IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF LINCOLN

REX CAPRI, Plaintiff, v. DANA W. JENKINS, LINCOLN COUNTY, Defendants.	Case No. _____ **COMPLAINT** **(Appeal under ORS 246.910, Declaratory Judgment)**

Plaintiff alleges:

1.

Plaintiff is an elector of Defendant Lincoln County ("County"). Plaintiff is an owner of woodlands in the County who has previously hired a corporation to undertake the aerial spraying of pesticides on the woodlands. Plaintiff wants to retain the ability to hire a corporation to undertake the aerial spraying of pesticides on the woodlands—activity prohibited or inhibited by Ballot Measure 21-177 ("Measure").

2.

Defendant Dana W. Jenkins ("Jenkins") is the County Clerk for the County.

3.

The County is a political subdivision of the state of Oregon established through ORS 201.210 and derives its authority to make law from ORS 203.010, 203.015, and 203.030 to 203.075.

4.

On or about June 5, 2017, Jenkins certified that the electors of the County approved the Measure, a true and accurate copy of which is attached as Exhibit 1.

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FIRST CLAIM FOR RELIEF

(Appeal under ORS 246.910)

5.

Plaintiff realleges paragraphs 1–4.

6.

As an elector of the County, Plaintiff is adversely affected and aggrieved by certification of approval of the Measure because the Measure was not validly adopted.

7.

This Court has jurisdiction under ORS 246.910(1) to review the decision of Jenkins to certify the Measure as approved by the electors of the County.

8.

The Measure was not validly adopted and is void in its entirety because the Measure:

a. Includes matters not of County concern in violation of ORS 203.035 and section 10, Article VI of the Oregon Constitution;

b. Fails to include the full text of the law in violation of section 1(2)(d), Article IV of the Oregon Constitution; and

c. Contains more than one subject in violation of section 1(2)(d), Article IV of the Oregon Constitution.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment)

9.

Plaintiff realleges paragraphs 1–4 and 6.

10.

Plaintiff is a person whose rights, status, or other legal relations are affected by the Measure and, as such, is entitled to a determination of the validity of the Measure under ORS 28.020. The prohibition and inhibition of aerial spraying by the Measure adversely affects the

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value of Plaintiff's woodlands.

11.

This Court has jurisdiction under ORS 28.010 and ORS 28.020 to determine the validity of the Measure.

12.

Plaintiff contends that the following provisions of the Measure are invalid and unenforceable for the following reasons:

a. Sections 3(a)–(c), 4, 5, and 6 because preempted by ORS 634.057;

b. Sections 3(a)–(c), 4, 5, and 6, to the extent applicable to forest practices, because preempted by ORS 527.722;

c. Sections 3(a)–(c), 4, 5, and because, in ORS 527.630(3) and ORS 527.710, the Legislative Assembly has vested exclusive lawmaking authority concerning forest environments with the State Board of Forestry;

d. Sections 3(a)–(c), 4, 5, and 6, to the extent applicable to farm or forest practices, because preempted by ORS 30.934, ORS 30.935, ORS 30.936, or ORS 30.937;

e. Sections 4(d), 5(d), and 6(c) because beyond the scope of the lawmaking powers granted to the County in ORS 203.010, 203.015, and 203.030 to 203.075; and

f. Sections 6(a) and (b) because violating rights to a remedy by due course of law under Article I, section 10, of the Oregon Constitution, the taking of property without compensation under Article I, section 18, of the Oregon Constitution, and to equal privileges and immunities under Article I, section 20, of the Oregon Constitution.

13.

The County denies Plaintiff's contentions.

14.

Plaintiff has no plain, speedy, or adequate remedy at law.

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15.

The Measure poses irreparable harm to Plaintiff by authorizing individuals to injure Plaintiff's person or property and immunizing individuals from civil liability and criminal prosecution for causing injury to Plaintiff's person or property.

