Lynn Bowers
30251 Fox Hollow Rd.
Eugene

I am a chief petitioner for the Lane Co. Freedom from Aerial Herbicides Bill of Rights iniatative.

There has been some suggestion that ~~A~~ Our iniative is somehow frivolous, not worthy of the electorate's attention.

So, why are we doing this? It is not because I like being the old lady on the street corner asking perfect strangers for their signatures.

No - this iniative action is a last resort, undertaken after we have gone thru all the "proper channels".

We have had no satisfaction from the regulatory agencies. What kind of training do agriculture investigators get that they can't see herbicide damage plain to the citizen that called them? And how do they manage to lose all those samples?

Also we have spent years driving to Salem, begging our legislators to protect us from herbicide drift. They can't even pass buffer laws — which actually would do very little good.

We even went to see the Governor.

So - having no other recourse,
we wrote our initiative,
affirming our Right to
protect our health, safety,
& welfare.

And then, our commissioners
tell us no, you can't do that
without ~~out~~ their approval?
what a heaping pile of
paternalistic horseshit!

Commissioners - consider
carefully. Your votes on
this will have consequences.
You must not deny the People
their constitutional Right
to Initiative ~~Rep~~ Petition.

County Commissioners, **7-26-16**

Your proposed initiative ordinance gives elected County officials, YOU, power and control over ordinary citizens constitutional rights, to write and pass laws free from government interference. Our State Constitution, excerpted from Article 1, Section 1, - guarantees that we the people, can "alter, reform, or abolish the government in such manner as they see proper." What you suggest is most definitely unconstitutional!

On another note, I have been unable to find out what exactly "Of County Concern" actually means. It's incredibly vague!

To me, it means I live in the County, I vote in the County, and everything that happens here should be OF COUNTY CONCERN to ME! What is your definition? I'm sure everyone would like to know!

I'd also like to know how you, Commissioners Farr and Leiken, plan to vote on this ordinance, since we already know that Faye Stewart and Jay Bozievich are way too entrenched with extractive & toxic industries to change THEIR positions.

Do you BOTH support doing something that gives the four of you the ability to undemocratically interfere with three initiatives that have already been approved by the County Elections Clerk, and are now being circulated for signatures?

I surely hope not. I will be waiting to hear public declarations from you both.

Robin Bloomgarden
1472 McKinley St
Eugene, OR 97402
541-342-1419

ANN B. KNEELAND
ATTORNEY AT LAW

P.O. Box 10294, Eugene, Oregon 97440
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TESTIMONY TO THE LANE COUNTY BOARD OF COMMISSIONERS

July 26, 2016

My name is Ann Kneeland. I am a member of Community Rights Lane County and a local attorney who has represented residents in six Oregon counties to advance initiatives to protect the people's health, safety, and welfare from harmful corporate activities in their communities.

As an attorney who has become quite immersed in the Oregon initiative and referendum process, it is my professional opinion that the proposed ordinance being drafted for this Commission's consideration – to give this elected body a role in controlling the people's law-making rights – is unconstitutional.

Oregon statute (specifically ORS 203.035(4)) says that the County's authority over "matters of county concern" cannot be used to limit the people's right to the initiative power.[1]

In addition, on June 3, 2016, Judge Charles Carlson of the Lane County Circuit Court – when reviewing one of the three initiatives that Commissioner Bozievich has set his sights on, and ironically, an initiative that recognizes the people's right of local community self-government – ruled that the "matters of county concern" inquiry is not applicable until after an initiative has been enacted. [2]

The Oregon Constitution (specifically Article IV, section 1(2)(a)) disallows the Legislative Assembly, which includes this legislative body, from interfering with the people's initiative and referendum powers.[3]

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[1] ORS 203.035 Power of county governing body or electors over matters of county concern. (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.

[2] *Bowers v. Betschart and Bloomgarden, et al,* Lane County Circuit Court Case No. 15CV28768. Judge Carlson's Order, dated June 3, 2016, is attached.

[3] Article IV, section 1(2)(a) of the Oregon Constitution reads: "The people reserve to themselves the initiative power, which is to propose laws and amendments to the Constitution and enact or reject them at an election *independently of the Legislative Assembly*." (Emphasis added.)

The U.S. Constitution (specifically, the First Amendment) recognizes voters' rights – worthy of the highest protection – to circulate petitions as core political speech.[4]

A concern that an initiative petition is subject to preemption is not sufficient to prevent circulation of that petition under Oregon law.[5]

A concern that an initiative petition unconstitutionally supersedes state and federal law is not sufficient to prevent the circulation of that petition under Oregon law.[6]

Commissioners Bozievich has tried to assure Lane County voters that the Commission has taken "no action" and is merely "researching" the proposed ordinance. This assertion is in direct contradiction to the instructions expressly given to County Counsel by Commissioners Bozievich and Stewart to redraft the proposed ordinance and return it to the Commission with haste.

