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MAY 14 2018

BRENDA PERCY COUNTY CLERK

By 

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

MARK R. WEBB

Petitioner,

And

GRANT COUNTY CLERK,
BRENDA PERCY

Respondent

Case No. 18CV19251

**PETITION CHALLENGING
COUNTY CLERK'S MEASURE 12-
72 DETERMINATION**

INTRODUCTION

The Grant County Clerk has determined that Grant County Measure 12-72 (enclosed as Item 1) meets the full text and single subject requirements of Article IV, Section 1(2)(d) of the Oregon Constitution. ORS 250.168(2). Petitioner is dissatisfied with the clerk's determination and timely petitions the Circuit Court in Grant County to overturn the clerk's determination. ORS 250.168(4). Petitioner also maintains that Measure 12-72 is improper given the scope of its subject matter, which goes well beyond the matters of county concern authorized by ORS 203.035(1) in the initiative petition process.

Legal Context

Oregon voters (or electors) exercise their legislative authority through “the initiative and referendum powers reserved to” them by Article IV, Section 1, of the Oregon Constitution.

Through this initiative power electors are able “to propose laws and amendments to the Constitution and enact or reject them at an election independently of the Legislative Assembly.”

Article IV, Section 1(2)(a). ORS 250.155(2) extends the Article IV, Section 1 reservation of initiative power for electors at the state level regarding state matters to electors at the county level regarding county matters. ORS 203.035(1) limits this exercise of power to “matters of county concern.”

Oregon’s initiative procedure requires that prospective petitions which propose laws must comply with the full text and single subject requirements of Article IV, Section 1(2)(d) of the Oregon Constitution. A county clerk is required to “determine in writing whether” an initiative petition (or measure) meets the full text and single subject requirements within five days of receiving the prospective petition. ORS 250.168(1). A petitioner dissatisfied with the clerk’s determination has seven business day in which to respond to the clerk’s determination. ORS 250.168(4).

The Grant County Clerk has determined that Grant County Measure 12-72 meets the full text and single subject requirements of Article IV, Section 1(2)(d) of the Oregon Constitution. ORS 250.168(2). This determination assumes that the subject matter of Measure 12-72 addresses matters of county concern as required by ORS 203.035(1).¹ Petitioner disagrees with

¹ The Oregon Supreme Court recently clarified that the Attorney General has an obligation and the authority to evaluate a proposed measure in the context of existing and “settled” law in order to identify the measure’s intended “subject or determine its major effect and, in so doing, to consider the ‘changes that the proposed measure would enact in the context of existing law’.” *Nearman v. Miller*, 358 Or 818 (2016), pp 826-829. This same obligation and authority holds at

the clerk's determination and timely petitions the Circuit Court in Grant County to overturn the clerk's determination. ORS 250.168(4). Petitioner also maintains that Measure 12-72 does not (in the main) address matters of county concern—hence constitutes an improper exercise of the initiative process reserved for electors at the county level. ORS 203.035(1).

Argument

1. Measure 12-72 does not satisfy the full text requirement.

Article IV 1(2)(d) requires that the full text of any proposed law be provided in the initiative petition. This is intended to ensure “fair notice” is provided to voters of all “direct and substantive legal” effects or changes that will occur if a proposed measure or law is enacted. *League of Oregon Cities v. Kitzhaber*, Case No. 00C20156, page 8ff. Measure 12-72 does not satisfy the full text requirement because it fails to provide county electors “fair notice” of several substantive legal changes to existing statutory and constitutional law that will occur if the measure is approved and enacted.

