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 No. 17CV23360

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO INTERVENOR'S AND DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

(Appeal under ORS 246.910, Declaratory Judgment)

I. INTRODUCTION

Only three disputes remain for this Court. First, this Court must decide whether the Ordinance is invalid in its entirety because it exceeds the County's authority to regulate matters of county concern. Under the Court of Appeals' decision in *State v. Logsdon,* 165 Or App 28 (2000), the answer is yes. If the court agrees, it need not reach any other issue.

Second, this Court may also find that the Ordinance is preempted by state law. Plaintiffs and the County agree that state law prohibits the County from enforcing the Ordinance against Plaintiffs. Only the Intervenor, which championed the Ordinance, claims the County has more power than the state, and that Lincoln County voters had a constitutional right to enact the Ordinance "with immunity from state preemptive statutes." Intervenor-Def's Cross-Mot for Summary Judgment ("Intervenor's Mot.") at 35. This Court should reject Intervenor's argument because it lacks any support and is contrary to well-established Oregon law.

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Finally, if the court declines to invalidate the Ordinance in its entirety, or declare the County may not enforce it against Plaintiffs, this Court could alternatively invalidate the Ordinance in its entirety because the underlying ballot measure was presented to voters without the full text of the measure.

II. ARGUMENT

A. The Ordinance is invalid in its entirety because it exceeds the County's authority.

1. The Ordinance exceeds matters of county concern by purporting to supersede state and federal law.

Under ORS 203.035, a county has authority "over matters of county concern." *See also Allison v. Washington Cty*., 24 Or App 571, 581 (1976) (noting that general law counties have authority over matters of county concern derived from ORS 203.035 unless preempted by state law). Local ordinances governing the conduct of state or federal officials exceed "matters of county concern." *Logsdon*, 165 Or App at 32.

As described more fully in Plaintiffs' Motion for Summary Judgment, the Ordinance violates the prohibition in *Logsdon* by attempting to: (1) elevate the Ordinance above state and federal law; (2) limit the authority of "state or federal agencies"; and (3) preclude the state or federal governments from asserting their preemptive power over the Ordinance.[1] The Ordinance is nearly identical to the local law struck down in *Logsdon*, and should suffer the same fate. By purporting to govern the effect and authority of state or federal law in the Ordinance, the County has overstepped its statutory authority to govern matters of county concern, and invalidates the Ordinance from its existence.

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[1] As discussed in Plaintiffs' Motion for Summary Judgment, the fact that the Ordinance exceeds matters of county concern invalidates the Ordinance in its entirety. Plaintiffs' Motion for Summary Judgment, pp. 6-8.

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2. A challenge based on a measure including matters beyond county concern can occur after the election.

The County does not seriously dispute that it lacks the authority to regulate state or federal entities, or that the Ordinance purports to do so. Instead, the County argues that this type of challenge is not timely because it must be filed before the election. But a challenge to compliance with the requirement in ORS 203.035(1) that a measure contain only "matters of county concern" may occur after the election.[2]

The cases that address whether a county law contained matters beyond "county concern" involve challenges commenced after the counties adopted the challenged law. *E.g.*, *Allison v. Washington County*, 24 Or App 571 (1976) (challenge to comprehensive plan amendment); *Logsdon*, 165 Or App at 31 (addressing challenged charter after enactment). In fact, Columbia County Circuit Court Judge Grove ruled that a challenge to a measure's compliance with ORS 203.035 cannot occur before the adoption of the measure: "The requirement that the initiative only pertains to matters of county concern will be addressed only if and when the initiative may pass." Letter Opinion, p. 1, *Bodell v. Huser*, Columbia County Circuit Court Case No. 15CV03622 (July 17, 2015), attached as Ex. 1.

The analytic framework for evaluating the lawfulness of measures demonstrates that the question of whether the Ordinance contains matters beyond county concern is a question of election law addressed through ORS 246.910(1). The first question the court addresses is whether the "voters of the county had the authority to enact [the measure]," *State v. Logsdon*, 165 Or App 28, 31 (2000), which is a question of election law. *See Hazell v. Brown*, 352 Or 455, 467 (2012) (plaintiff electors had standing under ORS 246.910(1) to challenge Secretary of State's decision that adopted measure did not take effect); *Lehman v. Bradbury*, 333 Or 231, 232, 250 (2002) (plaintiff electors used ORS 246.910(1) to challenge whether voters had authority to

[2] Whether an elector may or must challenge a measure as exceeding matters of county concern before the election may depend on the language of ORS 250.168(1). The law grants a right to sue before an election to assert lack of compliance with Article VI, section 10, of the Oregon Constitution, which authorizes counties with charters to propose and adopt laws that encompass matters of county concern.