Commissions Leiken and Farr are relatively quiet on this issue, except for head nods to move this proposed ordinance forward for redrafting by the County Counsel. But these Commissioner should tell voters – to whom they are accountable – how they intend to vote on this proposed ordinance that would

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[4] "[T]he circulation of an initiative petition [seeking to deregulate the Colorado trucking industry] necessarily constitutes "core political speech," for which First Amendment protection is at its zenith." *Meyer v. Grant,* 486 US 414 (1988).

[5] "Both state and federal constitutions contain numerous provisions that prohibit legislative bodies from passing certain kinds of laws. The courts have never held that those legislative bodies may be enjoined from voting on the prohibited laws.

To the contrary, **the courts consistently have held that such constitutional prohibitions establish only that the prohibited legislation, if approved, is invalid.** *State ex rel. v. Newbry et al.*, 189 Or. 691, 697, 222 P.2d 737 (1950); *State ex rel. Carson v. Kozer*, 126 Or. 641, 647-49, 270 P. 513 (1928)."

> *Boytano v. Fritz*, 131 Or App 466, 473, 886 P2d 31 (1994), withdrawing former opinion and affirming trial court.

[6] Courts are without power to inquire into the substance, legality, or constitutionality of the subject matter of an initiative measure prior to its enactment. *Oregon AFL-CIO v. Weldon*, 256 Or. 307, 312, 473 P.2d 664 (1970); *Johnson v. City of Astoria*, 227 Or. 585, 591-93, 363 P.2d 571 (1961); *Unlimited Progress v. Portland*, 213 Or. 193, 195, 324 P.2d 239 (1958); *State ex rel. v. Newbry,* 189 Or. 691, 697-98, 222 P.2d 737 (1950); *State ex rel. Carson v. Kozer*, 126 Or. 641, 649, 270 P. 513 (1928) (hereinafter *Carson II*).

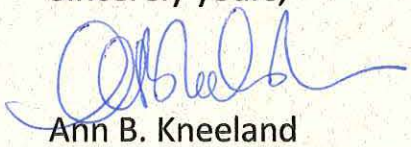
change the goal posts mid-game for three initiatives approved by the County Elections Office and now in circulation.

Commissioner Sorenson, of course, stands with people.

I would strongly urge this Commission to stop immediately wasting any more taxpayer money advancing an ordinance that is clearly unconstitutional.

Thank you.

Sincerely yours,



Ann B. Kneeland
Attorney At Law

Encl.: Judge Carlson's Order, Lane County Circuit Court Case No. 15CV28768

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE
125 E. 8th Ave. Eugene Oregon 97401

MARIE BOWERS,

Petitioner,

v.

CHERYL BETSCHART, in her capacity as Lane County Clerk,

Respondent,

and

ROBIN BLOOMGARDEN, MICHELE DE LA CRUZ, AND LAURA OHANIAN,

Intervenor-Respondents.

Case No. 15CV28768

ORDER

Petitioner Marie Bowers petitions this Court under ORS 260.168 to review and overturn Respondent Cheryl Betschart's determination that the initiative measure "Community Self-Government Charter Amendment" meets the procedural requirements of the Oregon Constitution. Intervenor-Respondents' motion to intervene was granted in part on January 25, 2016. In addition to their answer to the petition for review, Intervenor-Respondents filed a Motion for Lack of Jurisdiction over the Subject Matter and a Motion for a Judgment on the Pleadings. The parties appeared before the Court on May 24, 2016 for oral argument and the Court took the matters under advisement. In this written order, the Court addresses the initial petition and both motions.

A. The Petition

The Court affirms Respondent's determination that the initiative measure meets the Article IV, section 1 (2)(d) and Article VI, section 10 of the Oregon Constitution. In her petition, Petitioner alleges that the initiative does not pertain to "matters of county concern" and is "administrative" rather than "legislative" in discordance with Article VI, section 10 of the Oregon Constitution. Therefore, Petitioner asserts that the initiative does not meet the procedural constitutional requirements and asks the Court to overturn Respondent's determination.

Respondent argues that only part of Article VI, section 10 pertains to the initiative process, and the Court agrees with this analysis. The second half of the section—from "[t]he initiative and referendum powers reserved to the people" to the end of the section—addresses the initiative process and what the clerk must evaluate in a petition for an initiative measure. Evaluating the county home rule power, including the issues Petitioner raises in her petition, maybe addressed post-election.