To begin with, Measure 12-72 “would make unconstitutional in Grant County *any law or regulation that restricts a person from possessing firearms, ammunition or firearm accessories* [emphasis added]” (Summary, 2nd sentence). The context and language of Measure 12-72 do not provide any reason to limit the scope of ‘any’, which means the measure has extraordinarily broad scope. For example, according to ORS 166.250(ii)(C)(D)(E)(G) it is illegal for convicted felons and certain individuals with a mental illness to possess firearms. However, Measure 12-72 would amend this to make it lawful for any convicted felon or any individual with a mental illness to possess a firearm in Grant County. Surely amending ORS 166.250(ii)(C)(D)(E)(G) is

the county level when determining compliance with Article 1(2)(d) and a prospective petition's subject matter relative to ORS 203.035(1).

one “direct and substantive legal” change and effect that county electors should have been provided fair notice of.²

Measure 12-72 would also “require the Grant County Sheriff to review federal, state, and local laws affecting firearms, firearms accessories, and/or ammunition and determine whether they violate the United States and Oregon Constitutions as defined by this measure” (Summary, 3rd sentence). According to ORS 206.010, the county sheriff is the “chief executive officer and conservator of the peace of the county.” However, the responsibility described in the measure amounts to judicial review of local, state, and federal laws. Consequently, the measure would expand the county sheriff’s statutory responsibilities to include judicial review—i.e., judicial powers. This would amend Article VII, Section 1 of the Oregon Constitution, which vests the judicial power of the state in the Oregon Supreme Court, Appellate Courts, and District Courts. It would amend Article III, Section 1 of the Oregon Constitution, which divides Oregon government into three separate branches, and prohibits individuals “charged with official duties under one of these branches,” such as the county sheriff, from “exercising any of the functions of another, except as in this Constitution expressly provided.” It would amend Article VI, Section 8, according to which all “county and city officers [such as county sheriffs] shall keep their respective offices at such places therein, and perform such duties, as may be prescribed by law.” And it would amend ORS 206.010 and 204.635 which describe a county sheriff’s authority and

²Measure 12-72 would result in other substantive changes as well, if approved, that involve amending other state and federal statutes for Grant County around firearm possession. The measure should also note these as major effects. Oregon statutes include ORS 166.250, ORS 166.255, ORS 166.270, ORS 166.272. Petitioner has not researched federal statutes, but expect they will include similar laws that prohibit convicted felons or individuals with a mental illness from possessing firearms willy-nilly.

the general duties that office is prescribed by law to perform. These amendments are substantive legal changes and effects Measure 12-72 should provide electors fair notice of.

Finally, Measure 12-72 would “prohibit Grant County Government from enforcing any law that restricts the right of people to possess firearms, firearm accessories, and/or ammunition” (Summary, 4th sentence/paragraph down). That includes state and federal laws outside Grant County that do restrict the right of certain individuals to possess firearms. ORS 166.250 (and others) currently makes it illegal for a convicted felon or individual with a mental illness to possess a firearm. But Measure 12-37 would prohibit the county sheriff from enforcing any laws against the possession of firearms by such individuals as long as they are within Grant County. It would also prohibit the sheriff from fully enforcing interstate compact agreements governing supervision of adult offenders and others with criminal offenses that involve possession of firearms. Consequently, Measure 12-72 would significantly complicate (or change) interagency law enforcement responsibilities and significantly increase public safety risks for county residents. Amending such laws and changing the associated professional practices constitute substantive legal and public safety changes and effects that the measure should provide electors fair notice of.³

The full text requirement ensures prospective petitions provide “fair notice” to electors of all “direct and substantive legal” changes and effects that will occur if a proposed measure is enacted. Just the short list provided above indicates that Measure 12-72 will result in a number of “direct and substantive legal” changes and effects that it should have notified electors of, but didn’t. The measure clearly fails to satisfy the full text requirement of Article IV 1(2)(d).

³ These are only some of the substantive legal changes Measure 12-72 would bring about if approved.

2. Measure 12-72 does not satisfy the single subject requirement.

Article IV 1(2)(d) requires that “a proposed law or amendment to the Constitution shall embrace one subject only and matters properly contained within.” Known as the single subject requirement, this requirement is intended to prevent the inappropriate “bundling” of assorted subject matters that are best considered individually, or “the combining of incongruous matters or objects totally distinct and having no connection nor relation with each other in one and the same” law. *McIntire v. Forbes*, 322, Or 426, 439, 909 P2d 846 (1996).

