end that counties have all powers over matter of county concern that it is possible for them to have under the Constitutions and laws of the United States and of this state."
 - (4) "Nothing in this section shall be construed to limit the rights of the electors of a county to propose county ordinances through exercise of the initiative power."
- ORS 203.035(1), (2) and (4).

Defendant Intervenor LCCR asserts the people of Lincoln County possess an inherent and inalienable right of local community self-government "reserved by the Ninth Amendment, under Article I, Sections 1 and 33 of the Oregon Constitution. No Oregon case supports Defendant Intervenor's assertion in this regard. As stated by Defendant County, local self-governmental authority is not plenary, preemptory of state and federal laws, self-executing or an inalienable or fundamental right under the Oregon Constitution or laws of the state. The exercise of local authority shall be liberally construed, but it is established by state law. Therefore, it is also limited by state law.

As previously cited, the *LaGrande/Astoria* court acknowledged there may be areas where both state and local government have substantive objectives, each within its respective authority. *LaGrande/Astoria*, 281 Or App at 148. However, when a local enactment is found in incompatible with a state law in an area of substantive policy, the state law will displace the local rule. *Id.* at 149. "No state law in an area of substantive policy has ever been held subordinate to a contrary local rule..." *Id.* There is simply no authority for the proposition that the people of Lincoln County are granted an inalienable right of local self-government which preempts any authority of the state.

Defendant Intervenor LCCR concedes no Oregon court has recognized an actionable right of local community self-government. The court agrees with Defendant County and Plaintiff Oregon does not recognize an independent right of local community self-government that is fundamental, inherent, inalienable and constitutional. Defendant Intervenor's reliance on the Declaration of Independence, the Preamble of the Constitution, the Ninth Amendment and the Oregon Constitution is misplaced and without legal precedent. None of the sources relied upon by Defendant Intervenor grant or preserve rights of local community self-government. For the reasons stated, Intervenor Defendant's Cross Motion for Summary Judgment is denied in its entirety.

This case appropriately came before court on the parties' motions for summary judgment. There were no issues of fact for determination by the court. The parties' claims presented pure questions of law. ORCP 47A, 47C. In granting Plaintiff's Motion for Summary Judgment and declaring the Ordinance to be preempted in its entirety by the Oregon Pesticide Control Act, the court makes no choice among values or competing interests of the parties. Such choices are political, not a judicial decision. There is no determination within this decision of weighing or balancing community decision-making authority over that of the state, or vice versa. The court finds the Measure was lawfully presented to the voters of Lincoln County. It was lawfully enacted. The Measure presented an issue of county concern. However, state law preemption in the area of pesticide regulation is conclusive. Under ORS 634.060 the county may only enact a policy regarding the use of pesticides on its own property. The County may choose to do so based on the will of the voters in passing the Ordinance. Given Defendant-County's position in its cross motion, it appears the County desires to give effect to portions of the Ordinance. It may only adopt a policy against the use of aerial pesticides on county-owned property. Unless and until Chapter 634 is modified, this is the extent of local control in this area.

Finally, the court apologizes for the lateness of this decision. An email was previously sent to the parties expressing my regret, but it needs to be restated. Unfortunately, after this case was submitted my docket was significantly impacted by the long-term medical leave of one of our judges. As I hope you see from this opinion, it was my intent not to issue a summary opinion, but rather explain the rationale behind the court's rulings. I appreciate the briefing of the parties in this case; it was comprehensive and very helpful in deciding the issues in this case. The parties deserved the same from the court. Unfortunately, because of the demands of my docket it was very difficult to devote the time necessary to render this opinion.

Mr. Chaimov, please prepare a proposed judgment for the court's signature consistent with the findings set forth in this letter opinion. Thanks to all for your professional courtesies.

Sincerely,



Sheryl Bachart
Circuit Court Judge

FREEDOM OF LINCOLN COUNTY FROM AERIALY SPRAYED PESTICIDES

Section 1 – Purpose

At a time when the rights of corporations are being protected at the expense of the people's rights, we must reaffirm what the Oregon Constitution guarantees: "that all [people], when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper."

We assert that our right of local community self-government to claim and protect our constitutionally-guaranteed right to safety is inherent, fundamental, and inalienable, and that – as the United States Declaration of Independence proclaimed – governments derive their just powers from the consent of the governed.