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enact state measure they adopted). Only if the voters of the County had the authority to enact the measure does the court determine "whether the [local measure] is preempted by state law," 165 Or App at 31, which is a question of substantive law appropriate for determination under ORS 28.020.[3]

Even if ORS 246.910(1) were unavailable as a basis for challenging compliance of the Ordinance with ORS 203.035, Plaintiffs have standing under ORS 28.020 to challenge an enacted law that adversely affects their "rights, status or other legal relations." In *League of Oregon Cities*, 334 Or at 660–61, the Supreme Court ruled that ranchers had standing to challenge the validity of the enactment of a state measure that would "interfere with [a rancher's] ability to continue ranching and * * * would thus jeopardize a portion of [the rancher's] income." Plaintiffs' evidence of harm is the same: the Ordinance interferes with Plaintiffs' ability to continue to grow and harvest trees and, thus, jeopardizes Plaintiffs' income. Declaration of Rex Capri, ¶¶8, 9; Declaration of Nancy Hiatt, ¶¶8, 9.

B. State law prohibits the County from applying the ordinance to private parties like Plaintiffs.

The County acknowledges that the State Pesticide Control Act, the Oregon Forest Practices Act, or the Right to Farm and Forest Act preempts the challenged provisions of the Ordinance as applied to private parties like Plaintiffs. The County also does not contend the state lacks the power to preempt the Ordinance insofar as the Ordinance applies to private parties like Plaintiffs.

The Intervenor does not dispute that, by their terms, state laws (1) limit county lawmaking authority to "matters of county concern," and (2) prohibit the County from applying the challenged portions of the Ordinance to private parties like Plaintiffs. Presumably, the

[3] Judging from a statement in Defendants' Motion for Summary Judgment, Plaintiffs' allegations may have inadvertently caused Defendants to believe that Plaintiffs contend regulation of pesticide use is not a matter of county concern. That is not Plaintiffs' position. The parts of the Ordinance that are not matters of county concern are the provisions that purport to elevate county law over state and federal law.

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Court's inquiry should end here. The Intervenor, however, contends the state may not limit the County's lawmaking authority: "authority under the right of local community self-government is not derived from state statutory law, and thus, supersedes it." Intervenor's Mot., pp. 6–7. The Intervenor is wrong. A county does not exercise "county" power, let alone "community" power; a county exercises state power.[4] As a consequence, when analyzing the state's power to preempt local law, this Court need not balance the constitutional rights of the county to self-govern because those rights do not exist.

1. The County's power derives from state law, so its law-making authority is limited by state law.

The Legislative Assembly created the County bylaw in 1893. Oregon Laws 1893, p. 68 ("An Act to Create the County of Lincoln"). As a creation of the Legislative Assembly, the County's power to make law derives solely from the Legislative Assembly: 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.'" *Allison v. Washington County*, 24 Or App 571, 581 (1976).[5] The County's lawmaking authority depends on state law because the County exercises not its own authority but delegated state authority. As the Oregon Supreme Court explained:

> Counties are created for purposes of government and authorized to

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[4] The Intervenor also contends the "right of local community self-government" trumps Plaintiffs' rights under Oregon's Bill of Rights. Intervenor's Mot., p. 40. The contention is wrong for the same reason the Intervenor's contention that state laws do not apply to the Ordinance: there is no "right of local community self-government." As a result, this Court does not need to engage in a balancing act between competing constitutional rights.

[5] The Oregon Constitution's home rule provisions may permit local governments that have adopted charters to prescribe a form of governance free from state control, but even then the state may dictate substantive policy. *City of LaGrande v. Public Employees Retirement Bd.*, 281 Or 137, 156 (1978) ("a general law addressed primarily to substantive social, economic, or other regulatory objectives of the state prevails over contrary policies preferred by some local governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with the local community's freedom to choose its own political form"). Regulation of pesticide use is a "substantive social, economic, or other regulatory objective," not a matter of "political form."

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> exercise to a limited extent a portion of the power of the state government. They have always been held to act strictly within the powers granted by the legislative acts establishing and controlling them. The statute is to them their fundamental law and their power is only co-extensive with the power thereby expressly granted, or necessarily or reasonably implied from their granted powers.