This matter was recently considered in *State v. Mercer*, 269, Or App 135 (2015). Here the Court notes that the single subject requirement is satisfied provided “a proposed law or measure addresses a single substantive area of law, even if it ‘includ[es] a wide range of connected matters intended to accomplish the goal of that single subject’”; notes that “a reviewing court asks whether it can discern a ‘unifying principle logically connecting all provisions’ in the measure, such that it can be said that the measure embraces a single subject”; and states that “a law [or measure] that includes provisions addressing distinct and unrelated substantive areas of law risks violating the single-subject” limitation [or requirement].” *State v. Mercer*, pages 139, 138, and 140 respectively.

Measure 12-72 (1) mandates that the Oregon and U.S. Constitutions include ammunition and firearm accessories in the definition of ‘firearms’; (2) makes unconstitutional in Grant County any law that restricts (or prevents) a person from possessing firearms; (3) expands the county sheriff’s statutory duties to include judicial review; and (4), prohibits the county sheriff from enforcing any law that “restricts the right of people to possess firearms” (Summary, 1st, 2nd, 3rd, and 4th sentences). While firearm possession obviously provides some kind of “shared” context for Measure 12-72, and the single subject requirement lacks a hard-and-fast rule for

application, such that some level of discretion is involved in applying it, provisions (1) through (4) above clearly address substantively different legal issues that are best considered separately.

For example, the provision mandating constitutional changes to what constitutes a firearm is substantially different from the provision making unconstitutional any restriction whatsoever on who can legally possess a firearm—*regardless the definition*. And both of these substantive legal matters differ importantly from the substantive legal matter contained in the provision that *expands the county sheriff's authority to include judicial review* of both constitutional and local, state, and federal laws regarding the matter. Each one of these provisions address substantive “stand-alone” subject matters that can proceed independently, in the sense that neither of the other two are relevant or needed “to accomplish the goal of that single subject.” *State v. Mercer* 269, Or App 135 (2015).

They also address substantive legal matters that are for the most part addressed in different ORS chapters or parts of the Oregon Constitution, and are therefore best considered separately for approval by electors. For example, someone well might support changing the definition of ‘firearms’ to include ammunition and firearm accessories, yet reasonably oppose allowing convicted felons to possess firearms or expanding the sheriff’s responsibilities to include judicial review. Similarly, someone might support expanding the Sheriff’s statutory responsibilities, yet reasonably oppose allowing convicted felons to possess firearms.

Measure 12-72 includes provisions that address substantive, distinct, and unrelated areas of law. The measure clearly fails to satisfy the single subject requirement of Article IV 1(2)(d).

3. Measure 12-72 is an improper exercise of the initiative petition process.

Article IV, Section 1(2)(a) reserves to people (or electors) “the initiative power, which is to propose laws and amendments to the Constitution and enact or reject them at an election

independently of the Legislative Assembly.” ORS 250.155(2) extends the Article IV, Section 1 reservation of initiative power for electors at the state level regarding state matters to electors at the county level regarding county matters. ORS 203.035(1) limits the exercise of this power to “matters of county concern” in an elector’s county.

The phrase ‘matters of county concern’ should be understood broadly as authorizing the electors of a county to exercise broad legislative discretion regarding local matters, subject to compatibility with state and federal law—i.e., absent preemption by state or federal law.⁴

State law preempts a county ordinance (or measure) when there is a direct conflict between state law and the county ordinance. A direct conflict occurs when the ordinance is “incompatible with legislative policy [or law], either because both cannot operate concurrently or because the legislature meant its law to be exclusive.” *LaGrande/Astoria v. PERB*, 281 Or 137 148-149 (1978). Broadly speaking, federal law preempts state law in one of two ways. First, if “Congress evidences an intent to occupy a given field, [then] any state law falling within that field is pre-empted.” *Cal. Costal Comm’n v. Granite Rock Co.*, 480 U.S. 572, 581 (1987). Second, when state law directly conflicts with federal law, in which case the Supremacy Clause requires that federal law prevail.⁵ Counties are agents of the state, so what holds for state laws in the federal context holds for county ordinances or measures. Consequently, an initiative petition that addresses matters preempted by state or federal law is not a matter of county concern per

⁴ See *City of La Grande and City of Astoria v. Public Employees Retirement Board* 281 Or 137 (1978), affirmed on rehearing 284 Or 173; *GTE Northwest Incorporated v. Oregon Public Utility Commission* 179 Or App 46 (2002); and *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or App 457, 228 P3d 650 (2010).

