

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

IN THE MATTER OF THE PETITION)	
of the Board of County Commissioners)	Case No: 21CV12796
of COLUMBIA COUNTY, a political)	
subdivision of the State of Oregon,)	PETITIONER'S
)	REPLY TO INTERVENORS'
Petitioner,)	OPENING BRIEF
)	
For a Judicial Examination and Judgment)	
Of the Court as to the Regularity,)	
Legality, Validity and Effect of the)	
Columbia County Second Amendment)	
Sanctuary Ordinance)	

COMES NOW, Petitioner and hereby replies to Intervenor's Opening Brief. This reply is supported by the declaration of Donald Clack, Columbia County Chief County Clerk and Elections Supervisor, filed herewith, and the points and authority set forth below.

POINTS AND AUTHORITIES

I. Petition for Judicial Examination of Ordinance No. 2021-1 is Proper.

Intervenor's challenge the County's authority to adopt Ordinance No. 2021-1, the Columbia County Second Amendment Sanctuary Ordinance, and challenge this Court's authority to review the Ordinance.

A. Petitioner's Adoption of Ordinance No. 2021-1 was Lawful.

Columbia County's adoption of Ordinance No. 2021-1 was a legislative act pursuant to its authority under ORS 203.030 to ORS 203.075. The citizens of Columbia County enacted two

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ordinances related to the second amendment, the first pursuant to Initiative Measure 5-270 (“SAPO”), and the second pursuant to Initiative Measure 5-278 (the “SASO”). In Ordinance No. 2021-1, Columbia County amended the SASO and repealed the SAPO. With that action, there is only one Ordinance in existence, that being Ordinance No. 2021-1, the Columbia County Second Amendment Ordinance, which is now properly before this Court.

Intervenors argue that the Court should impermissibly strip legislative powers from the Columbia County Board of Commissioners. ORS 203.035(1) provides that “...the governing body or the electors of a county may by ordinance exercise authority within the county over matters of county concern, to the fullest extent allowed by Constitutions and laws of the United States and of this state....” This language grants equivalent legislative authority to the governing body and to the voters co-extensively to enact an ordinance governing matters of county concern. ORS 203.035(4) does not prohibit the Board of County Commissioners from exercising its legislative authority. The electors may continue to propose county ordinances through the exercise of initiative power. The Board’s exercise of legislative authority therefore does not limit the electors’ right to legislate.

In *City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 287 (1981), the Oregon Supreme Court held, “[i]nitiative and referendum are a sharing of legislative power between the people and their representatives, not a grant of additional legislative power to either” (citing *State ex rel Pierce v. Slusher*, 119 OR 141, 146-47; *Zilesch v. Polk County*, 107 Or 659, 668 (1923); *Allison v. Washington County*, 24 Or App 571 (1976)). The County’s authority to legislate exists regardless of whether the voters previously enacted an ordinance, and whether or

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not intervenors believe the County needed to do so. The Board of County Commissioners holds a plenary right, indeed, a responsibility, to legislate. Under the Oregon initiative and referendum system, the citizens and the legislative body (the County) have the same legislative authority over matters of County concern, except that which is preempted by state law. See also *Allison v. Washington County*, 24 Or App 571, 581 (1976) (“Under the Oregon initiative and referendum system, the citizens and the legislative body have the same legislative authority”).

The County was authorized under its general authority of ORS 203.035 to amend and repeal the two ordinances adopted by initiative. This action was lawful, as explained in *Allison and Roseburg* and also not uncommon. For example, in *In the Matter of Validation Proceedings to Determine the Regularity and Legality of Multnomah County Home Rule Charter Section 11.60*, 366 OR 295, Multnomah County adopted new ordinances implementing voter approved election restrictions (Measure 26-184). This Court has also ruled in a similar case wherein the Columbia County voters approved Initiative Measure 5-190, the Employment of Unauthorized Alien ordinance by initiative measure. That ordinance was subsequently implemented in the County by Ordinance No. 2008-6 and submitted to this Court with a Petition for Validation (See Case No. 08-2843)¹ Similarly, it is not uncommon for citizens to amend County ordinances by initiative measure.

