IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF COLUMBIA

IN THE MATTER OF THE PETITION of the Board of County Commissioners of COLUMBIA COUNTY, a political subdivision of the State of Oregon, Petitioner, For a Judicial Examination and Judgement of the Court as to the regularity, legality, validity and effect of the Columbia County Second Amendment Sanctuary Ordinance	Case No. 21CV12796 **INTERVENORS' RESPONSE BRIEF**

INTERVENORS' RESPONSE BRIEF

Raven Chris Brumbles, Gun Owners of America, Inc., Gun Owners Foundation, Oregon Firearms Federation, Larry Erickson, Keith Forsythe, and Ruth Nelson (together "Intervenors") hereby file this, their combined Response Brief in response to and opposing the Attorney General's ("AG") Motion for Summary Judgment and the "Columbia County Residents'" ("CCR" or "Gun Control Intervenors") Motion for Summary Judgment.

At the hearing held on June 10, 2021, this Court denied the County's request to stay the Initiatives 5-270 and 5-278 and concluded that the validity of the Initiatives is not at issue in this proceeding. Indeed, as noted in their Opening Brief, Intervenors' position is that the substance of the SAPO and SASO ("Initiatives") are not properly before this Court, even to the extent that the Board's Ordinance ("Ordinance") purports to have incorporated the Initiatives' substance for the sole purpose of challenging it. A challenge to the validity of the Initiatives themselves would have to come through a traditional circuit court proceeding via ORS Chapter 28. But even if the

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substance of the Initiatives (as incorporated into the Ordinance) were at issue, as explained in Intervenor's Opening Brief pp 1-3, a decision on that still would not affect the continuing validity of the Initiatives. Invalidating a repeal, would revive the SAPO and invalidating the amendment via the Ordinance would restore the original SASO. However, Intervenors nevertheless have offered a robust defense of the substance of the Initiatives because that is what the CCR and County in a round-about way seek to challenge through this Petition. Thus, Intervenors use the term "Initiatives" because they have appeared to defend the legality of what the People have done in the SAPO and SASO (not what the Board has done), albeit as incorporated by copy/paste into the Ordinance.

POINTS AND AUTHORITIES

I. Columbia County Has Failed to Prosecute Its Own Litigation.

As an initial matter, it should be noted that the Columbia County Board has not filed any pleading in response to this Court's briefing schedule, ostensibly content to sit back and watch the fireworks after having filed a meritless Petition. The Board has chosen, apparently, to let the Attorney General's office and an anti-gun group do the dirty work of attempting to deny the People of Columbia County their right under the Oregon Constitution in deciding on matters of county concern. If the Board was so eager "to implement the intent of the voters," then it should have defended its constituents, and the Ordinance it passed, in the proceeding it initiated. Having utterly failed to speak up in support of what the People have done, the Board's silence speaks volumes.

As Intervenors argued in their opening brief, this validation proceeding is the improper vehicle to bring this challenge, because it is designed to test not the Board's Ordinance but rather the People's Initiatives, something that is not permitted under the validation statute. Even if this were a proper proceeding, then the only thing at issue is the shell of the Ordinance enacted by the

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Board, not the substance of the Initiatives enacted by the People.[1] Even hypothetically, the invalidation of a mere 'amendment' to the an existing ordinance, leaves behind the pre-existing ordinance. ORS 33.710 provides no authority to challenge the legality of a ballot measure, and this Court has already noted that the validity of initiatives 5-270 and 5-278 are not before it. Any argument relating to the content of the Initiatives rather than the Ordinance is invalid and should not be entertained by this Court.

Finally, even to the extent this Court might find it permissible or appropriate to wade into the details of the Initiatives, if only for the analysis, it should not consider new arguments raised by the Gun Control Intervenors or the Attorney General that were not raised in the Board's Petition. Likewise, to the extent that the Attorney General and Gun Control Intervenors fail to brief and argue issues that were raised in the Board's Petition, these matters should be deemed waived and dismissed, since the Board disclaims taking a position one way or another.

