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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LINCOLN

REX CAPRI, WAKEFIELD FARMS, LLC,)	Case No. 17CV23360
)	
Plaintiffs,)	UNOPPOSED
)	MOTION TO INTERVENE
v.)	BY LINCOLN COUNTY
)	COMMUNITY RIGHTS
DANA W. JENKINS, LINCOLN COUNTY,)	
)	
Defendants.)	

Pursuant to ORCP 33C, Lincoln County Community Rights, by and through its attorney, Ann B. Kneeland, moves to intervene as an Intervenor-Defendant to assert the claims and defenses set forth in the proposed Answer and Counterclaim, a copy of which is attached as Exhibit 1 to the Declaration of Ann B. Kneeland, filed in support of this motion.

This motion is supported by the following Points and Authorities, and the Declarations of Barbara Davis, Treasurer of Lincoln County Community Rights, and Maria Sause, Secretary of Lincoln County Community Rights.

Gregory A. Chaimov, counsel for Plaintiffs, takes no position on this motion and does not intend to file any opposition. Wayne Belmont, counsel for Defendants, does not object to this motion.

POINTS AND AUTHORITIES

1. ORCP 33C provides for permissive intervention; it reads: "At any time before trial, any person who has an interest in the matter in litigation may, by leave of court, intervene.

1 In exercising its discretion, the court shall consider whether the intervention will unduly delay or
2 prejudice the adjudication of the rights of the original parties.”

3 2. Oregon courts have decreed that permissive intervention will be allowed if the
4 party seeking intervention “has an interest in the matter in litigation. . . [and the interest is] of
5 such a direct and immediate character that the intervenor will either gain or lose by the direct
6 legal operation of the judgment.” *Brune v. McDonald*, 158 Or. 364, 370, 75 P.2d 10 (1938);
7 *Taylor v. Portland Adventist Med. Ctr.*, 242 Or. App. 92, 102, 255 P.3d 526 (2011). Thus, the
8 interest affected must not be a speculative one, but must be a “significant interest” which could
9 be “impeded” by a ruling. *Samuels v. Hubbard*, 71 Or.App. 481, 488, 692 P.2d 700, 705 (1984),
10 *rev. den.*, 299 Or. 118 (1985).

11 3. Furthermore, under ORCP 33C, organizations may intervene where a shared
12 interest of its members is at stake. In *Rendler v. Lincoln County*, the Oregon Supreme Court
13 affirmed that an organization representing the collective public interest of its members may
14 intervene under ORCP 33C. 302 Or 177, 728 P.2d 21 (1986). The Court, allowing a public
15 interest group’s intervention, stated:
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17 We see no reason why a claim that the law defines to be collective should not be
18 collectively pursued in the name of an association if it is in fact an interest shared
19 by the members of the association.

19 *Id.* at 184.

20 More particularly, in *Rendler*, the Oregon Supreme Court affirmed a trial court ruling that
21 allowed an organization to intervene in a declaratory judgment action, where the organization
22 asserted a collective public interest in the case, and at the same time, to counterclaim for
23 declaratory judgment. *Id.* at 182.

24 4. Consistent with ORCP 33C and Oregon case law, Lincoln County Community
25 Rights (LCCR) has a significant interest in defending the enactment of Ballot Measure 21-177
26

1 (the “Measure”), now known as the Freedom from Aerially Sprayed Pesticide Ordinance of
2 Lincoln County (the “Ordinance”), because this new law represents a significant gain for the
3 core purpose of the organization and results from LCCR’s and its members’ direct efforts.
4 LCCR, its board, members and the voters who supported the Measure have a significant interest
5 in the enactment and enforcement of the natural and human rights and the right of local
6 community self-government now codified in Lincoln County. The advancement of these rights is
7 central to the purpose and mission of LCCR. LCCR intervenes on behalf of its members who
8 share these interests.

9 5. LCCR’s interests in the advance of natural and human rights and the right of local
10 community self-government in Lincoln County would be significantly harmed if the Ordinance
11 is found to be unlawfully enacted.