Petitioner does not seek Judicial Examination and Judgment of the Court as to the regularity, legality, validity and effect of the ordinances adopted by Initiative Measure 5-270 (SAPO) or Initiative Measure 5-278 (SASO). As indicated, above, the SAPO was repealed by

¹ The Ordinance was deemed invalid by this Court because it was preempted by Federal and State law.

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Ordinance No. 2021-1 and the SASO was amended by Ordinance No. 2021-1. There is only one Ordinance governing a second amendment sanctuary in Columbia County, that being Ordinance No. 2021-1. The County seeks judicial examination and judgment of the Court as to the regularity and legality only of Ordinance No. 2021-1, as set out in its prayer.

B. This Court Has Authority to Review Ordinance No. 2021-1.

It is appropriate for this Court to examine the regularity, legality, validity and effect of Ordinance No. 2021-1 under its authority set forth in ORS 33.710(2)(e) (authorizing the Court to examine the regularity, and legality of any decision of the governing body when the decision will significantly affect the lives or businesses of a significant number of persons within the boundaries of the governing body); ORS 33.710(2)(f) (authorizing the court to examine the regularity and legality of the County to enact an ordinance); and ORS 33.710(2)(g) (authorizing the Court to examine the regularity and legality of any ordinance adopted by the governing body, including its constitutionality). Ordinance No. 2021-1 is clearly an ordinance adopted by the governing body, within the meaning of ORS 33.710(2)(g). In addition, at issue is whether the County has authority to enact such an Ordinance due to its content, within the meaning of ORS 33.710(2)(f). Finally, the Ordinance has the potential to affect the lives or businesses of a significant number of persons depending upon the validity of some or all of its provisions.² Petitioner's motivation is not relevant to whether an ordinance is subject to review under ORS 33.710, nor is it relevant to this Court's examination of the regularity, validity or legality of the

² For example, the general public is entitled to know what firearms laws apply to them and/or will be enforced against them.

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Ordinance³. Moreover, this Court recognized its authority to review controversial matters arising from an initiative measure in Consolidated Case Nos. 08-2843 and 08-2922.⁴

C. A Justiciable Controversy Exists in this Case.

Justiciability is a vague standard but entails several definite considerations. *Brown v. Oregon State Bar*, 293 Or 446, 449 (1982)⁵. The leading cases, despite a variety of considerations and outcomes, establish two irreducible requirements for justiciability: the dispute must involve present facts, and it must be a dispute in which a prevailing plaintiff can receive meaningful relief. The controversy must involve present facts as opposed to a dispute which is based on future events of a hypothetical issue. *Cummings Constr. v. School Dist. No. 9*, 242 Or. 106, 110 (1965). A justiciable controversy results in specific relief through a binding decree as opposed to an advisory opinion which is binding on no one. *Id.* “The controversy may not simply be an abstract inquiry about a possible future event. *Id.* (See also *Berg v. Hirschy*, 206 Or App 472, 475-76 (2006); *Brown* at 449 and *Granta v. Tanzer*, 31 Or App 21, 23-24 (1977).

Regarding the “present facts” requirement, the Oregon Court of Appeals has held that, if the dispute involves the interpretation of an existing statute that could apply to a party in the

³ While not relevant to these proceedings Petitioner strongly disagrees with Intervenors’ continued mischaracterization of Petitioners’ motive and intent in adopting Ordinance No. 2021-1 and filing this Petition.

⁴ In Judge Groves Letter Opinion he states, “The subject matter of the ordinance and initiative is without question controversial and the margin of the initiative’s passage indicates the community is indeed frustrated with the lack of Federal attention. Neither of these issues, however, are appropriate for this court to consider in determining the validity and enforceability of either.”

⁵ “[w]hile the controversy arises from advisory opinions, the substance of the controversy concerns the interpretation of a statute. The court is requested to consider a specific set of facts—whether plaintiff may give advice upon request to agencies in contested cases where plaintiff’s office is not involved in the case, agency rules do not prohibit the conduct and the recipient does not have authority to issue binding orders. The controversy involves present facts, the plaintiff’s existing statutory duty.”