Fales v. Multnomah County, 119 Or 127, 133 (1926); *See also State Highway Commission v. Clackamas Water Dist.*, 247 Or 216, 219 (1967) (noting a "county is merely a political agent of the state created by law for governmental purposes, invested with legislative powers and charged with the performance of duties for the state" (citations and internal quotation omitted)).

Those authorities should be all the Court needs to sustain the state's power to prohibit county regulation of pesticide use. Because the County's power stems from the state and can be limited by the state, the state has the authority to prohibit county regulation of pesticide use. *See* ORS 634.057.

2. The County does not have a right of self-government that supersedes state law.

Because the state clearly has the power to preempt contrary county law, the Intervenor attempts to create a constitutional right of "community self-government" allowing members of a "community"—here, the County—to adopt laws free of the state's "preemptive laws that encumber or prohibit the exercise of the people's right of local community self-government." Intervenor's Mot., p. 7. To be clear, the County does not contend that it has a constitutional right of "self-government." Instead, only Intervenor argues that the Declaration of Independence and various constitutional provisions combine to create this "right," never previously recognized in Oregon. But nothing in the Declaration of Independence or constitutional provisions support the constitutional right identified by Intervenor.

In the rare instances where local governments in other jurisdictions have adopted laws like the Ordinance, the courts have rejected the same arguments the Intervenor raises here. In *Pennsylvania General Energy Co., LLC v. Grant Tp.*, 139 F Supp 3d 706 (WD Pa 2015), the court evaluated a local "community rights" law that, except for the subject matter (oil and gas

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development instead of aerial spraying of pesticides), was substantially identical to the Ordinance. There, the same legal organization representing the Intervenor here made identical arguments against preemption: an un-enumerated but inalienable right to local community self-government trumped state law:

> The right of local community self government [*sic*] is inherent and inalienable. It derives necessarily from the fundamental principle that *all* political power is inherent in the people, is exercised by them for their benefit, and is subject to their control. The right is secured by the Pennsylvania Constitution, the American Declaration of Independence, state constitutional bills of rights, and the United States Constitution. Because the right is inherent and inalienable, no government can define, diminish, or otherwise control it.

139 F Supp 3d at 713. The court rejected the argument as "[w]ithout a legal basis" because it lacked support from any "precedential statute or constitutional provision[,]" effectively urging the court to ignore binding precedent. 139 F Supp 3d at 714.

Likewise, in *City of Longmont v. Colorado Oil and Gas Association*, 369 P3d 573 (Colo 2016), the Colorado Supreme Court rejected "citizen intervenors'" contention that the Colorado Constitution preserved an un-enumerated but inalienable right to local community self-government. In that case, local governments had adopted laws prohibiting methods of extracting oil and gas. In an unsuccessful effort to avoid preemption by state law, the citizen intervenors argued:

> [T]he inalienable rights granted to citizens by article II, section 3 of the Colorado Constitution "reign supreme over any state statute." Accordingly, * * * because [the] fracking ban protects citizens' inalienable rights, no state statute may preempt it. 369 P3d at 585.

Like the federal court in *Pennsylvania General Energy*, the Colorado Supreme Court rejected the argument as without precedent: "no authority supports application of that provision to the preemption analysis in this case." 369 P3d at 586. Just as important, the court identified the danger of local laws like the Ordinance when taken to their logical extreme:

> [U]nder the citizen intervenors' interpretation of the inalienable

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> rights provision, no local regulation alleged to concern life, liberty, property, safety, or happiness could *ever* be preempted, and thus, such local regulations would *always* supersede state law.

369 P3d at 586 (emphasis in original).

Similarly here, Intervenor's argument for an inalienable right to self-government is not supported by any authority and is contradicted by Oregon preemption law. The Intervenor concedes that, as in the other jurisdictions, no Oregon court has interpreted any of the Intervenor's sources to provide the right the Intervenor claims: "Oregon courts to date have not recognized an actionable right of local community self-government[.]" Intervenor's Mot.,- p. 15. This Court should therefore reject Intervenor's invitation to overturn binding preemption law based on an unrecognized constitutional right. Nevertheless, each of the sources of the claimed right is discussed below.

a. The Declaration of Independence does not grant or preserve a right of "local community self-government."

The Declaration of Independence does not grant or preserve a right of "local community self-government" because the Declaration is not a source of rights. Any rights come from the substantive provisions of the Constitution. Although "it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence," the Declaration of Independence does "not have the force of organic law, [and cannot] be made the basis of judicial decision as to the limits of right and duty." *Cotting v. Godard*, 183 US 79, 22 S Ct 30, 42, 46 L Ed 92 (1901).

b. The Preamble to the United States Constitution does not grant or preserve a right of "local community self-government."