WHEREFORE, Plaintiff prays for judgment as follows:

1. Reversing Jenkins' certification of the Measure as approved by the electors of the County and declaring that the Measure is void in its entirety because not validly adopted;

2. Declaring that sections 3(a)–(c), 4, 5, and 6 of the Measure are invalid and unenforceable;

3. Enjoining the enforcement and applicability of the Measure, or in the alternative, enjoining the enforcement and applicability of sections 3(a)–(c), 4, 5, and 6 of the Measure;

4. Awarding Plaintiff his reasonable costs and disbursements incurred herein; and

5. Awarding any other relief the Court considers just and equitable.

Dated this 6th day of June, 2017.

DAVIS WRIGHT TREMAINE LLP

By s/ GREGORY A. CHAIMOV

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Attorneys for Plaintiff

FREEDOM OF LINCOLN COUNTY FROM AERIALLY SPRAYED PESTICIDES

Section 1 – Purpose

At a time when the rights of corporations are being protected at the expense of the people's rights, we must reaffirm what the Oregon Constitution guarantees: "that all [people], when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper."

We assert that our right of local community self-government to claim and protect our constitutionally-guaranteed right to safety is inherent, fundamental, and inalienable, and that – as the United States Declaration of Independence proclaimed – governments derive their just powers from the consent of the governed.

The practice of aerial spraying of pesticides on Lincoln County's forests is causing serious chemical contamination of our county's air, people, wildlife, ecosystems, and watersheds, as well as terminal degradation of our soil. A large number of pesticides being used, among them 2,4-D, glyphosate (Roundup), and atrazine, have been proven harmful to both humans and the environment.

It is important to note that only a small fraction of the approximately 12,000 pesticides registered for use in Oregon, including those being used in aerial spraying, have ever been tested for safety. None have been tested for the effects of repeated exposure over time, or for the effects of their routine application in combination with other pesticides and chemicals.

Lincoln County's most populated communities are located at the base of our life-giving watersheds. However, clear-cut logging operations and the aerial spraying of pesticides before and after replanting are taking place upstream in those watersheds, exposing people, ecosystems, and natural communities to chemical contamination.

Current laws and regulations permit and protect the practice of aerial spraying of pesticides, threaten our public health, violate our constitutionally-guaranteed right to safety, and interfere with our right of local community self-government. The risks from toxic trespass from aerial spraying of pesticides, due to the failure of our federal, state, and local governments to protect us, are therefore no longer acceptable.

Our fundamental right to clean air, water, and soil not contaminated by aerial spraying of pesticides cannot be achieved when that right is routinely overridden by corporate minorities claiming legal powers to engage in that contamination. Nor can sustainability of any kind be achieved within a system of preemption which enables corporate decision-makers to wield state governmental power to override local self-government, and when the state itself restricts the county's lawmaking powers in ways that prevent the people of the county from protecting the health, safety and welfare of people and natural communities from such harms as aerial spraying of pesticides.

The people of Lincoln County believe that aerial spraying of pesticides is not necessary, because the task of eliminating weeds and competing vegetation after tree planting can also be accomplished by manual action, without the use of any pesticides, however applied, without contaminating the environment, and without endangering the safety of all life in it, while at the same time creating many direly needed jobs for our community. Increasingly mechanized logging, including the practice of aerial spraying of pesticides, utilized by corporations extraneous to our communities, no longer makes any sizable contribution to our local economy,

but nevertheless is now carried out by these corporations that wield tremendous power over decision-making in our county.

Now, therefore, the people of Lincoln County hereby adopt this Ordinance, which shall be known and may be cited as the "Freedom from Aerially Sprayed Pesticides Ordinance of Lincoln County"

Section 2 – Definitions

(a) "Corporations," for purposes of this Ordinance, includes any corporation, limited partnership, limited liability partnership, business trust, public benefit corporation, business entity, or limited liability company organized under the laws of any state of the United States or under the laws of any country. The term includes all public corporations, municipal corporations, state and federal agencies, and any state and federal entity.

(b) "Ecosystems" means wetlands, streams, rivers, aquifers, and other water systems, as well as all naturally occurring habitats that sustain wildlife, people, flora and fauna, soil-dwelling or aquatic organisms.