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future, that situation itself creates a present fact. In *Advocates for Effective Regulation v. City of Eugene*, 160 Or App 292, 981 P.2d 368 (1999), the plaintiffs challenged a local initiative imposing limits on the use of toxic substances and creating a Toxics Board to implement the limitation. Plaintiffs claimed (among other things) that the initiative conflicted with state law. *Id.* at 298. At the time of the challenge, the local initiative had never been enforced; in fact, the Toxics Board had not even promulgated implementing rules. *Id.* In rejecting the city's claim that the question was merely hypothetical and therefore not justiciable, the Court observed, “[a] facial challenge to the validity of an enactment generally presents * * * a concrete controversy” and is therefore justiciable.” *Id.* at 299, 981 P.2d 368. The Court went on to identify the issue as “whether the Initiative—independent of any future action by the Toxics Board—” conflicted with state law. The Court held, “That question is not hypothetical, and its answer requires no speculation as to future facts. Either the Initiative on its face conflicts with state law, or it does not.” See also *TVKO v. Howland*, 335 Or. 527, 536 (2003), (the court described *Brown* as “stand[ing] for the unremarkable proposition that, when state officers seek judicial declarations regarding their duties, the statutory responsibilities of their office provide the present facts necessary for a justiciable controversy and, when such a controversy is present, a court only has limited discretion to decline to adjudicate it.”).

Regarding the “meaningful relief” requirement, a justiciable controversy exists when the interests of the parties are adverse. For example, in *Oregon Med. Ass’n v. Rawls*, 276 Or 1101 (1976), the medical association and an individual physician brought suit against the insurance commissioner, seeking a declaration that the statute governing medical malpractice insurance

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was constitutional. The Oregon Supreme Court held that there was no justiciable controversy between the plaintiffs and defendant because both were interested in establishing the constitutionality of the statute. The intervenors, however, supplied the element of adverseness essential to justiciability.

Ordinance No. 2021-1 was adopted on March 31, 2021, and was effective 90 days after its adoption pursuant to ORS 203.045(9).⁶ Therefore, there is a dispute based on present facts, not facts that may or may not happen in the future. *Brown*, 293 at 449. Petitioner’s rights do not depend on an event that no one can predict and that might not ever take place. The decision in this case will affect rights between the parties in the present. *Cummings* at 110. Here, the petition is a request for a binding decree as opposed to a nonbinding advisory opinion.

Intervenors argue that there is no justiciable controversy in this case because it “involves only one party” and because “Petitioner is not attempting to undermine its own Ordinance”. Yet, there are multiple parties to this in rem proceeding with differing legal interests. Furthermore, while Petitioner has made it clear that while its desire is to uphold the will of the voters in its adoption of Ordinance No. 2021-1, it has taken a clear position that it is likely that certain provisions of the Ordinance conflict with State law and Federal law or are preempted by ORS 166.170. However, notwithstanding the foregoing, this case, like the case in *Advocates for Effective Regulation v. City of Eugene*, 160 Or App. 292, 981 P.2d 368 (1999), involves a facial challenge to an enactment. “That question is not hypothetical, and its answer

⁶ Ordinance No. 2021-1, having no emergency clause, was effective on the 90th day after adoption. The effective date noted by the recording secretary is incorrect.

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requires no speculation as to future facts.” *Id* at 299. Either the Ordinance on its face conflicts with state law, or it does not. Here, Petitioner seeks meaningful relief; a binding decision as to the legality, validity and enforceability of Ordinance No. 2021-1. However, even if justiciability doesn’t otherwise exist, intervenors have supplied a sufficient element of adversity.

D. Oaths of Office Not Violated.

Intervenors allege that by adopting Ordinance No. 2021-1 the County Commissioners have violated their oaths of office because they adopted the Ordinance and then submitted it to the Court for judicial examination. Intervenors are misguided. It is well within the Board’s authority under ORS 203.030 to adopt an Ordinance and submit it to court for judicial validation. And, notwithstanding the clear legality of the Board’s action, it was the responsible thing to do based on the significant legal questions involved and the likelihood of costly litigation.

II. REGULARITY, LEGALITY AND ENFORCEABILITY OF ORDINANCE NO. 2021-1

Intervenors’ Opening Brief illuminates why it was important to submit Ordinance No. 2021-1 to the Court for examination as Intervenors’ interpretation of the breadth and scope of the Ordinance is not consistent with its plain language.

A. Firearm Regulations Preempted by ORS 166.170.

Intervenors argue that Ordinance No. 2021-1 is not preempted by ORS 166.170 because the effect of the Ordinance is limited to prohibiting the use of County resources to enforce certain firearms laws, and any participation in enforcement of such laws which, in turn, regulate, restrict or prohibit firearms-related activities. This reading is inconsistent with the express language of the Ordinance.