⁵ The Supremacy Clause provides that federal law or the U.S. Constitution “shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the contrary notwithstanding.” U.S. Constitution, Article VI, Clause 2.

ORS 203035(1), nor a proper exercise of the initiative power reserved to electors by Article IV, Section 1(2)(a), ORS 250.155(2), and ORS 203.035(1).

Alternatively, any prospective petition that is, or includes provisions that are, preempted by state or federal law, exceeds the statutory authority electors are authorized to exercise at the county level. ORS 203.035(1).

3a. Amending the U.S. and Oregon Constitution is not a matter of county concern.

Measure 12-72 provisions include amending the U.S. and Oregon Constitutions to broaden the definition of firearms to include “ammunition and firearms accessories”; amend the Oregon Constitution (at least) by expanding the sheriff’s statutory responsibilities to include judicial review; and amend the Oregon and U.S. Constitutions regarding what laws Grant County, acting as an agent of the state, can legally enforce regarding who can possess firearms (Summary, 1st, 3rd, and 4th sentences respectively).

Article V of the U.S. Constitution prescribes the process by which it may be amended:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by Congress. . . .

Amending the U.S. Constitution requires a two thirds vote in Congress ratified by three fourths of the states. While the Supremacy Clause ensures the Constitution prevails in cases of conflict with state or county laws. In short, amending the U.S. Constitution exceeds the statutory authority electors are authorized to exercise at the county level per ORS 203.035(1) and the initiative power reserved to them.

The Oregon Constitution is easier to amend. Article IV, Section 1 prescribes the process for doing so through the initiative petition process. According to Section 1(2)(c),

An initiative amendment to the Constitution may be proposed only by a petition signed by a number of qualified voters equal to eight percent of the total number of votes cast for all candidates for Governor at the election at which a Governor was elected for a term of four years next preceding the filing of the petition.

Measure 12-72 was filed 4/23/2018, so 2016 is the election year in question. Approximately 1,923,308 votes were cast state-wide for all candidates for Governor in 2016. 8% of that is approximately 153,865 votes. Grant County has a population of less than 8000 individuals. It's simply not possible that the petition signature gathering process in Grant County can meet the conditions required to amend the Oregon Constitution via the initiative petition process.

Consequently, amending the Oregon Constitution (or state laws) to change the definition of firearms, or amending Article III, Section 1, Article VI, Section 8, and ORS 206.010 and 204.635 to include judicial powers, constitutionally reserved to the judiciary by Article VII, Section 1, within the sheriff's statutory responsibilities exceeds the statutory authority electors are authorized to exercise at the county level per ORS 203.035(1) and the initiative power reserved to them.

3c. ORS 166.170 and State Preemption.

ORS 166.170 states:

(1) Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.

(2) Except as expressly authorized by state statute, no county, city or other municipal corporation or district may enact civil or criminal ordinances, including but not limited to

zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition. Ordinances that are contrary to this section are void.

Oregon's Legislative Assembly has not expressly authorized either the governing body of Grant County or its electors the authority to regulate firearm possession in accord with the provisions found in Measure 12-72. But short that authorization, Measure 12-72 exceeds the statutory authority electors are authorized to exercise at the county level per ORS 203.035(1), ORS 166.170, and the initiative power reserved to them.

In summary, Article IV, Section 1, ORS 250.155(2), and ORS 203.035 reserve to county electors the right to exercise initiative powers within their county over matters of county concern—i.e., over legislative matters that have not been preempted by state or federal laws. Measure 12-72 provisions include subject matter that address matters preempted by state or federal law. Measure 12-72 therefore constitutes an improper exercise of the initiative power reserved to electors by Article IV, Section 1(2)(a), ORS 250.155(2), and ORS 203.035(1).