II. The Attorney General's Motion for Summary Judgment Is without Merit.

That said, the AG's Motion raises six points about the content of the Initiatives, each of which it alleges serves to invalidate the Ordinance: 1) state law preempts the Ordinance, 2) a county cannot "nullify" state law, 3) County officials' statutory duties preempt the Ordinance, 4) criminal statutes preempt the Ordinance, 5) state law impliedly preempts the Ordinance, and 6) federal law preempts the Ordinance. None of these is a meritorious argument, because all of the

[1] The AG's Motion ("AG Brief") appears to be based on the premise that the only issue in this validation proceeding is the Ordinance 2021-1 ("Ordinance") passed by Columbia County. *See* AG Brief at 1. In contrast, the "Columbia County Residents" ("Gun Control Intervenors") Motion for Summary Judgment challenges "Initiative Measures 5-270 and 5-278, as codified by the SASO…." *See* The Columbia County Residents' Motion for Summary Judgment ("CCR Brief") at 1. In footnote 4, the Gun Control Intervenors' Motion makes a passing statement that because the Ordinance "combines, amends and incorporates the [Initiatives], for simplicity, the remainder of this brief will refer to only the [Ordinance]. However, all arguments apply to the [Initiatives] themselves as well." *See* CCR Brief at 4, fn. 4.

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AG's positions are based on and demonstrate a fundamental misunderstanding of the purpose and effect of the SAPO and SASO.

Indeed, more than once the AG's brief deceptively and dishonestly claims that the Initiatives "declare[] that state and federal laws 'affecting the right to keep and bear arms' ***are*** 'null, void and of no effect in Columbia County, Oregon.'" AG Brief at 1; *see also* at 8 ("providing they ***are*** 'null, void and of no effect in Columbia County, Oregon.'") (emphasis added). Of course, that is not at all what the Initiatives say, but rather they provide only that certain Extraterritorial Acts "***shall be treated as if they are*** null, void and of no effect in Columbia County, Oregon." Ordinance at 8 (emphasis added). This Court should reject the AG's deceitful attempt to rewrite the plain language of the Initiatives to suit its political agenda.

A. The Initiatives Are Not Preempted by State Law.

The AG's first point is that the Initiatives are preempted by ORS 166.170. Intervenors' Opening Brief discussed this issue at length (at 14-18). As noted, the Initiatives neither "regulate, restrict, [n]or prohibit" firearms in any way. Nor do the Initiatives seek to preempt or "supersede" (AG Brief at 1), nor "purport[] to void" (AG Brief at 5), nor "attempt to nullify" (AG Brief at 5), nor "purport[] to displace" (AG Brief at 5), nor "render … 'of no effect'" (AG Brief at 5) any regulation of firearms by state or federal government. Rather, the Initiatives merely control the county's participation in and its own enforcement of the firearm regulatory schemes of other jurisdictions. *See* Intervenors' Brief at 16.

For the same reason, the AG's reliance on *Oregon Firearms v. Board of Higher Educ*., 245 Or App 713, 723 (2011) for the proposition that any "exercise of an 'authority to regulate' firearms that is not expressly authorized by the Legislative Assembly … is preempted by ORS 166.170(1)" is meaningless in this context because the Initiatives do not purport to exercise authority to

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"regulate," but merely set the county's enforcement priorities.

Like the Board's Petition, short of nakedly claiming it to be so, the AG's brief never attempts to explain how the Initiatives regulate, restrict, or prohibit any persons, arms, or activities related to the right to keep and bear arms. Rather, the Initiatives regulate, restrict, and prohibit only County officials' enforcement of other regulations. The AG provides absolutely no citation to any authority that the word "regulate" as used in ORS 167.170 somehow encompasses the Initiatives here.[2] To be sure, the AG relies on *Doe v. Medford School Dist. 549C*, 232 Or App 38 (2009) for the idea that the legislature sought to "avoid[] a patchwork quilt of … inconsistent[] regulati[ons]" (*id*. at 57-58; AG Brief at 4-5), but the Initiatives do not change anything about the uniformity, validity, and enforceability of state and federal firearms laws and regulations within the County and across the state. The Initiatives plainly do not operate in the way the AG believes, and thus its point is entirely without merit.