The practice of aerial spraying of pesticides on Lincoln County's forests is causing serious chemical contamination of our county's air, people, wildlife, ecosystems, and watersheds, as well as terminal degradation of our soil. A large number of pesticides being used, among them 2,4-D, glyphosate (Roundup), and atrazine, have been proven harmful to both humans and the environment.

It is important to note that only a small fraction of the approximately 12,000 pesticides registered for use in Oregon, including those being used in aerial spraying, have ever been tested for safety. None have been tested for the effects of repeated exposure over time, or for the effects of their routine application in combination with other pesticides and chemicals.

Lincoln County's most populated communities are located at the base of our life-giving watersheds. However, clear-cut logging operations and the aerial spraying of pesticides before and after replanting are taking place upstream in those watersheds, exposing people, ecosystems, and natural communities to chemical contamination.

Current laws and regulations permit and protect the practice of aerial spraying of pesticides, threaten our public health, violate our constitutionally-guaranteed right to safety, and interfere with our right of local community self-government. The risks from toxic trespass from aerial spraying of pesticides, due to the failure of our federal, state, and local governments to protect us, are therefore no longer acceptable.

Our fundamental right to clean air, water, and soil not contaminated by aerial spraying of pesticides cannot be achieved when that right is routinely overridden by corporate minorities claiming legal powers to engage in that contamination. Nor can sustainability of any kind be achieved within a system of preemption which enables corporate decision-makers to wield state governmental power to override local self-government, and when the state itself restricts the county's lawmaking powers in ways that prevent the people of the county from protecting the health, safety and welfare of people and natural communities from such harms as aerial spraying of pesticides.

The people of Lincoln County believe that aerial spraying of pesticides is not necessary, because the task of eliminating weeds and competing vegetation after tree planting can also be accomplished by manual action, without the use of any pesticides, however applied, without contaminating the environment, and without endangering the safety of all life in it, while at the same time creating many direly needed jobs for our community. Increasingly mechanized logging, including the practice of aerial spraying of pesticides, utilized by corporations extraneous to our communities, no longer makes any sizable contribution to our local economy.

but nevertheless is now carried out by these corporations that wield tremendous power over decision-making in our county.

Now, therefore, the people of Lincoln County hereby adopt this Ordinance, which shall be known and may be cited as the "Freedom from Aerially Sprayed Pesticides Ordinance of Lincoln County"

Section 2 – Definitions

- (a) "Corporations," for purposes of this Ordinance, includes any corporation, limited partnership, limited liability partnership, business trust, public benefit corporation, business entity, or limited liability company organized under the laws of any state of the United States or under the laws of any country. The term includes all public corporations, municipal corporations, state and federal agencies, and any state and federal entity.
- (b) "Ecosystems" means wetlands, streams, rivers, aquifers, and other water systems, as well as all naturally occurring habitats that sustain wildlife, people, flora and fauna, soil-dwelling or aquatic organisms.
- (c) "Engage in aerial spraying of pesticides" means the physical deposition of pesticides into the land, water, or air by any aerial method, including, but not limited to, all actions taken to prepare for that physical deposition.
- (d) "Natural Communities" means communities of wildlife, flora, fauna, soil-dwelling, aerial, and aquatic organisms, as well as humans and human communities that have established sustainable interdependencies within a proliferating and diverse matrix of organisms, within a natural ecosystem.
- (e) "Pesticides" means any synthetic chemicals, or synthetic chemical mixtures, that can be classified as algacides, avicides, bactericides, fungicides, herbicides, insecticides, miticides, acaricides, molluscicides, nematocides, rodenticides, or virucides, and shall include, but not be limited to, restricted and non-restricted pesticides used to destroy plant, fungal, and/or animal 'pests'.

Section 3 - Statements of Law – Freedom from Aerially Sprayed Pesticides Bill of Rights

- (a) Right to be Free from Toxic Trespass. All people of Lincoln County, along with natural communities and ecosystems within the County, possess the right to be free of aerially sprayed pesticides.
- (b) Right to Clean Air, Water, and Soil. All people of Lincoln County possess the right to clean air, water, and soil free of aerially sprayed pesticides; and that right shall include the right to be free from potential contamination of the air, water, and soil within the County from aerially sprayed pesticides.
- (c) Right to Rural Preservation. All people of Lincoln County possess a right to an unspoiled rural quality of life free of aerially sprayed pesticides. The right to an unspoiled rural quality of life free of aerially sprayed pesticides includes, but is not limited to, outdoor recreational activities such as hunting, fishing, and foraging.
- (e) Governmental Legitimacy. To the extent necessary to secure this Ordinance, all governments in the United States owe their existence to the people of the community that those governments serve, and governments exist to secure and protect the rights of the people and those communities; and further, any system of government that becomes destructive of those ends is not legitimate, lawful, or constitutional.
- (f) Right of Local Community Self-Government. For the limited purpose of securing Lincoln County to be free of aerially sprayed pesticides, the people of Lincoln County possess both a collective and individual right of

self-government in their local community, a right to a system of government that embodies that right, and the right to a system of government that protects and secures their human, civil, and collective rights.

