



MEDIA RELEASE

Lincoln County Board of Commissioners

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Court Renders Decision and Opinion Letter in Aerial Spraying Ordinance Challenge

(Lincoln County, OR – 9.30.19)

Lincoln County Circuit Court Judge Sheryl Bachart has ruled on motions and cross motions for summary judgement on challenges to the county voter enacted Measure 21-177, “The Freedom from Aerially Sprayed Pesticides Ordinance” passed by voters in May of 2017. The motions and cross motions were filed by Plaintiff Rex Capri, et. al., Defendant Lincoln County, and Intervenor Lincoln County Community Rights. In short, the Court overturned the entire Ordinance on the grounds of state preemption of pesticide regulation.

Judge Bachart made four rulings in the opinion letter:

- (1) Granted Defendant County’s cross motion for summary judgment that the election was “properly placed on the ballot and legally enacted by the voters of Lincoln County” and that the subject matter of the election, aerial spraying, was a proper matter of county concern for the voters to consider. Plaintiffs’ several election validity challenges (both prior to and after the election) were denied.
- (2) Determined that state law, and specifically Oregon’s Pesticide Control Act, ORS Chapter 634, preempts the County from the adoption or enforcement of “any ordinance, rule or regulation regarding pesticide sale or use.” Therefore, the Court granted Plaintiffs’ Motion for Summary Judgment on the question of preemption and declared the Measure (Ordinance) void and unenforceable.
- (3) In connection with the preemption question, the Court denied the County’s cross motion that the Ordinance was applicable at least to County actions on County owned land. The Court distinguished between an ordinance regulating pesticide use on County owned land (which is not allowed) and the adoption of a policy regarding the use of pesticides on property owned by the County (which is allowed).
- (4) Finally, the Court denied Intervenor Lincoln County Community Rights’ (LCCR) cross motion for summary judgment. LCCR argued that there are inherent and inalienable rights of local community self-government under the US and Oregon Constitutions that allow the local enactment to supersede contrary state law. The Court found no Oregon case supports Intervenor’s assertions and noted that Intervenor conceded that no Oregon Court has “recognized an actionable right of local community self-government”. Where local enactments are found incompatible with state law in an area of substantive policy and explicit preemption, state law will displace the local law.

Judge Bachart went to great lengths to explain her decision. She concluded by expressing that the decision was based on questions of law and not of policy. “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.”

County Counsel Wayne Belmont said the County is reviewing the decision, but for the most part the Court and County agreed as to the application of the law. Mr. Belmont said the County will continue to abide by its long-time practice of not aerial spraying pesticides on county owned property.

Court's Decision and Opinion Letter online at:

www.co.lincoln.or.us

For Further information contact Lincoln County Counsel's Office at 541-265-4108.

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