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The text of Ordinance No. 2021-1 establishes that the Ordinance is not merely a regulation of the enforcement of certain firearms laws. Section 2.B of Ordinance No. 2021-1 preserves the right of all people,

“****while in Columbia County*” to keep and bear arms as originally understood in self-defense and preservation, and one’s own community and country, and to freely manufacture, transfer, sell and buy firearms, firearm accessories and ammunition, which are designed primarily for the same purposes and protects ancillary rights that are closely related to the right to keep and bear arms protected by the Second Amendment, including the right to manufacture, transfer, buy and sell firearms, firearm accessories and ammunition.” (emphasis added)

This language reads to provide a right to all people in Columbia County⁷ (including incorporated cities within its boundaries) with ancillary firearm rights as defined in the Ordinance. The scope of this right is not limited to local, state and federal acts originating from outside of Columbia County, and operates separately from the ordinance’s enforcement provisions.

In addition, Section 4.A of the Ordinance provides that “Such Extraterritorial Acts shall not be enforced by Columbia County agents, employees, or officers, and shall be treated as if they are null, void and of no effect in Columbia County, Oregon.” (emphasis added). While this Section does prohibit enforcement by the County, it also appears to require that all such Extraterritorial Acts be treated by anyone in Columbia County as if they are null, void, and of no effect.

⁷ ORS 201.050 defines the boundary of “Columbia County” to include all of the unincorporated cities located therein.

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Furthermore, Section 3 of the Ordinance provides that it shall be the duty of the Sheriff of Columbia County to determine as a matter of internal policy and “county concern per ORS 203.035” whether any federal, state or local regulation affecting firearms, accessories or ammunition violates the 2nd Amendment or Article I, Sections 27 and 33 of the Oregon Constitution. Therefore, the Sheriff’s obligations under the Ordinance is not limited to the enforcement/appropriation provisions in the Ordinance.

Separately and together, the Ordinance provisions are inconsistent with Intervenors’ assertion that the Ordinance only impacts the County’s authority to participate in enforcement of extraterritorial acts or appropriate governmental funds and resources to enforce extraterritorial acts. Rather, the Ordinance appears to regulate which laws are null and void in Columbia County at the same time as it restricts enforcement.

B. Applicability of Ordinance No. 2021-1 to the Cities in Columbia County.

Assuming that Ordinance No. 2021-1 legislates over a matter of county concern and is not otherwise in conflict with state or federal law, it is well settled that ORS 203.040 requires that cities within the County must consent to its applicability inside an incorporated cities. Intervenors argue that the Ordinance does not apply within the incorporated cities. However, as set forth above, the plain language of the Ordinance grants ancillary firearm rights to “all people while in Columbia County,” and otherwise makes it clear that both the initiatives and Ordinance No. 2021-1 apply in the County as a whole. Section I.J. provides that

“...all local, state and federal acts, laws, orders, rules, or regulations regarding firearms, firearms accessories and ammunition are a violation of the Second Amendment.”

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In addition, Section 1.K of Ordinance No. 2021-1 states,

“[l]ocal governments have the legal authority to refuse to cooperate with state and federal firearm laws that violate those rights and to proclaim a Second Amendment sanctuary for law-abiding citizens in their cities and counties.”

Both of the above findings relate to local actions in incorporated areas. Furthermore, in Section 2.B., the Ordinance, implementing the same language from the SAPO, grants “ancillary firearm rights” to “any person” “while within Columbia County.”⁸ Finally, Section 4 of the Ordinance provides that Extraterritorial Acts shall be “treated as if they are null, void, and of no effect in the whole of Columbia County, Oregon.”

In addition, it appears that the intent of the initiative drafters and therefore, the voters was that the SAPO and SASO apply throughout the County. As evidence of the intent of the SAPO and SASO (which are implemented by Ordinance No. 2021-1), both were presented as County-wide initiatives, and submitted to all registered voters in the County, whether within or outside of the incorporated cities in the County, meaning that the two ordinances applied County-wide. If the two ordinances were meant only to apply in the unincorporated areas of the County, the measures should not have been presented as county-wide measures. See Declaration of Don

⁸ While within Columbia County, this Ordinance preserves “[t]he right of any person to keep and bear arms as originally understood; In self-defense and preservation, and in defense of one’s community And country, and to freely manufacture, transfer, sell and buy firearms, Firearm accessories and ammunition, which are designed primarily for the Same purposes and protects ancillary rights that are closely related to the right to keep and bear arms protected by the Second Amendment; including the right to manufacture, transfer, buy and sell firearms, firearm accessories and ammunition (“ancillary firearm rights”).