The Preamble to the United States Constitution does not grant or preserve a right of "local community self-government" because, like the Declaration of Independence, the Preamble is not a source of rights. In *Jacobson v. Commonwealth of Massachusetts*, 197 US 11, 25 S Ct 358, 49 L Ed 643 (1905), an individual contended the Preamble prevented a state from requiring the individual to obtain a vaccination. The United States Supreme Court rejected the argument,

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explaining:

> Although that preamble indicates the general purposes for which the people ordained and established the Constitution, it has never been regarded as the source of any substantive power conferred on the government of the United States, or on any of its departments. Such powers embrace only those expressly granted in the body of the Constitution, and such as may be implied from those so granted. Although, therefore, one of the declared objects of the Constitution was to secure the blessings of liberty to all under the sovereign jurisdiction and authority of the United States, no power can be exerted to that end by the United States, unless, apart from the preamble, it be found in some express delegation of power, or in some power to be properly implied therefrom.

25 S Ct at 359–60. The law has not changed since.

c. The Ninth Amendment does not grant or preserve a right of "local community self-government."

The Ninth Amendment is not a source of rights; "it is simply a rule about how to read the Constitution." *San Diego County Gun Rights Comm. v. Reno*, 98 F3d 1121, 1125 (9th Cir 1996) (quotation and citation omitted). Thus, Intervenor's reliance on the Ninth Amendment as a basis for a county's constitutional right is misplaced.

The Intervenor's quotation of Professor Lash about the Ninth Amendment's preserving "local self-government" is taken out of two important contexts.[6] First, Professor Lash recognizes that courts interpret the Ninth Amendment not to confer rights. He argues current law is wrong—but it is current law that controls this case. He contends the Ninth Amendment *should be* "an enforceable provision of the Bill of Rights," but acknowledges that his goal of changing current jurisprudence on the issue is "rather quixotic." Second, when Professor Lash uses the term "local" in the context of "self-government," he is referring to *state* governments, not local counties. His treatise is about "federalism"—the relationship between the federal and states' governments—not about the relationship between states and their political subdivisions.

[6] K. Lash, The Lost History of the Ninth Amendment 360 (Oxford 2009).

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d. Article I, section 1 of the Oregon Constitution does not grant or preserve a right of "local community self-government."

Despite the Intervenor's apparent contention to the contrary, Article I, section 1 of the Oregon Constitution does not confer or preserve a "fundamental," "inalienable," or "natural right" of community self-government. Intervenor's Mot., p. 1. In fact, as the Intervenor later concedes, Article I, section 1 "does not create *any* individual fundamental or inalienable natural rights." *Martinez v. Kulongoski*, 220 Or App 142, 159 (2008) (emphasis added). The only "right" Article I, section 1 has ever been interpreted to support is the ability of the people of the state to change the form of state government. *See Schubel v. Olcott*, 60 Or 503, 520 (1912) (citing Article I, section 1 as support for the people's adoption of the initiative).[7] That the people of the state may change their state government does not mean a county may unilaterally change its relationship with state government.

The Intervenor and its allies are, in fact, trying to change state governance in a way consistent with Article I, section I: amending the state constitution to provide that "[l]ocal laws * * * shall be immune from preemption or nullification by state law * * *." 2018 Initiative Petition 29 (copy attached as Ex. 2). Until that change occurs, the Oregon Constitution provides no protection of the Ordinance from preemption.

e. Article I, section 33 of the Oregon Constitution does not grant or preserve a right of "local community self-government."

The Intervenor appears to argue that, if Article I, section 1 is not itself a source of the right to community self-government, then in combination with Article I, section 33, both become the source. Intervenor's Mot., p. 15. Article I, section 33, however, adds nothing to Intervenor's argument.

Like the Ninth Amendment to the United States Constitution, Article I, section 33 is not a source of rights, but rather an aid to interpretation of other constitutional provisions. Article I,

[7] In a case not followed elsewhere, the Supreme Court in *Priester v. Thrall*, 229 Or 184, 188 (1960), described Article I, section 1, as "intended to prevent discrimination." That interpretation, even if valid today, has no bearing on the Intervenor's claim to a right to community self-government.