B. The Initiatives Do Not "Render State Laws 'Null, Void and of No Effect.'"

The AG's second argument fails for all of the same reasons as the first. The AG claims that "the county is powerless to supersede state law…." AG Brief at 5. Indeed, it is. The Initiatives do not purport to "supersede" state law, but only to control local priorities regarding enforcement thereof. State law is still fully valid and in effect in Columbia County. For that reason, the Initiatives do not "conflict with … general state statutes," nor are they "'irreconcilable with'" state law. *See* AG Brief at 5. On the contrary, under *La Grande v. Public Employees Retirement Bd.*, on which the AG relies, county enforcement of criminal and civil statutes is entirely within "the

[2] *See Doe v. Medford Sch. Dist.* 549C, 232 Or App 38, 52, 221 P3d 787 (2009) ("we note that, when the legislature employs the term 'regulate' or its variant 'regulation' in other statutes, it generally does so in the narrower, legal sense of the word that we have described," and further providing examples of such regulations, including the "number of exceptions, codified at ORS 166.171 through ORS 166.175" which "each refer to … the possession or discharge of firearms in specified circumstances." *Id.* at 54-55.

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local community's freedom to choose its own political form" (281 Ore. 137, 156, 576 P.2d 1204 (1978)) – *i.e.*, the People's twice-expressed desire that Columbia County exist as a Second Amendment Sanctuary.[3]

C. County Officials' Statutory Duties Are Not Implicated.

The AG alleges that the provisions of the Initiatives prohibiting enforcement by County officials of Extraterritorial Acts "conflict with state law," which the AG apparently believes requires that local official must enforce "state criminal laws" in every instance, without fail, and without any exercise of discretion. AG Brief at 6-7. This theory was already briefed in Intervenors' Opening Brief (at 23-27). At its core, the AG's argument is that the Sheriff is an arm of the State, beholden only to the legislature, instead of an elected county official, beholden to the People. Indeed, the AG cites ORS 206.010 for the proposition that "a sheriff has a statutory duty to enforce the state criminal gun laws." *Id.* at 7. On the contrary, the Sheriff is not denied the duty, pursuant to his constitutional oath, to determine that certain laws are unconstitutional and may not be enforced.[4] Similarly, there is no statute which forces the Sheriff to enforce Extraterritorial Acts which the People who elected him have determined are not to be enforced by County officials.

Nor is the County (the People who enacted the Initiatives) denied the prerogative to set local enforcement priorities and guidelines, including through budgetary constraints on the Sheriff.

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[3] Of course, Intervenors do not believe the Initiatives are in conflict with federal or state law. However, the *La Grande* Court explained that an impermissible state law would be one "that would impose policy responsibilities or record-keeping, reporting, or negotiating requirements on persons or entities contrary to their allocation under the local charter." *Id.* at 156 n.31. To the extent that any Oregon statute would impose mandatory enforcement requirements upon Columbia County, they would fall within this prohibition.

[4] As ORS 206.010(5) expressly notes, the Sheriff is required to enforce only "lawful orders or directions" by the courts, meaning that unlawful orders are unenforceable. If the legislature had intended to deny the Sheriff any discretion in carrying out the law, it would have simply said "all orders or directions."

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In *Burks v. Lane County*, 72 Or App 257, 695 P2d 1373 (1985), the Court of Appeals explained that, while a county board is statutorily required to appropriate "*some* funds … for the sheriff's performance of his duties," "the statute necessarily leaves *at least* the *budgetary* decision over the amount of funding to the county governing bodies." *Id*. at 262-63. The court continued to explain that, even though the legislature has the power to "compel" certain county functions, this power "'does not extend to depriving a municipality of discretion as to the means or method of accomplishment….'" *Id*. at 263. More specifically, to the extent that the AG argues there is mandatory enforcement, Oregon law prohibits unfunded mandates. Or. Const. Art. XI, Section 15. Thus, as a persuasive analogy, only when certain criteria are met can the legislature even mandate specific enforcement programs, and that same constitutional protection even authorizes local jurisdictions to refuse to comply with unfunded mandates. *Id.* Accordingly, local jurisdictions clearly have discretion on how they allocate funds and non-monetary resources.