12 6. LCCR seeks to intervene to advance and defend its interests, which are consistent
13 with the collective public interest to defend the Ordinance adopted by a majority of Lincoln
14 County voters at the election held on May 16, 2017.

15 7. LCCR has had a significant and demonstrated interest in the Ordinance from the
16 initial filing of the initiative to the day the initiative appears on the ballot and beyond. The
17 initiative’s chief petitioners Maria Sause and Barbara Davis are the Secretary and Treasurer of
18 LCCR respectively. LCCR has had an interest in qualifying the initiative for signature collection,
19 including compliance with pre-election procedural constitutional requirements under ORS
20 250.168. Chief Petitioners Sause and Davis previously intervened in the lawsuit challenging the
21 Measure pre-election for compliance with the single-subject and full-text rules. *See Bregman v.*
22 *Belmont and Davis/Sause, Lincoln County Circuit Court Case Number 15CV19955.* LCCR’s
23 interests will be directly and immediately affected by the outcome of this case as detailed in Ms.
24 Sause and Ms. Davis’ declarations.
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1 8. LCCR is a public benefit corporation registered with the State of Oregon
2 (Registry Number 1073202-93). Pursuant to LCCR's Articles of Incorporation, "the purpose for
3 which the Corporation is formed is the transaction of any or all lawful business for which non-
4 profit corporations may be incorporate under the laws of Oregon. The specific purpose of this
5 corporation shall be to educate the residents of Lincoln County, Oregon and the State of Oregon
6 about local, community self-government." Similarly, LCCR's Bylaws state: "This Corporation's
7 primary purpose shall be to provide educational opportunities and leadership around issues of
8 human and natural rights in Lincoln County and Oregon by raising consciousness about
9 participating in a community-based democracy."

10 9. LCCR's Board of Director consists entirely of volunteers who are committed to
11 the mission of the organization. As such, they are also fully committed to the enactment and
12 defense of the Ordinance. Other community volunteers, upwards of eight individual members of
13 the public have given their time, money, and other resources to the advancement of LCCR's
14 overarching mission and specific goal of supporting the enactment of the Ordinance.

15 10. LCCR's interest is unique to the organization as a proponent of Lincoln County
16 voters' right of local community self-government which authorizes the Ordinance. The right of
17 local community self-government is a legal concept rooted in early American jurisprudence and
18 culture. LCCR maintains that, pursuant to this right, Lincoln County voters have the authority to
19 adopt the Ordinance which prevails over state preemptive law on the regulation of pesticides or
20 other similar limitations on the legislative power of the people. Legal arguments in defense of
21 Lincoln County voters' right of local community self-government will not be fully or adequately
22 represented by the County, which participates only to defend the County Clerk's determination
23 and the other County's interests, but holds no stated interest in advancing a ban on the aerial
24 spraying of pesticides or the right of local community self-government.
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1 **CERTIFICATE OF SERVICE**

2 I certify that on June 24, 2017, I served the foregoing MOTION TO INTERVENE BY

3 LINCOLN COUNTY COMMUNITY RIGHTS upon:

4 Gregory A. Chaimov
5 Davis Wright Tremaine LLP
6 1300 S. W. Fifth Avenue, Suite 2400
7 Portland, Oregon 97201-5610,

8 and

9 Wayne Belmont
10 Lincoln County Counsel
11 110 Lincoln County Courthouse
12 225 W Olive St
13 Newport, OR 97365

14 by E-serve.

15 DATED this 24th day of June, 2017.

16 s/ Ann B. Kneeland

17 Ann B. Kneeland, OSB #992977
18 Community Environmental Legal Defense Fund
19 P.O. Box 10294
20 Eugene, OR 97440
21 Tel: (541) 514-9720
22 Email: ann@kneelandlaw.net

23 Attorney for Intervenor-Applicant
24 Lincoln County Community Rights
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