Therefore, it is not proper for the clerk, or the Court, to evaluate the subject matter of a petition for an initiative measure, beyond confirming that the initiative contains only one subject. Both Article IV, section 1 (2)(d), and Article VI, section 10 of the Oregon Constitution address the criteria necessary for an initiative measure's circulation. When evaluating an initiative measure, the clerk need only confirm that the constitutional requirements concerning the initiative process have been met. That the subject matter of the initiative petition only addresses "matters of county concern" is not one of the constitutional requirements for the initiative process. Just as, on the state level, a statute's constitutionality is evaluated after its enactment, so too, on the county level, an initiative measure's constitutionality is evaluated only after it has been adopted.

The issues the Petitioner raises are not issues the clerk or the Court should consider at this pre-election stage of initiative process. Therefore, the Court affirms the Respondent's determination.

B. Intervenor-Respondents' Motion for Lack of Subject Matter Jurisdiction and Motion for a Judgment on the Pleadings.

Intervenor-Respondents' Motions for Lack of Subject Matter Jurisdiction and Motion for a Judgment on the Pleadings are DENIED.

The Court questions whether the motions are appropriate for a petition brought under ORS 250.168. The Court acknowledges that a "petition" could arguably meet the definition of a "pleading" under ORCP 13A's general definition for pleading: "written statements by the parties of the facts constituting their respective claims and defenses." However, a petition brought under ORS 250.168 is not an enumerated pleading allowed under ORCP 13B. While the appellate courts have accepted the broader definition of ORCP 13A for purposes of allowing enlargements of time or late filing under ORCP 15 (*see Joe D. Ornduff v. Russell Hobbs*, 273 Or App 169, 177-178 (2015)), they have not embraced a broader definition of pleading for ORCP 21 motions directed against non-enumerating pleadings. *See, e.g., Richard Gage v. Manfred Maass*, 306 Or 196 (1988).

The Court further finds that these motions run contrary to the intent of ORS 250.168(5), which explicitly states that the circuit court must conduct its review "expeditiously to ensure the orderly and timely circulation of the petition." Initiative measures are meant to be addressed quickly at a county level, not subject to appeal processes which can take years to come before the Court of Appeals and significantly delay the actual voting on the measure. By the explicit language of ORS 250.168(5), the legislature intended to make the circuit court the "Court of Appeals" for determinations pertaining to county measures. They directly tried to avoid drawing out this process with multiple appeals to reviewing courts. Intervenor-Respondent's here have tried to circumvent that expeditious intent behind the statute by filing motions that are subject to appellate review. The Court finds these the motions are procedurally improper because to rule otherwise would frustrate the expeditious ballot initiative process for all interested parties and invalidate a central purpose of the statutory provision at issue.

Signed: 6/3/2016 10:03 AM

Charles D. Carlson, Circuit Court Judge

August 26, 2016

Lane County Board of Commissioners
125 East 8th Avenue
Eugene, OR 97401

Lane County Board of Commissioners:

My name is Lon Otterby. I am a farmer in the Mohawk River Valley on the Mohawk River not far from the Linn County Line. I am here today to question your plan to reduce county expenditures by making changes to the initiative process that would empower you to decide which citizen initiatives were county business and which were not. I firmly believe that the changes you have in mind are to reduce citizen participation in the democratic process and in county government, and that these changes would not in fact reduce county costs but would instead increase them dramatically as each qualifying initiative that you denied would then go through a costly litigation. The provisions that are in place for reviewing county initiatives are effective and give ample protections against frivolous initiatives.

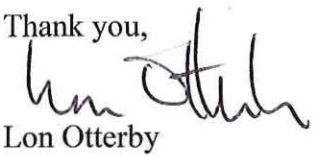
Government does have costs that must be continually monitored for ways to pay for what is necessary and what the people have deemed to be in their best interests. However, adding barriers to a process that already includes ample measures for vetting proposed initiatives is nothing less than blatant interference with our citizen initiative rights

We could for instance as a cost saving decide to do away with costly Lane County elections and replace them with an appointment process managed by a committee selected by this commission. We could then ask all candidates to appear before the committee for an up or down vote.

Implied in your consideration to change the initiative process is that you because of your experience could do a far more professional job of deciding which initiatives were in the best interest of the public. To see how that would play out we just need to look back on the vehicle registration tax that you all offered as a measure to the citizens of Lane County.

We the citizens and voters tend to make very good decisions in the long run, and I hope you will respect that.

Thank you,



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