Finally, the AG's point about civil liability "aimed at county officials" misses the target entirely. ORS 166.412 deals with the "criminal history record check" required for firearm transfers, which is conducted by the Department of State Police, not the Columbia County Sheriff. ORS 166.412(2)(d). Since the Initiatives do not purport to control the actions of the State Police, this statute is not implicated. But more obviously, the Initiatives do not prohibit carrying out a "background check requirement on firearms … required at time of purchase prior to December 2012…." Ordinance at 8. ORS 166.412 existed in substantially its current form since at least 2001, meaning that, even if the Columbia County Sheriff for some reason had cause to participate in a "criminal history record check," his actions would not be prohibited by the Initiatives. Specifically, the SASO contains an exception to its application for individuals participating in obtaining concealed handgun licenses and other applications. Ord 2021-1 4(b)(4).

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D. Criminal Statutes Do Not Preempt the Initiatives.

The AG's brief claims that "[t]he Ordinance also purports to 'nullify' the State's criminal laws," putting the word "nullify" in quotation marks and providing a citation to the Ordinance as if that word actually appears in the text. AG Brief at 7. It does not. Neither the Initiatives nor the Ordinance ever use the word "nullify." As Intervenors' Opening Brief explained, the Initiatives do not "nullify" anything,[5] nor do they purport to legalize anything, and the AG's unfounded assertion that what "would be criminal in Oregon's other 35 counties *would be legal in Columbia County*" is wholly incorrect. AG Brief at 7 (emphasis added). The AG has misapprehended (or worse, sought to conflate) the difference between what is *legal* with Columbia County and what is *enforced* by County officials. Unlike other enactments by various states, the Initiatives do not contain any language "purporting to permit" anything, "purporting to nullify" anything, or "purporting to displace" anything. *See* AG Brief at 8. The Initiatives do not invalidate state or federal law, nor seek to stop enforcement by state and federal officials. If, for instance, state or federal law enforcement personnel went to St. Helens, in Columbia County to infringe on rights that "shall not be infringed," neither the SAPO nor SASO would stand in the way, aside from

[5] For a true look at a statute that purports to nullify federal law, Idaho is a good example: "A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Idaho and that remains within the borders of Idaho ***is not subject to federal law or federal regulation, including registration***, under the authority of congress to regulate interstate commerce." Idaho Code § 18-3315a (emphasis added). *See also, e.g.,* Montana Firearms Freedom Act, Mont. Code Ann. § 30-20-104 ("A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Montana and that remains within the borders of Montana ***is not subject to federal law or federal regulation***…."); Kansas Second Amendment Protection Act, Kan. Stat. § 50-1204 ("A personal firearm, a firearm accessory or ammunition that is manufactured commercially or privately and owned in Kansas and that remains within the borders of Kansas ***is not subject to any federal law, treaty, federal regulation, or federal executive action***, including any federal firearm or ammunition registration program…."); Missouri Second Amendment Preservation Act ("all federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations, whether past, present, or future, that infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the United States Constitution and Article I, Section 23 of the Missouri Constitution must be ***invalid in this state***.").

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declining to provide county assistance.

E. State Law Does Not Impliedly Preempt the Initiatives.

The AG asserts that the Initiatives "'cannot operate concurrently'" with state statutes. *See* AG Brief at 8. Of course, the AG does not provide any analysis (or even speculation) about why that is so. As noted above, the Initiatives only control local enforcement priorities, which in no way affects the validity or effect of state law. This Court should decline the AG's invitation to explore the AG's unfounded assertion.

F. The Initiatives Are Not Preempted by Federal Law

The AG cites to *Gonzales v. Raich*, 545 US 1, 29 (2005) for the holding that "[t]he Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail."[6] AG Brief at 8. The AG claims that the Initiatives "'affirmatively authorize' conduct violating federal law." *Id*. at 9. On the contrary, the Initiatives *authorize* nothing (aside from civil suits for violation of their *prohibitions*). The AG claims that the Initiatives are "strikingly similar" to the Montana Firearms Freedom Act (quoted in pertinent part above). *Id.* If, by "strikingly similar," the AG means "nothing at all alike," then Intervenors agree. Indeed, Second Amendment sanctuary ordinances have been, from their inception, designed specifically to avoid the purported complications that have arisen with past state enactments that have purported to nullify federal law. Unlike the MFFA, the Initiatives do not declare that Columbia County is "'not subject to federal law or federal regulation,'" nor do they "'govern[] the

[6] The irony of its citation to *Raich* is apparently lost on the AG, as Oregon has taken the position that federal law is irrelevant with respect to Oregon's drug legalization. *See* Intervenors' Opening Brief at 21-24. Were the Court to somehow find that the Initiatives are preempted by federal law and thus invalid, then the same would hold true for the multitude of measures, initiatives, state law, and ordinances regarding Oregon's (and the various counties') drug policies.