(g) Right to Assert the Right of Self-Government. The people of Lincoln County possess the right to use their local government to enact this Ordinance that secures Lincoln County to be free of aerially sprayed pesticides, and the making and enforcement of this Ordinance by the people through a municipal corporation or any other institution shall not eliminate, limit, or reduce their sovereign right of local community self-government as stated in subsection 3(f).

(h) Rights as Self-Executing. All rights delineated and secured by this Ordinance are inherent, fundamental, and unalienable, and shall be self-executing and enforceable against both private and public actors.

Section 4 – Statements of Law – Prohibitions Necessary to Secure the Bill of Rights

(a) It shall be unlawful for any corporation to violate any right secured by this Ordinance.

(b) It shall be unlawful for any corporation to engage in aerial spraying of pesticides within Lincoln County.

(c) Corporations engaged in aerial spraying of pesticides in any municipality or designated jurisdiction adjacent to Lincoln County shall be strictly liable for damages caused by those pesticides to the residents and ecosystems within Lincoln County.

(d) No permit, license, privilege, charter, or other authority issued by any State or federal entity that would violate the rights of this Ordinance, shall be deemed valid within Lincoln County.

Section 5 – Enforcement

(a) Any corporation that violates any provision of this Ordinance shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. Each day or portion thereof, and violation of each section of this Ordinance, shall count as a separate violation.

(b) Lincoln County or any resident of Lincoln County, may enforce the rights and prohibitions of this Ordinance through an action brought in any court possessing jurisdiction over activities occurring within Lincoln County. In such an action, Lincoln County or the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

(c) Any action brought by either a resident of Lincoln County or by Lincoln County to enforce or defend the rights of ecosystems or natural communities secured by this Ordinance shall bring that action in the name of the ecosystem or natural community in a court possessing jurisdiction over activities occurring within Lincoln County. Damages shall be measured by the cost of restoring the ecosystem or natural community to its state before the injury, and shall be paid to Lincoln County to be used exclusively for the full and complete restoration of the ecosystem or natural community.

(d) If the County Government fails to enforce or defend this law, or a court fails to uphold this law's limitations on corporate power, this law shall not be affected by the failure to enforce or defend, or by the failure to uphold the limitations on corporate power, and any person may then enforce the rights and prohibitions of this law through direct action. If enforcement through direct action is commenced, this law shall prohibit any private or public actor from filing a civil or criminal action against those participating in direct action. If filed in violation

of this provision, the applicable court must dismiss the action promptly, without further filings being required of direct action participants. "Direct action" as used by this provision shall mean any activities or actions carried out to directly enforce the rights and prohibitions contained within this law."

Section 6 – Enforcement – Corporate Powers

(a) Corporations that violate this Ordinance, or seek to violate this Ordinance, shall not be deemed to be "persons" to the extent that such treatment would interfere with the rights or prohibitions enumerated by this Ordinance, nor shall corporations possess any other legal rights, privileges, powers, or protections that would interfere with the rights or prohibitions enumerated by this Ordinance. "Rights, privileges, powers, or protections" shall include the power to assert state or federal preemptive laws in an attempt to overturn this Ordinance, and the power to assert that the people of this municipality lack the authority to adopt this Ordinance.

(b) Corporate claims to "future lost profits" shall not be considered property interests under this Ordinance, and thus, shall not be recoverable by corporations seeking those damages.

(c) All laws adopted by the legislature of the State of Oregon, rules adopted by any State agency, laws adopted by the United States Congress, and rules adopted by any federal or international agency, shall be the law of Lincoln County only to the extent that they do not violate the rights or prohibitions of this Ordinance.

Section 7—Severability

The provisions of this Ordinance are severable. If any court decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance.

Section 8 - Repealer

All inconsistent provisions of prior Ordinances adopted by Lincoln County are hereby repealed, but only to the extent necessary to remedy the inconsistency.

Section 9 - Effect

This Ordinance shall take effect thirty (30) days after adoption.