(c) "Engage in aerial spraying of pesticides" means the physical deposition of pesticides into the land, water, or air by any aerial method, including, but not limited to, all actions taken to prepare for that physical deposition.

(d) "Natural Communities" means communities of wildlife, flora, fauna, soil-dwelling, aerial, and aquatic organisms, as well as humans and human communities that have established sustainable interdependencies within a proliferating and diverse matrix of organisms, within a natural ecosystem.

(e) "Pesticides" means any synthetic chemicals, or synthetic chemical mixtures, that can be classified as algaecides, avicides, bactericides, fungicides, herbicides, insecticides, miticides, acaricides, molluscicides, nematicides, rodenticides, or virucides, and shall include, but not be limited to, restricted and non-restricted pesticides used to destroy plant, fungal, and/or animal 'pests'.

Section 3 - Statements of Law – Freedom from Aerially Sprayed Pesticides Bill of Rights

(a) *Right to be Free from Toxic Trespass.* All people of Lincoln County, along with natural communities and ecosystems within the County, possess the right to be free of aerially sprayed pesticides.

(b) *Right to Clean Air, Water, and Soil.* All people of Lincoln County possess the right to clean air, water, and soil free of aerially sprayed pesticides; and that right shall include the right to be free from potential contamination of the air, water, and soil within the County from aerially sprayed pesticides.

(c) *Right to Rural Preservation.* All people of Lincoln County possess a right to an unspoiled rural quality of life free of aerially sprayed pesticides. The right to an unspoiled rural qualify of life free of aerially sprayed pesticides includes, but is not limited to, outdoor recreational activities such as hunting, fishing, and foraging.

(e) *Governmental Legitimacy.* To the extent necessary to secure this Ordinance, all governments in the United States owe their existence to the people of the community that those governments serve, and governments exist to secure and protect the rights of the people and those communities; and further, any system of government that becomes destructive of those ends is not legitimate, lawful, or constitutional.

(f) *Right of Local Community Self-Government.* For the limited purpose of securing Lincoln County to be free of aerially sprayed pesticides, the people of Lincoln County possess both a collective and individual right of

self-government in their local community, a right to a system of government that embodies that right, and the right to a system of government that protects and secures their human, civil, and collective rights.

(g) *Right to Assert the Right of Self-Government.* The people of Lincoln County possess the right to use their local government to enact this Ordinance that secures Lincoln County to be free of aerially sprayed pesticides, and the making and enforcement of this Ordinance by the people through a municipal corporation or any other institution shall not eliminate, limit, or reduce their sovereign right of local community self-government as stated in subsection 3(f).

(h) *Rights as Self-Executing.* All rights delineated and secured by this Ordinance are inherent, fundamental, and unalienable, and shall be self-executing and enforceable against both private and public actors.

Section 4 – Statements of Law – Prohibitions Necessary to Secure the Bill of Rights

(a) It shall be unlawful for any corporation to violate any right secured by this Ordinance.

(b) It shall be unlawful for any corporation to engage in aerial spraying of pesticides within Lincoln County.

(c) Corporations engaged in aerial spraying of pesticides in any municipality or designated jurisdiction adjacent to Lincoln County shall be strictly liable for damages caused by those pesticides to the residents and ecosystems within Lincoln County.

(d) No permit, license, privilege, charter, or other authority issued by any State or federal entity that would violate the rights of this Ordinance, shall be deemed valid within Lincoln County.

Section 5 – Enforcement

(a) Any corporation that violates any provision of this Ordinance shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. Each day or portion thereof, and violation of each section of this Ordinance, shall count as a separate violation.