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conduct of state and federal officials.'"[7] AG Br. at 9. The Initiatives provide only that county officials will not help enforce certain federal laws. As Intervenors' Opening Brief explains, the Supreme Court has held that states and local governments cannot be compelled to do otherwise.

III. The "Columbia County Residents' Motion for Summary Judgment" Is Without Merit.

First, it cannot go without repeating that the Gun Control Intervenors' arguments largely attack the Initiatives, rather than the Ordinance, when only the Ordinance is the proper subject of an ORS 33.710 proceeding. Arguments as to the validity of the Initiatives, their arguments should be either disregarded.

Second, there are four declarations for the proposed Gun Control Intervenors attached as exhibits to their motion for summary judgment. Each of the Gun Control Intervenors alleges that he or she is a "resident of Columbia County," a "taxpayer in Columbia County," "an elector registered to vote in Columbia County," and thus "an interested party." None of the Gun Control Intervenors allege that they voted either for or against either the SAPO or the SASO or, indeed, whether they voted at all.[8] Likewise, none of the Gun Control Intervenors allege that they were even aware of, much less supported or opposed adoption of, the Ordinance. None explain how

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[7] The AG relies heavily on *State v. Logsdon*, 165 Or App 28, 33 (2000) (AG Brief at 1, 5, 9), but that case involved a county charter which "declare[d] that *no one* – no 'individual, group, *or federal, state* or local governmental body or agency' – may enforce any law that is contrary to" the charter's prohibition. *Id.* at 33 (emphasis added). The Court of Appeals concluded that such a wide sweeping prohibition was not a matter of "county concern," and that "[n]o county has the authority to do that." *Id.* In contrast, the Initiatives declare that only county officials may not enforce certain Extraterritorial Acts. Every county has the authority to do that.

[8] In contrast, Intervenor Brumbles was the Chief Petitioner for both Initiatives, while Intervenors Erickson, Forsythe, and Nelson all voted in support of both Initiatives. Meanwhile, Intervenors GOA, GOF, and OFF are organizations which have drafted, supported, provided legal analysis of, testified, and advocated for Second Amendment sanctuary ordinances nationwide.

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their lives are, have been, or will be affected by either the Initiatives or the Ordinance.[9] Thus, aside from the fact that the Gun Control Intervenors generally are not fans of the right to keep and bear arms, there is nothing to establish that they have any legal interest in the outcome of this proceeding.

Otherwise, the Gun Control Intervenors make similar arguments to the AG and raise similar questions to those that are already addressed by Intervenors' Opening Brief. Intervenors address each argument in turn.

A. Local Governments Are Not Required to Enforce State and Federal Law.

The Gun Control Intervenors claim that "[t]he SASO is rooted in the flawed premise that '[l]ocal governments have the legal authority to refuse to cooperate with state and federal firearms laws….'" CCR Brief at 4. The Gun Control Intervenors provide absolutely no authority for this proposition, yet the unstated conclusion is that local governments are *required to cooperate* with state and federal laws. Of course, there is no Oregon state statute mandating local compliance with and enforcement of all state laws, nor are Intervenors aware of any legal authority stating as much. On the contrary, county government is not merely an arm of the state tasked with doing whatever the state demands. As stated above, most such unfunded mandates are explicitly unconstitutional in Oregon. Or. Const. Art. XI, Section 15.

In *New York v. United States*, 505 US 144 (1992), the Supreme Court explained that "Congress may not simply 'commandeer … the States by directly compelling them to … enforce

[9] Tellingly, the Declaration of Mr. Joe Lewis states that he is "a survivor of the Kent State shooting of 1970, where [he] was wounded as an 18-year-old freshman." Ironically, being shot by one's own government certainly would give one a unique perspective when it comes to reasons that federal government's power should be curtailed, especially as the central purpose of the right to keep and bear arms is self-defense against any illegitimate perpetrator of violence, including one's own government.

