

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 LINCOLN**

REX CAPRI,)
WAKEFIELD FARMS, LLC)

Plaintiffs,)

v.)

DANA W. JENKINS, LINCOLN COUNTY)

Defendants.)

and)

LINCOLN COUNTY COMMUNITY RIGHTS)

Intervenor-Defendant.)

Case # 17CV23360

**DEFENDANTS
DANA JENKINS' AND
LINCOLN COUNTY'S
CROSS MOTION FOR
SUMMARY JUDGMENT**

(Oral Argument Requested)

UTCR 5.050 STATEMENT

Defendants Dana Jenkins and Lincoln County (hereafter collectively "County") request oral argument on this motion. Estimated time for oral argument is 1 hour. Court reporting services are requested. No advance filing or recording fees are required, ORS 20.140. Appearance in person and not via telecommunications is requested. No UTCR 5.010 certification of conferring is required since this Motion is made pursuant to ORCP 47.

1 **MOTION**

2 Pursuant to ORCP 47, County moves the Court for an Order granting Summary
3 Judgment in favor of defendants and against Plaintiffs and Intervenor-Defendants Lincoln
4 County Community Rights as follows:

5 (1) Dismissing Plaintiffs First Claim for relief of their Amended Complaint
6 because the Court lacks Subject Matter Jurisdiction over the claim or
7 alternatively, ruling that the Ballot Measure (21-177) does not violate the
8 single subject rule or fails to include the full text of the law (both under
9 Section 1(2)(d) of Article IV of the Oregon Constitution. ORS 246.910.

10 (2) Declaring under ORS 28.020, that the County is not completely preempted
11 under state law from regulation of pesticides as alleged by Plaintiffs.
12 County may be limited in its regulatory capacity and requests the Court
13 declare the extent of that regulatory preemption.

14 (3) Determine pursuant to County's First Counterclaim under ORS 28.020:
15 a. That the construction of "aerial spraying" in the Measure applies to
16 certified aerial pesticide applicators under Oregon law and to no other
17 method of pesticide application;
18 b. That "corporations" under the Measure do not include individuals and
19 natural persons;
20 c. That Sections 3(f), (g) and (h) of the Measure are invalid statements of
21 law, violate the Oregon Constitution and are overbroad and void for
22 vagueness.

1 d. Except to the extent determined in paragraph (2) of this Motion, the
2 remainder of Section 6(c) of the Measure is invalid and unconstitutional
3 under the Oregon and Federal Constitutions.

4 (4) Denying Intervenor – Defendant Lincoln County Community Rights First
5 Affirmative Defense (Rights of Local Community Self-Government);

6 (5) Denying Intervenor - Defendant Lincoln County Community Rights First
7 Counterclaim for Declaratory Judgment, except to the validity of the
8 adoption of the Measure.

9 There are no genuine issues of material fact as pertains to this Motion; County is therefore
10 entitled as a matter of law to Judgment and construction of the Measure as requested.

11 In support of this Motion, County relies upon the following:

12 (1) ORCP 47;

13 (2) The pleadings on file with the Court;

14 (3) The Declaration of Wayne Belmont and the materials attached thereto, and

15 (4) The Memorandum of Law that accompanies this Motion.

16 DATED this 11th day of August, 2017

17
18 s/Wayne Belmont
19 Wayne Belmont, OSB #841662
20 Lincoln County Counsel
21 225 West Olive St, Room 110
22 Newport, OR 97365
23 Phone: 541-265-4108
24 Fax: 541-265-4176
25 Email: wbelmont@co.lincoln.or.us
26 Attorney for Defendants Dana Jenkins and Lincoln County
27

1
2 **CERTIFICATE OF SERVICE**
3

4 Pursuant to ORCP 9, I hereby certify that I served a true and accurate copy of the
5 foregoing DEFENDANTS DANA JENKINS' AND LINCOLN COUNTY'S CROSS MOTION
6 FOR SUMMARY JUDGMENT upon the following by e-service:
7

8 Gregory A. Chaimov, OSB #822180
9 Davis Wright Tremaine LLP
10 1300 SW Fifth Ave, Suite 2400
11 Portland, OR 97201-5610
12 Attorney for Plaintiffs

13 and

14 Ann. B Kneeland, OSB #992977
15 Community Environmental Legal Defense Fund
16 PO Box 10294
17 Eugene, OR 97440
18 Attorney for Intervenor-Defendants
19 Lincoln County Community Rights
20

21
22 DATED 17TH day of August, 2017
23

24
25 s/Wayne Belmont
26 Wayne Belmont, OSB #841662
27 Lincoln County Counsel
28 225 West Olive St, Room 110
29 Newport, OR 97365
30 Phone: 541-265-4108
31 Fax: 541-265-4176
32 Email: wbelmont@co.lincoln.or.us
33 Attorney for Defendants Dana Jenkins and Lincoln County

CERTIFICATE OF SERVICE

Office of Lincoln County Legal Counsel
225 West Olive Street, Room 110
Newport, Oregon 97365
(541) 265-4108