(b) Lincoln County or any resident of Lincoln County, may enforce the rights and prohibitions of this Ordinance through an action brought in any court possessing jurisdiction over activities occurring within Lincoln County. In such an action, Lincoln County or the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

(c) Any action brought by either a resident of Lincoln County or by Lincoln County to enforce or defend the rights of ecosystems or natural communities secured by this Ordinance shall bring that action in the name of the ecosystem or natural community in a court possessing jurisdiction over activities occurring within Lincoln County. Damages shall be measured by the cost of restoring the ecosystem or natural community to its state before the injury, and shall be paid to Lincoln County to be used exclusively for the full and complete restoration of the ecosystem or natural community.

(d) If the County Government fails to enforce or defend this law, or a court fails to uphold this law's limitations on corporate power, this law shall not be affected by the failure to enforce or defend, or by the failure to uphold the limitations on corporate power, and any person may then enforce the rights and prohibitions of this law through direct action. If enforcement through direct action is commenced, this law shall prohibit any private or public actor from filing a civil or criminal action against those participating in direct action. If filed in violation

of this provision, the applicable court must dismiss the action promptly, without further filings being required of direct action participants. "Direct action" as used by this provision shall mean any activities or actions carried out to directly enforce the rights and prohibitions contained within this law."

Section 6 – Enforcement – Corporate Powers

(a) Corporations that violate this Ordinance, or seek to violate this Ordinance, shall not be deemed to be "persons" to the extent that such treatment would interfere with the rights or prohibitions enumerated by this Ordinance, nor shall corporations possess any other legal rights, privileges, powers, or protections that would interfere with the rights or prohibitions enumerated by this Ordinance. "Rights, privileges, powers, or protections" shall include the power to assert state or federal preemptive laws in an attempt to overturn this Ordinance, and the power to assert that the people of this municipality lack the authority to adopt this Ordinance.

(b) Corporate claims to "future lost profits" shall not be considered property interests under this Ordinance, and thus, shall not be recoverable by corporations seeking those damages.

(c) All laws adopted by the legislature of the State of Oregon, rules adopted by any State agency, laws adopted by the United States Congress, and rules adopted by any federal or international agency, shall be the law of Lincoln County only to the extent that they do not violate the rights or prohibitions of this Ordinance.

Section 7—Severability

The provisions of this Ordinance are severable. If any court decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Ordinance.

Section 8 - Repealer

All inconsistent provisions of prior Ordinances adopted by Lincoln County are hereby repealed, but only to the extent necessary to remedy the inconsistency.

Section 9 - Effect

This Ordinance shall take effect thirty (30) days after adoption.

Dana W. Jenkins
LINCOLN COUNTY CLERK
225 W. Olive Street-Room 201
Newport, Oregon 97365

County of Lincoln
"Customer Service is #1"
www.co.lincoln.or.us/clerk/
(541) 265-4131

July 14, 2015

Barbara B. Davis
PO Box 2170
Waldport, OR 97394

Maria Sause
15 NW Brook Street
Newport, OR 97365

Re: Initiative Petition/Determination of Compliance with Requirements

Dear Ms. Davis and Ms. Sause,

I have reviewed your proposed initiative petition for compliance with the following requirements for a local initiative petition:

1. Does the proposed local initiative measure comply with the Single Subject Rule?
2. Is the proposed local initiative a "legislative" measure that can properly be submitted to the voters under the people's initiative power?

My determinations are as follows:

1. The proposed measure complies with the Single Subject Rule.
2. The proposed measure is a "legislative" measure that can properly be submitted to the voters.

Since I have determined that your proposed initiative does comply with questions 1 and 2 above, it can go forward and I will send it to the District Attorney for preparation of a ballot title.

Sincerely,

Dana W. Jenkins
Lincoln County Clerk

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225 W. Olive Street-Room 201
Newport, Oregon 97365

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INVOICE

TO:

Oregonians for Food and Shelter

FOR:	AMOUNT:
Copies	**$1.50**
TOTAL:	**$1.50**

Please return this invoice with remittance to:

Dana W. Jenkins
LINCOLN COUNTY CLERK
225 W. Olive Street - Room 201
Newport, Oregon 97365

IMPORTANT: Do not hesitate to contact Dana Jenkins at (541)265-4131 if you have questions. Thank you.