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Clack, ¶3. It is also clear from the tally of votes for each city, not all cities voted in favor of one or both initiative measures. See Declaration of Don Clack ¶4.⁹

Finally, the effect of language prohibiting the Sheriff's Office, the District Attorney's Office, as well as the Justice Court, Juvenile Department and Parole and Probation, from enforcing any Extraterritorial Act, is that some firearms crimes committed within the city limits cannot be enforced. For example, the District Attorney prosecutes misdemeanor and felony crimes originating from city police departments. In addition, the Sheriff provides jail facilities for persons committed to the Jail both from City prosecutions in municipal court and from District Attorney prosecution of crimes committed within the cities. The Justice Court hears cases originating within the cities and the County.¹⁰ Finally, both the Juvenile Department and Parole and Probation make arrests within city limits for criminal violations by persons under their supervision.¹¹

C. Conflicts with Extraterritorial Acts and Ancillary Firearm Rights.

As explained above, the Ordinance prohibits enforcement of "Extraterritorial Acts" defined broadly as "[a]ll local, state and federal acts, laws, rules or regulations, originating from jurisdictions outside of Columbia County, which restrict or affect an individual person's general right to keep and bear arms, including firearms, firearm accessories or ammunition." The Ordinance also provides that such Extraterritorial Acts shall be treated as if they are null, void

⁹ SAPO Results- Clatskanie, Rainier, St. Helens, Vernonia and Prescott voted in favor; SASO Results- Clatskanie, Rainier, and Vernonia voted in favor.

¹⁰ The fact that the County can submit a change of boundaries of the Justice Court to the voters for approval does not impact whether the Ordinance is currently in conflict with Oregon law.

¹¹ The Juvenile Department has retained supervision of juvenile offenders until the age of 25. ORS 419C.005

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and of no effect in Columbia County, Oregon. In addition, the Ordinance preserves the right of any person to keep and bear arms as originally understood and to freely manufacture, transfer, sell and buy firearms, firearm accessories and ammunition, defined as “ancillary firearm rights”. To the extent that Extraterritorial Acts and Ancillary Firearm Rights cannot be enforced and are treated as null, void, and of no effect in Columbia County, they effectively make many Oregon and Federal criminal laws inapplicable to persons while in Columbia County. It appears to Petitioner that if the effect of the Ordinance is only to prohibit enforcement, it may still conflict with the generally applicable firearms laws.

Intervenors’ briefing on this aspect of the Ordinance also highlights that the definitions of Extraterritorial Acts and Ancillary Firearms Rights are vague and that this proceeding is therefore necessary. Intervenors provide some arguably plausible interpretations of these terms in the context of some of the Oregon criminal laws surrounding firearms. However, overall, for both the persons charged with implementing and enforcing the Ordinance and the firearm laws and as for the average person trying to navigate the law, it is entirely unclear which laws apply and/or are enforceable in Columbia County. This problem appears to be exactly the type of problem the legislature intended to resolve by retaining to itself almost all legislative authority related to firearms. The legislature's concern was directed at preventing Oregon citizens from having to travel “through a ‘patchwork’ of inconsistent laws [and], perhaps unknowingly, violating local firearms restrictions.” *Oregon Firearms Federation @ 722*. Petitioner seeks review of the Ordinance to obtain clarity as to what laws apply and can be enforced.

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D. Appropriation of Funds.