Conclusion

An initiative petition must address matters of county concern as prescribed by ORS 203.035(1) and satisfy the full text and single subject requirements of Article IV, Section 1(2)(d). Measure 12-72 includes subject matter that goes well beyond the matters of county concern prescribed by ORS 203.035(1)—hence it constitutes an improper exercise of the initiative power reserved to electors by Article IV, Section 1(2)(a), ORS 250.155(2), and ORS 203.035(1). It also fails to satisfy the requirements of Article IV, Section 1(2)(d). For these reasons petitioner requests that the Court overturn the clerk's determination and remove Measure 12-72 from voter consideration.

DATED this 13th day of May 2018

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Pro Se

Notice of Measure Election
County

#12-72

MAY 03 2018

SEL 801

BRENDA PERCY COUNTY CLERK
By *B. Percy*
v 01/18: ORS 250.035, 250.041,
250.175, 254.103, 254.465

Notice		
Date of Notice May 3, 2018	Name of County or Counties Grant	Date of Election November 6, 2018

Final Ballot Title The following is the final ballot title of the measure to be submitted to the county's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

Caption 10 words which reasonably identifies the subject of the measure.

Expands definition of firearms and limits enforcement of firearms laws.

Question 20 words which plainly phrases the chief purpose of the measure.

Should Grant County expand constitutional definition of firearms and prohibit enforcement of laws that regulate their manufacture, sale, and possession?

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

- (1) Approval of this measure would mandate that in Grant County, the Oregon and United States Constitutional definitions of firearms be interpreted as including ammunition and firearms accessories.
- (2) Approval of this measure would make unconstitutional in Grant County any law or regulation that restricts a person from possessing firearms, ammunition, and firearms accessories.
- (3) Approval of this measure would require the Grant County Sheriff to review federal, state, and local laws affecting firearms, firearms accessories, and/or ammunition and determine whether they violate the United States and Oregon Constitutions as defined by this measure.
- (4) Approval of this measure would prohibit Grant County Government from enforcing any law that restricts the right of people to possess firearms, firearms accessories, and/or ammunition.
And approval of this measure would subject people or corporations who violate this measure to a fine of up to \$2,000 for an individual and \$4,000 for a corporation.

Explanatory Statement 500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:
→ any measure referred by the county governing body; or
→ any initiative or referendum, if required by local ordinance. **Explanatory Statement Attached?** Yes No

Authorized County Official Not required to be notarized.

Name	Title
Mailing Address	Contact Phone

By signing this document:
→ I hereby state that I am authorized by the county to submit this Notice of Measure Election; and
→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature _____ Date Signed _____

Prospective Petition
Local Initiative and Referendum

APR 23 2018

SEL 370

BRENDA PERCY COUNTY CLERK

rev 01/18 ORS 250.045,
 250.165, 250.265, 255.135

Warning Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, a contact phone number and a signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status below must be reported to the Elections Division no later than the 10th day after you first have knowledge or should have had knowledge of the change.

Petition Information		Type	
This filing is an	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Initiative
			<input type="checkbox"/> Referendum

Jurisdiction			Some Circulators may be Paid	
<input checked="" type="checkbox"/> County	<input type="checkbox"/> City	<input type="checkbox"/> District	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Title Subject or name you give your petition.
 Second Amendment Preservation Ordinance

Website if applicable

Petition Correspondence Select the method of receiving notices or other correspondence from the Filing Officer.

Correspondence Recipient Email Chief Petitioners Mail Chief Petitioners

Recipient Information

Name	Email Address
------	---------------

Chief Petitioner Information At least one original chief petitioner must remain throughout the petition process or the petition is void.

→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

Name Ronald K. Rue	Contact Phone 541-628-7916
Residence Address street, city, state, zip 641 Johnson Ave. North, Prairie City, Oregon 97869	
Mailing Address if different PO Box 811, Prairie City, Oregon 97869	Email Address ronnsandy4ever@gmail.com
Signature <i>Ronald K Rue</i>	Date Signed 04/23/2018

Name	Contact Phone
Residence Address street, city, state, zip	
Mailing Address if different	Email Address
Signature	Date Signed

Name	Contact Phone
Residence Address street, city, state, zip	
Mailing Address if different	Email Address
Signature	Date Signed