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section 33 means only that there is not a hierarchy of constitutional provisions, *i.e.*, a right conferred outside the Bill of Rights is equivalent to a right granted in the Bill of Rights. *Ex Parte Kerby*, 103 Or 612, 616 (1922) (citing Article I, section 33 for the proposition that "[a] private right reserved by the Constitution is equally as effective when found in one article in the Constitution as in another"); *see Hall v. Northwest Outward Bound School, Inc.*, 280 Or 655, 661 n 11 (1977) (noting the "doubtful assumption" that the rights "retained" by Article I, section 33 "lend themselves to judicial rather than political assertion against legislation").

While the Intervenor is correct that, decades ago, individual justices of the Oregon Supreme Court suggested Article I, section 33 should be interpreted to provide a right not to be convicted of a crime except on proof beyond a reasonable doubt, the Oregon Supreme Court never interpreted Article I, section 33 to provide any un-enumerated rights. *E.g.*, *State v. Williams*, 313 Or 19, 48 (1992) (Unis, J., dissenting); *State v. Burrows*, 293 Or 691, 713 (1982) (Linde, J., dissenting).[8] The framers of Oregon's Constitution cared about text. They intentionally omitted a catch-all provision that might give rise to rights not found in the text of the Constitution itself: "unlike their counterparts in many western states, the framers of the Oregon Constitution did not include any express announcement of the 'inalienable' natural rights of man in their constitution." *State v. Ciancanelli*, 339 Or 282, 310 (2005). The right the Intervenor claims simply does not exist.

C. Plaintiffs' full-text challenge is timely.

Finally, as an alternative, the Court should invalidate the Ordinance in its entirety based on its failure to comply the full-text requirement of Article IV, Section 1(2)(d) or the Oregon

[8] From time to time, the Oregon courts have assumed for the sake of argument that Article I, section 33 provided a right to privacy akin to the right to privacy Justice Goldberg espoused in his concurrence in *Griswold*, but the courts have not identified any rights that Article I, section 33 actually protects. *E.g.*, *Brookes v. Tri-Met*, 18 Or App 614, 626 (1974) (no "'rights' or 'privileges' [under Article I, section 33] to groom oneself as one wishes in public employment"); *State v. Fetterly*, 254 Or 47, 50–51 (1969) (Article I, section 33 did not grant the "right to operate a motorcycle without protective headgear"). Even if Article I, section 33 granted a right to privacy, the right would have no bearing on this case because Intervenor claims no community rights based on rights of privacy.

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Constitution. Plaintiffs acknowledge that, before the election, the County Clerk, as required by ORS 250.168(1), reviewed the proposed Ordinance for compliance with Article IV, section 1(2)(d) of the Oregon Constitution and that Plaintiffs did not challenge that determination within 60 days. The question for this Court is whether a challenge to the Ordinance's compliance with Article IV, section 1(2)(d) is timely if brought after the election. This Court should conclude that it is.

Plaintiffs also acknowledge that in *League of Oregon Cities v. State*, 334 Or 645 (2002), and *Ellis v. Roberts*, 302 Or 6 (1986), the Supreme Court ruled that challenges to state measures under Article IV, section 1(2)(d)—the "full text" and "one subject only" grounds the Supreme Court calls "form-of-adoption requirements"—must be brought before the election. The Supreme Court adopted the 60-day deadline for state measures to permit time for "meaningful judicial review," *Ellis*, 302 Or at 17, which, for state measures, includes appellate review. *E.g.*, *Kerr v. Bradbury*, 193 Or App 304, 314 (2004), *rev dism'd* 340 Or 241, *adh'd to on recons*, 341 Or 200 (2006) (proposed state initiative violated "full text" requirement of Article IV, section 1(2)(d)).

ORS 250.168(5), on the other hand, does not permit appellate review of a decision on a county measure made before the election. As a result, applying the rule in *Ellis* and *League of Oregon Cities* would mean a challenger would never be entitled to appellate review of a county measure's compliance with Article IV, section 1(2)(d). For a challenge to a county measure, meaningful judicial review, including appellate review, can only occur after the election. Lack of any right to appeal should not be the case because ORS 246.910(5) provides that the remedy in ORS 246.910(1) is "cumulative" of other remedies. In other words, a decision under ORS 250.168(1), for which there is no appeal, should not preclude a decision under ORS 246.910(1) for which there is an appeal. Thus, Plaintiffs' challenge under ORS 246.910(1) made within 60 days of the adoption of a local law should be considered timely.