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a federal regulatory program.' … 'States are not compelled to enforce the [federal] standards, to expend any state funds, or to participate in the federal regulatory program in any manner whatsoever. If a State does not wish to submit … the full regulatory burden will be borne by the Federal Government.' … While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions." *Id.* at 161-62. Likewise, in *Printz v. United States*, 521 US 898, 935 (1997), the Court reiterated that "[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. … such commands are fundamentally incompatible with our constitutional system of dual sovereignty."

Likewise, local county governments are under no duty to enforce state law. Or. Const. Art. XI, Section 15. When Washington state voters enacted I-1639 imposing new gun control regulations upon the state, many Washington sheriffs announced that they would not enforce the new law. In response, Governor Inslee and Attorney General Ferguson wrote to all gun dealers in those counties, informing them that state law was still in effect and would still be enforced by "the Washington State Patrol…." However, while "governor, Jay Inslee, accused the sheriffs of 'a futile kind of grandstanding,' … he also tacitly acknowledged his lack of authority over them…". Likewise, dozens of sheriffs nationwide went on record last year, stating that they would not enforce their state-issued COVID-19 shutdown orders. It is worth noting that the AG's Brief does not argue that the county may not *decline to participate in enforcement* of all state laws in all instances, but rather proceeds on the mistaken assumption that the Initiatives purport to *override* state law.

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B. Fate of Similar Ordinances.

The Gun Control Intervenors erroneously cite to a 2020 circuit court decision from Harney County.[10] However, the Court in those counties failed to understand that the only relevant legal questions to be decided in a pre-signature gathering and pre-election review is whether the initiative complies with the constitutional prerequisites applied in a review pursuant to ORS 250.168.

As this Court appears to have correctly recognized in Columbia County Circuit Court case no. 19CV02825, some issues simply cannot be reviewed until after a proposed initiative has become a ballot measure and then been passed by the voters. Pre-election, there are three and only three items that a clerk, or a circuit court, can examine during an Article IV, Section 1 review under ORS 250.168: "the county clerk shall determine in writing whether the initiative measure meets the requirements of section 1 (2)(d), Article IV, and section 10, Article VI of the Oregon Constitution." Likewise, the Oregon Court of Appeals has stated that the only grounds which can legitimately be tested during the ORS 250.168 review for compliance with Article IV, section 2(d), and Article VI section 10 are (1) does the initiative include the full text; (2) does the initiative embrace a single subject or matters property connected thereto; and (3) is the initiative legislative in nature. *See Geddry v. Richardson*, 296 Or. App. 134, 143, 437 P.3d 1163, 1169 (2019) (Court of Appeals examining in depth exactly what the Secretary of State, and by correlation, a County Clerk, is allowed to review in its pre-election review of a ballot measure.)

[10] The Gun Control Intervenors fail to recognize that, during the relevant time periods, Grant County and Harney County had the same county counsel and rotating circuit court Judge. Thus, a decision the same erroneous legal advice affected both counties, and erroneously prohibited a proposed initiative measures from circulating for signature gathering (a SAPO (Grant County) and a SASO (Harney County)).

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Specifically, in Harney County, the ballot measure was effectively withdrawn because of a major typo made in the proposed initiative that listed and referred to a different county and therefore instead, on June 2, 2021, the Harney County Board of Commissioners adopted Ordinance 2021-01 (the SASO) as an ordinance. This Court can take judicial notice of the law, and ordinances of other counties in this State, and that ordinance has been recorded in the Harney County Commissioner's journal as CJ2021-63. Other Cities and Counties around Oregon (Jackson, Umatilla, Yamhill, Douglas, Sherman, Lexington, Linn, Baker, Klamath, and more) have their own versions, in many various forms, of the SAPO, SASO or other (similar in goal but substantively different type of) ballot measures and ordinances. Columbia County's "Petition" in relation to its own Ordinance does nothing to test or bring before this Court the validity of any proposed initiative, ballot measure in circulation, or Ordinance or Ballot Measure already passed in another jurisdiction as there would be no claim preclusive effect.

