

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

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IN THE MATTER OF THE PETITION of the Board
of County Commissioners of COLUMBIA COUNTY,
a political subdivision of the State of Oregon,
Petitioner.

Case No. 08-2843 (LEAD)
CONSOLIDATED CASES

ORDER ON PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

For a Judicial Examination and Judgment of the Court
as to the Regularity, Legality, Validity and Effect of
the Proposed Ordinance Regulating the Employment
of Unauthorized Aliens

Case No. 08-2922

WENDI ABBOTT, NONI ANDERSON, RICH
BAILEY, JEFF CAMPBELL, SUSAN EASLY
CONN, ANNE COX, DAVE EHRENKRANZ,
PENNY EHRENKRANZ, BECKY FRASIER,
CRAIG FRASIER, PRATITI FULLERTON,
DANIEL R. GARRISON, GIGI GORDON,
JOLENE JONAS, ERNIE KLOSTERMANN,
MARJORIE KUNDIGER, ROBERT LALIBERTE,
GARY LIAO, JUDY LITWIN, MIKE LITWIN,
TONY MANDELLA, JESUS OCHOA-
MADRUENO, HARRY MAURER, PALMER T.
OLSON, BRADY PREHEIM, RURAL
ORGANIZING PROJECT, KEVIN WAYNE
WALDING, MARCI WESTERLING, and PAT
ZIMMERMAN,
Plaintiffs,

v.

COLUMBIA COUNTY; STEVE ATCHISON, in his
official capacity as District Attorney of Columbia
County; SARAH HANSON, in her official capacity
as County Counsel for Columbia County; RITA
BERNHARD, in her official capacity as Columbia
County Commissioner; EARL FISHER, in his official
capacity as Columbia County Commissioner; TONY
HYDE, in his official capacity as Columbia County
Commissioner; and COLUMBIA COUNTY BOARD
OF COMMISSIONERS,
Defendants.

CITY OF ST. HELENS and CITY OF SCAPPOOSE,

Intervenors.

Plaintiffs and interested persons Wendi Abbott, Noni Anderson, Rich Bailey, Jeff Campbell, Susan Easley Conn, Anne Cox, Dave Ehrenkranz, Penny Ehrenkranz, Becky Frazier, Craig Frasier, Pratiti Fullerton, Daniel R. Garrison, Gigi Gordon, Jolene Jonas, Ernie Klostermann, Marjorie Kundiger, Robert Laliberte, Gary Liao, Judy Litwin, Mike Litwin, Tony Mandella, Jesus Ochoa-Madrueno, Harry Maurer, Palmer T. Olson, Brady Preheim, Rural Organizing Project, Kevin Wayne Walding, Marcy Westerling, and Pat Zimmerman ("Plaintiffs") moved pursuant to ORCP 47 for summary judgment in these consolidated cases to invalidate Columbia County Initiative Measure 5-190 (2008) and Columbia County Ordinance No. 2008-6 (2008). Defendants Columbia County, County Counsel Sarah Hanson, County Commissioners Rita Bernhard, Earl Fisher, and Tony Hyde, and the Columbia County Board of Commissioners did not concede or oppose Plaintiffs' motion and did not submit arguments either for or against that motion. Likewise, defendant Columbia County District Attorney R. Stephen Atchison took no position regarding the validity of the Measure or the Ordinance. The City of Scappoose and City of St. Helens ("the Cities") responded to the petition of Columbia County in Case No. 08-2843 and sought and obtained intervenor status in the declaratory judgment action filed by plaintiffs, Case No. 08-2922. The Cities sought a determination of whether the approval of the Measure by voters in each city constituted the "consent" required by ORS 203.040 and would result in the Measure and/or Ordinance applying within the Cities' boundaries.

The Court, having considered the parties' pleadings, briefs, and arguments, and for the reasons stated in its letter opinion dated April 13, 2009 (attached as Appendix 1), concludes that Columbia County Initiative Measure 5-190 (2008) and Columbia County Ordinance No. 2008-6 (2008) are invalid. Accordingly, Columbia County Initiative

2 invalid in Case No. 08-2843 (the Petition filed by the Board of County Commissioners of
3 Columbia County) and shall have no force or effect. Plaintiffs' action in Case No. 08-2922
4 challenging the same Measure and Ordinance is dismissed as moot.