Petitioner seeks an opinion from the Court as to the legality and effect of Ordinance No. 2021-1 on its obligation to appropriate funds generally pursuant to local budget laws and pursuant to department specific statutory funding requirements. Ordinance No. 2021-1, Section 2.A prohibits authorization or appropriation of government “funds, resources, employees, agencies, contractors, buildings, detention centers or offices” for the enforcement of any element of a firearm law (unless excepted in the Ordinance) and prohibits use of assets to engage in “activity that aids in the enforcement or investigation related to personal firearms, firearm accessories or ammunition.” These restrictions are broadly worded, as many activities can be deemed to “aid in enforcement.” Intervenors suggest that the meaning of these restrictions cannot be “absurd” but offer no specific insight as to what is “absurd” except that the County can change lightbulbs and does not have to “blow bridges.” Intervenors’ Opening Brief, page 27. Intervenors response again illuminates why it was important to seek judicial examination of Ordinance No. 2021-1, given the vague provisions and significant consequences to Petitioner if it somehow crosses the line from absurdity to “aiding enforcement”.

E. Sovereignty.

As a political subdivision of the state, counties share the sovereignty of the state. Only the state, and thus the legislature can waive sovereign immunity. *State v. Shinkle*, 231 Or 528, 529-530 (1962) ((citing *Vendell v. School District No. 26C*, 226 or 263, 28-279 (1961)) (“The State of Oregon is not subject to suit except as the legislature has otherwise provided. The doctrine of sovereign immunity exists in this state, not as the creation of courts, but as a

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constitutional principle chosen by the people and which is subject to change only by general law). In the absence of the statutory authorization, the courts lack jurisdiction over monetary claims against the state, and therefore the County. *James & Jost v. Board of Higher Edu.*, 216 Or 598, 600-603 (1959). The Oregon Tort Claims Act (OTCA) provides for a limited waiver of immunity for the torts of public bodies and their officers, employees, and agents acting within the scope of their employment or duties. ORS 30.265(1). The cause of action is against the public body, not against the employee or officer. ORS 30.265(1). The term tort means the “breach of a legal duty that is imposed by law, other than a duty arising from contract or quasi-contract, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy.” ORS 30.260(8). It appears to petitioners that if an employee is complying with statutory and constitutional duties, such employee is acting within the scope of employment.¹²

F. Sheriff’s Authority to Determine Constitutionality As a Matter of County Concern.

Intervenors argue that Section 3 of Ordinance No. 2021-1, which requires the Columbia County Sheriff to “determine as a matter of internal policy and county concern per ORS 203.035, whether and federal, state or local regulation affecting firearms, firearms accessories and ammunition” violates either the Second, Ninth or Tenth Amendments to the US Constitution or Article I, Sections 27 and 33 of the Oregon Constitution, means that the Sheriff is required only

¹² To determine whether state officials were acting within scope of their employment or duties for purposes of Oregon Tort Claims Act, court should consider (a) whether conduct was of kind official was hired to perform, (b) whether conduct occurred within authorized time and space, and (c) whether official was motivated at least in part by purpose to serve employer. *Lumbreras v. Roberts* (2004) 319 F.Supp.2d 1191, affirmed 156 Fed.Appx. 952, 2005 WL 3304174.

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to determine whether rules originating outside of the County are constitutional. This reading appears to be inconsistent with the plain language of the Ordinance. First, it is important to point out that the duty of the Sheriff under Section 3 of the Ordinance originated from the SAPO which referred to “ancillary firearm rights” and not “extraterritorial acts”. “Ancillary firearm rights” are not limited to those originating outside of the County.¹³ Second, “county concern” per ORS 203.035 is a term of art. A term of art is not necessarily given its ordinary meaning. See, e.g., *State ex rel. Dept. of Transportation v. Stallcup*, 341 Or. 93, 99 (2006) (“we give words that have well-defined legal meanings those meaning[s]”); *Tharp v. PSRB*, 338 Or 413, 423 (2005) (terms of art are not given their plain, natural, and ordinary meaning). A determination as to the constitutionality of a law “as a matter of county concern per ORS 203.035” refers to the legislative authority granted to Counties per ORS 203.035.

III. INTERVENORS REQUEST FOR ATTORNEY’S FEES.

Intervenors’ request for attorney’s fees pursuant to Ordinance No. 2021-1 is inappropriate. Assuming the Court finds that by Ordinance, a County can legislate attorney fees, Intervenors’ request still fails. Section 6 of Ordinance No. 2021-1 provides for a private right of action for violations of the Ordinance. In those cases, the Ordinance provides that the court shall award attorney fees to the prevailing party (as long as the prevailing party is not the County). This case is not a private cause of action against the County for a violation of the Ordinance. Nor, does initiation of this case violate the Ordinance. The County is in no way enforcing a

¹³ The Ordinance preserves the right of any person to keep and bear arms as originally understood and to freely manufacture, transfer, sell and buy firearms, firearm accessories and ammunition, defined as “ancillary firearm rights”.