C. The Initiatives Are Not Implicitly Preempted.

The Gun Control Intervenors' claim that the Initiatives are implicitly preempted by state law fails for the same reasons as the AG's claim, discussed above. To that, the Gun Control Intervenors add the additional claim that "the SASO, by its very nature, 'makes it impossible to comply with' numerous state statutes." CCR Brief at 8. The Gun Control Intervenors do not further explain this curious claim. On the contrary, the Initiatives prevent no one from *complying* with state law, but only prohibit county officials from enforcing state law. Columbia County residents are perfectly free to participate in licensing and registration programs, background checks for gun sales, etc. Indeed, since the Initiatives do not override or nullify existing law, county residents are still *required to comply with* all state and federal firearms laws. The only thing that has changed is that county officials will not investigate, arrest, prosecute, or otherwise enforce

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certain laws.

The Gun Control Intervenors posit a scenario where the Sheriff would be prohibited from "investigating or arresting a transferor who violated the statute by selling a firearm without a background check," but do not explain how that transferor would not still be required to *comply with* the state law, despite the Sheriff's nonenforcement thereof. CCR Brief at 9.

Disgustingly, the Gun Control Intervenors then parade a potential tragedy in front of the Court to fan emotional flames, claiming without support that "it appears that Columbia County officials could not use county assets to investigate an active shooting…" *See* CCR Brief at 9. Despite what Moms Demand Action or Everytown for Gun Safety want the public to believe, the right to keep and bear arms does not include the right to commit mass murder, and the Initiatives do not insulate "active shooters" from prosecution or against an immediate response from law enforcement. *Even if* there was some ambiguous language in the Initiatives (there is not), laws are not read to provide absurd results such as this. The Initiatives provide a lengthy list of the types of laws that "restrict or affect an individual person's general right to keep and bear arms," and mass murder unsurprisingly is not on the list. *See* Ordinance at 8.

Finally, the Gun Control Intervenors provide a listing of "at least 30 firearms-related laws throughout Oregon statutes," each of which they allege preempt the Initiatives (*see* Table A) plus "at least 17 other state laws that are not explicitly firearms related" (*see* Table B). Unfortunately, as with the Board's Petition, the Gun Control Intervenors do not even attempt to explain how the Initiatives conflict with any of these statutes, [11] leaving Intervenors and this Court to guess. It is

[11] In addition, as noted above, the Gun Control Intervenors parade new Oregon statutes with which they claim the Initiatives conflict. *See* CCR Brief at 10 (ORS 166.370); *see also* Table A (ORS 821.240). But since these issues were not raised in the Petition, these questions certainly are not before this Court.

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simply not sufficient for the Gun Control Intervenors to copy and paste the list of statutes from the Board's Petition, claim without evidence, support, or even a viable legal theory as to how the Initiatives violate any of these statutes, and therefore seek to require Intervenors and this Court to invent an argument and then rebut these naked allegations. The inescapable conclusion is that there is no preemption.

D. The Initiatives Are Not Expressly Preempted by Oregon Law.

The Gun Control Intervenors, like the AG, allege that the Initiatives are "expressly preempted by state law," based on the argument that the Initiatives "purport[] to set the boundaries in Columbia County of what behavior is legal and what is unlawful." CCR Brief at 10-11. But again, the Initiatives do not legalize anything or invalidate anything. Rather, they merely set enforcement priorities. Making it unlawful to enforce something is not the same as making it lawful.

E. The Initiatives Are Not Preempted by Federal Law.

Next, the Gun Control Intervenors cite numerous authorities for the proposition that a county's ordinances cannot contravene federal law. CCR Brief at 11-12. Intervenors' response to this flawed argument is the same as to the AG's above. The Initiatives do not conflict with federal law because they do not purport to make legal what federal law makes illegal, nor do they seek to remove any duty of Columbia County residents to abide by federal law. Again, aside from citing to various provisions of the Gun Control Act (CCR Brief at 8), the Gun Control Intervenors do not provide any explanation of how the Initiatives contravene each of these federal statutes (again, a list uncritically copied and pasted from the Board's Petition). The Gun Control Intervenors end by claiming that "[t]he SASO effectively would prevent local law enforcement from investigating any action that could implicate federal law…." CCR Brief at 12. Certainly, not enforcing federal

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law would implicate the enforcement of federal law, but not the validity of federal law. Of course, while implication might be the standard for Congress' power to enact laws under the commerce clause, merely implicating federal law is not the standard for a supremacy clause violation. In fact, as Intervenors have noted repeatedly, the Supreme Court repeatedly has made clear that non-federal authorities have no duty to enforce federal law. *See Printz v. United States* at 935 (emphasis added).