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III. CONCLUSION

This case arises because the Intervenor disagrees with the system of government the people of Oregon have chosen and maintained for themselves:

> A community rights legal system elevates the rights of human and natural communities over protection of corporate interests. A rights-based legal system helps to create a balanced relationship between local, state and federal levels of government. That balance does not exist today: Federal and state governments may legally preempt and regulate localities[.] https://orcrn.org/frequently-asked-questions/

Encouraging County voters to adopt a law that violates state law is not, however, the proper path to change state law. This Court should rule that the Ordinance was not validly adopted or, in the alternative, declare (as Plaintiffs and the County agree) that the challenged portions of the Ordinance may not be enforced against private parties like Plaintiffs.

Dated this 18th day of September, 2017.

DAVIS WRIGHT TREMAINE LLP

By s/ GREGORY A. CHAIMOV

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Ted E. Grove, Circuit Court Judge
Jenefer S. Grant, Circuit Court Judge
Cathleen B. Callahan, Circuit Court Judge

CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COLUMBIA
July 17, 2015

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Re: Ron Bodell and Alta Lynch vs Elizabeth Huser, et al
Columbia County Circuit Court Case No. 15CV03622

Dear Mr. Chaimov, Ms. Hanson and Ms. Kneeland:

The court is granting Respondent's and Intervenor-Respondents' Motions for Summary Judgment and denying Petitioner's Motion for Summary Judgment. The main dispute between the parties is whether or not Respondent is required to determine whether the proposed initiative only pertains to matters of county concern.

As indicated, the court rules that Respondent County Clerk fulfilled her duties by determining the initiative contains a single issue and is not further required to determine whether said initiative is limited to matters of county concern prior to certifying the initiative.

It is clear to the Court that the pertinent provision of Section 10, Article VI of the Oregon Constitution pertains to the charters of Home Rule counties. This court does not find that ORS 203.035 makes said constitutional provision apply to General Law counties.

Respondent County Clerk has met her statutory responsibility by determining the single subject requirement, a determination that this Court affirms and with which it agrees. The requirement that the initiative only pertains to matters of county concern will be addressed only if and when the initiative may pass.

Respondent to submit the appropriate judgment.

Sincerely,

Ted E. Grove
Circuit Court Judge

TEG:cf

Be It Enacted by the People of the State of Oregon

In the constitution of the state of Oregon, add section 47 to Article I as follows:

Section 47. Right of Local Community Self-Government

(1) As 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 the people have at all times the right to alter, reform or abolish their government should it become destructive to their fundamental rights or well-being, therefore the people have an inalienable and fundamental right of local community self-government, in each county, city, town, or other municipality.

(2) That right shall include the power of the people, and the power of their governments, to enact and enforce local laws that protect health, safety, and welfare by recognizing or establishing the rights of natural persons, their local communities, and nature; and by securing those rights using prohibitions and other means deemed necessary by the community, including measures to establish, define, alter, or eliminate competing rights, powers, privileges, immunities, or duties of corporations and other business entities operating, or seeking to operate, in the community.

(3) Local laws enacted pursuant to subsection (2) shall be immune from preemption or nullification by state law, federal law, or international law, and shall not be subject to limitation or preemption under Article IV, section 1(5), Article VI, section 10, or Article XI, section 2 of this constitution, or Oregon Revised Statutes 203.035, provided that:

> **(a) Such local laws do not restrict fundamental rights of natural persons, their local communities, or nature secured by the Oregon Constitution, the United States Constitution, or international law; and**
>
> **(b) Such local laws do not weaken protections for natural persons, their local communities, or nature provided by state law, federal law, or international law.**

(4) All provisions of this section are severable.

CERTIFICATE OF SERVICE

I hereby certify that, on September 18, 2017, I served a copy of the foregoing **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO INTERVENOR'S AND DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT** on:

Wayne Belmont, OSB #841662 Email: wbelmont@co.lincoln.or.us Email: jharrison@co.lincoln.or.us Lincoln County Counsel 110 Lincoln County Courthouse 225 W. Olive Street Newport, OR 97365 Tel: 541.265.4108 Rob Bovett, OSB #910267 Email: rbovett@oregoncounties.org Association of Oregon Counties 1201 Court Street, NE, Suite 300 Salem, OR 97301 Tel: 503.585.8351 Attorneys for Defendants	Ann B. Kneeland, OSB #992977 Community Environmental Legal Defense Fund PO Box 10294 Eugene, OR 97440 Telephone: 541-514-9720 Email: ann@kneelandlaw.net Attorney for Intervenor-Defendant Lincoln County Community Rights

by emailing a copy thereof to the email address as shown above and by using Cm/ECF electronic service.

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