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firearm law or assisting with an investigation of a firearm law by this action. In addition, enforcement of Ordinance No. 2021-1 is stayed by Order of this Court. Therefore, even if the Court could find that this action involves enforcement or investigation of a firearm law within the meaning of Ordinance No. 2021-1, the remedies set forth in the Ordinance, including the attorney's fee provision cannot be enforced. There is no statutory basis for attorney's fees against Petitioner in these proceedings.

Dated this 8th day of July, 2021.

s/ Sarah Hanson

Sarah Hanson, OSB 983618
County Counsel
Of Attorneys for Columbia County

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2021, I served the foregoing PETITIONERS RESPONSE TO INTERVENORS' OPENING BRIEF on:

Tyler Smith
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100 SW Market St.
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By email and first class mail at the addresses set forth above.

Dated this 8th day of July, 2021.

s/ Sarah Hanson

Sarah Hanson, OSB 983618
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR COLUMBIA COUNTY

IN THE MATTER OF THE PETITION) Of the Board of County Commissioners) of COLUMBIA COUNTY, a political) subdivision of the State of Oregon,) <p style="text-align: center;">Petitioner,)</p> For a Judicial Examination and Judgment) Of the Court as to the Regularity,) Legality, Validity and Effect of the) Proposed Columbia County Second) <u>Amendment Sanctuary Ordinance</u>)	Case No: 21CV12796 DECLARATION OF DONALD CLACK IN SUPPORT OF PETITIONER'S RESPONSE TO INTERVENORS' OPENING BRIEF
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I, Donald Clack, hereby declare:

1.

I am the Chief Deputy County Clerk and Elections Supervisor for Columbia County, Oregon. In my capacity as the Elections Supervisor I processed both initiative measures 5-270 (commonly referred to as the SAPO) and 5-278 (commonly referred to as the SASO) for County-wide ballots for general elections on November 6, 2018 and November 3, 2020, respectively.

2.

The two initiative measures were placed on ballots of all electors located within the County, including those residing within the incorporated boundaries of the cities within Columbia County.

3.

Prospective Initiative Petitions for both initiative measures included signatures of electors within the incorporated boundaries of cities within Columbia County. An initiative measure intended to apply only to the unincorporated areas of the County would not include signatures of electors residing in incorporated cities and would not be considered a County-wide measure.

4.

Results of the City votes for both initiative measure 5-270 and initiative measure 5-278 are attached hereto as Exhibit 1.

I hereby declare that the above statements are true to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'D. Clack', written over a horizontal line.

Donald Clack, Chief Deputy County Clerk
Columbia County Elections Supervisor

Exhibit 1

5-278	Precinct	Yes	No	over	under
Clatskanie	1	494	388	0	56
Rainier	15	533	526	0	60
St Helens	ALL	3565	3646	3	407
	21	1208	1167	0	130
	24	1137	1194	2	120
	26	1220	1285	1	157
Scappoose	ALL	1922	2466	1	257
	31	344	401	0	36
	32	953	1354	1	141
	34	625	711	0	80
Vernonia	41	729	597	0	85
Prescott	50	24	25	0	4
Columbia City	53	628	715	0	64

5-270	Precinct	Yes	No	over	under
Clatskanie	1	385	292	0	4
Rainier	15	473	344	0	37
St Helens	ALL	2900	2517	3	210
	21	964	834	0	73
	24	906	796	1	52
	26	1030	887	2	85
Scappoose	ALL	1699	1708	3	165
	31	291	289	0	30
	32	883	907	2	92
	34	525	512	1	43
Vernonia	41	597	418	0	40
Prescott	50	26	17	0	5
Columbia City	53	557	573	0	44

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2021, I served the foregoing DECLARATION OF DONALD CLACK IN SUPPORT OF PETITIONER'S RESPONSE TO INTERVENORS' OPENING BRIEF on:

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By email and first class mail at the addresses set forth above.

Dated this 8th day of July, 2021.

s/ Sarah Hanson

Sarah Hanson, OSB 983618
County Counsel
Of Attorneys for Columbia County

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