F. The Initiatives Address Matters of "County Concern."

The Gun Control Intervenors next attack the authority of the People to have promulgated the Initiatives, arguing that their contents do not involve a matter of county concern. CCR Brief at 13. This issue was already briefed in the Intervenors' Opening Brief at 12, 30-31. But this argument fails for the same reasons as above, because the Initiatives do not "'contravene[] state or federal law,'" and are not "preempted" by state or federal law. *See* CCR Brief at 13. Use of local resources, and the conduct of local officials, are quintessentially matters of county concern. Moreover, only the Ordinance is legitimately at issue before the Court in this matter.

G. The Gun Control Intervenors' Bullet Point Arguments Fail.

The Gun Control Intervenors list four additional "other issues" with the Initiatives, pulled nearly verbatim from the Board's Petition. CCR Brief at 14. Without providing any analysis for either the Court or Intervenors, the Gun Control Intervenors ask this Court to overturn the People's Initiatives based on incantations, such as "[t]he SASO is void for vagueness." No, it is not.

As already briefed in the Intervenors' Opening Brief (at 16-18), the Ordinance does not exceed the regulatory authority of the County. As to whether the Ordinance applies to incorporated cities, the Intervenors' Opening Brief addressed that issue at 29-30 ("This [Ordinance] applies to Columbia County personnel no matter where their actions occur, but clearly does not apply to a

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city or state police officer, agent, employee or official."). As to the third claim, the Sheriff must be able to determine the constitutionality of all laws he/she enforces and has a duty not to enforce ones which violate state or federal constitutional provisions. (Intervenors' Opening Brief at 30-31). Nothing in the Ordinance states that the Sheriff's determination is binding on anyone but his own office. The final claim is that the Ordinance is "void for vagueness," a notion Intervenors also rebutted in their Opening Brief (at 34-36). The Gun Control Intervenors offer no additional analysis of these issues, and this Court should reject these claims for that reason alone, not to mention the rebuttal provided by Intervenors in their Opening Brief.

H. It Does Not Matter If the Ordinance Is Severable, Because the Initiatives Are Not at Issue Here.

As Intervenors have explained, the Ordinance adopted by the Board deleted the Severability clause from the Initiatives it purported to implement, then added a different Severability clause back to the Ordinance, and finally added a contravening "Repealer" section immediately thereafter, designed to undo and negate the effect of the Severability clause. *See* Intervenors' Opening Brief at 9 n.13. Contrary to the Gun Control Intervenors' claims, many of the provisions of the Initiatives are easily severable from the rest, such as the private cause of action, or even the different types of prohibited acts. Indeed, any court naturally should be wary of wholesale overturning enactments by the People. Of course, even if the Gun Control Intervenors were correct that the Ordinance's provisions are not severable, this would not change the validity of the Initiatives which are not part of the Ordinance and which are not part of this "validation proceeding." So, in the end, it does not matter if the Ordinance's provisions are severable from the other provisions, because if this Court finds the Ordinance invalid, the Initiatives still stand.

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IV. Conclusion

None of the Gun Control Intervenors' nor the Attorney General's arguments add much to support the Board's Petition. It is simply not sufficient to merely repeat the assertions in the Petitions, nor attempt to package the Initiatives into the Ordinance and ask this Court to wholesale repeal the People's Initiatives. For the reasons presented in this Response and in the Intervenors' Opening Brief, this Court should decline the Board's invitation to find the Initiatives invalid, should dismiss the Board's Petition, and award Intervenors their fees and costs associated with being required to appear and defend the Board's actions.

DATED this 8th day of July, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th of July, 2021, I caused a true copy of INTERVENORS' RESPONSE BRIEF to be served upon the following named parties, or their registered agents or their attorney by first class mail as indicated below and addressed to the following:

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Mailing was done by __X_ first class mail, and by ____ certified or ____ registered mail, return receipt requested with restricted delivery, or ____ express mail, eFiling __X___, and e-mail ___X_.

DATED this 8th day of July, 2021.

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