5 IT IS SO ORDERED.

6 DATED this 21st day of May, 2009.

7 

8 Honorable Ted E. Grove
9 Circuit Court Judge

10 Submitted by:

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20 *Attorneys for Abbott Plaintiffs*



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

April 13, 2009

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Re: In the Matter of the Petition of the Board of County Commissioners of Columbia County
Wendy Abbott, et al vs. Columbia County, et al
Columbia County Circuit Court Case Nos. 08-2843 and 08-2922

Dear Ms. Dozono, Ms. Hanson, Mr. Ming, Mr. Dale, Ms. Heaton, Mr. Goldberg, Mr. Jordan,
Mr. Lilly, Mr. Manning, Mr. Campbell, and Mr. DeHoog:

The above-noted cases, which have been consolidated, present a number of challenges to Columbia County Ordinance No. 2008-6 entitled the "Columbia County Employment of Unauthorized Aliens Ordinance" and Columbia County initiative Measure 5-190 which the former was ordained to implement. The subject matter of the ordinance and initiative is without question controversial and the margin of the initiative's passage indicates that the community is indeed frustrated by 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.

The ordinance by its terms is repealed if the initiative is determined unenforceable. The initiative contains a severability provision so that failure of certain provisions of the initiative do not necessarily invalidate the entire initiative.

Violation of the initiative and ordinance either intentionally or knowingly subjects the offender to a \$10,000 mandatory fine and a period of probation as well as suspension of all licenses and building permits. The Federal Immigration Reform and Control Act of 1983, 8 U.S.C. section 1324a (hereinafter, the "IRCA") states in part, "The provisions of this section preempt any state or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ or recruit or refer for a fee employment, unauthorized aliens" 8USC section 1324a(h)(2). While the petitioner may have started with Arizona's Legal Arizona Worker's Act, hereinafter referred to as "Arizona Act" as a model, significant modifications were made. This Court must determine if those modifications are such as to affect the legality of Columbia County's Ordinance and underlying initiative. As just stated, the Columbia County initiative is substantially different from the Arizona Act which was held enforceable. It was found to not violate the above-noted Federal preemption provision.

The provision requiring a mandatory fine clearly violates this preemption.

If the fines were the only difference between the Arizona Act and the Ordinance and Initiative, the fine could be severed from the ordinance and the remainder upheld. Petitioner, however, attempted to implement an enforcement procedure that ignored existing statutes and the autonomy of other political entities.

The initiative and ordinance proscribe the following concerning provisions:

- 1) That enforcement shall be through a proceeding filed before the Columbia County Commissioners and conducted per Chapter 183 of the Oregon Revised Statutes with appeals to the Justice Court. There is a clear conflict as Chapter 183 provides all appeals to be to the Oregon Court of Appeals.
- 2) There is a requirement for suspension of all licenses, including building permits which are issued for the purpose of operating a business in Columbia County. Further, the Board of Commissioners or Justice Court are required to order appropriate agencies to suspend licenses, building permits, and to issue stop work orders. Neither of these entities have the statutory authority to order other agencies to perform these suspensions. Columbia County does not issue business licenses and many building permits are issued by cities. These required actions are beyond the limited jurisdiction of Justice Court and except as to building permits issued by the county, are beyond the statutory authority of the County Commissioners.

The actions required are more than mere conditions associated with issuance of licenses. They rise to the level of criminal or civil sanctions which also have been preempted by Federal Law. The essence of the initiative and the enabling ordinance is to sanction non-conforming employers with a fine and suspension of licenses beyond those issued by the county, thus rising to the level of civil or criminal sanctions. In addition, the initiative attempts to place the enforcement of these sanctions with entities and utilizes procedures that are in conflict with statutory authority.

The initiative and thus the ordinance are not able to survive a review under ORS 33.710(2)(e) and are declared illegal. While the Court recognizes the serious issue the initiative was seeking to address, existing Federal preemption and statutory provisions cannot be ignored. The Court having determined the initiative and ordinance unenforceable would dismiss as moot the consolidated action for Declaratory and Injunctive Relief.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted E. Grove", with a stylized flourish at the end.

Ted E. Grove
Circuit Court Judge

TEG:cf