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2
3 IN THE CIRCUIT COURT OF THE STATE OF OREGON
4 FOR THE COUNTY OF COLUMBIA
5

6 BRUMBLES, RAVEN,

7 Petitioner,

8 v.

9 COLUMBIA COUNTY, COLUMBIA
10 COUNTY CLERK acting by and through its
agent DONALD CLACK

11 Respondent

Case No. 19CV02825

**SUPPLEMENTAL BRIEF IN SUPPORT
OF PETITION CHALLENGING
COUNTY CLERK'S MEASURE 19-1
DETERMINATION**

12 **BACKGROUND**

13 On March 19, 2019 at oral argument Petitioner and Respondent presented argument on
14 whether proposed measure 19-1 the "Second Amendment Sanctuary Ordinance" (aka SASO)
15 complied with the proposed ballot measure "full text" requirement contained in the Oregon
16 Constitution. The parties agreed that if there was an amendment to an existing law then the
17 ballot measure would have to include text explaining what was being deleted, added, moved or
18 otherwise being amended. Petitioner and respondent disagreed on what constituted an
19 amendment. Petitioner argued that the controlling Oregon case law on this issue ruled:

20 "The full-text requirement of our constitution means exactly what it says. The petition
21 must carry the exact language of the proposed measure. It need include nothing more.
22 *Schnell v. Appling*, 238 Or 202, 204-05 (1964)".

23 *Kerr v. Bradbury*, 193 Or App 304, 310 (2004). (cited on page 6 of Petitioner's Reply).

1 Petitioner argued that SASO was a proposed new ordinance, that does not currently exist in
2 Columbia County therefore it is not amending itself nor adding or subtracting from any existing
3 language. Petitioner bolstered that point by demonstrating that the SASO expressly recognizes
4 that other laws exist but SASO simply prohibits agents, employees or officials of Columbia
5 County from enforcing such laws while acting in their official capacity.

6 Petitioner pointed out that before the clerk could lawfully reject IP 19-1 based on the
7 allegation that it amended some law; the County Clerk had the burden to find and be able to
8 show that IP 19-1 was in fact amending some pre-existing law. Petitioner pointed out that the
9 Clerk had failed to demonstrate in any of its briefing that IP 19-1 changed any word, added any
10 word, or removed any word from any existing law. At oral argument the Clerk’s counsel
11 admitted there was no amendment to a general law. Oral Arg. Audio 11:38:08-11:38:13. That
12 should be outcome determinative.

13 The County Clerk, shortly before the oral argument, through counsel, filed new
14 documents and a sur-response attempting to argue that the SASO amended the SAPO. Then
15 during oral argument, the County Clerk delivered a packet copy of the County’s entire
16 Enforcement Ordinance and insisted that IP 19-1 amended part of the “Enforcement Ordinance”.
17 Both of those arguments fail. This supplemental brief addresses the impact or inapplicability of
18 those two late filed documents.

19 **IP 19-1 does not amend the Enforcement Ordinance**

20 With respect to the 38 page “Enforcement Ordinance”, none of the provisions of that
21 document have anything to do with firearms. At oral argument County Counsel asserted that
22 Sections 6, 10 and 11 were “impacted and amended”. Oral Argument Audio 11:40:44-52. It is
23 no surprise that the document was not used or cited before oral argument because it has nothing

1 to do with firearms or firearms enforcement. County Counsel specifically pointed to Section 6
2 and asserted that the SASO amended part of the Enforcement Ordinance. However, a thorough
3 review of the County’s Enforcement Ordinance demonstrates that Section 6 is simply a list of the
4 statutes, administrative rules, ordinances, orders and resolution that are enforceable under the
5 “Enforcement Ordinance”. None of them relate in any way to firearms. Section 6 includes
6 subsections A-CC, and a review after the close of the hearing reveals that not a single one of the
7 provisions related in any way to firearms. The provisions of Section 6 all relate to other aspects
8 of county governance such as land use, weed control, building codes, sewage, animals, state fair,
9 roads and matters having nothing to do with the prohibition in SASO.

10 Sections 10 and 11 of the Enforcement Ordinance don’t relate to any particular
11 substantive laws at all, they are simply the procedural portions of the Enforcement Ordinance
12 that says that, “violations under this ordinance shall follow the procedure for the enforcement of
13 violations set forth in ORS 153.030 to ORS 153.121, 153.990 and 153.992”. None of that
14 language has anything to do with SASO because neither the Enforcement Ordinance nor the
15 statutes referenced have anything to do with firearms.

16 Likewise, Section 11 of the Enforcement Ordinance simply explains who can enforce
17 violations of the Enforcement Ordinance. Again, since the Enforcement Ordinance does not
18 have anything to do with firearms, and nothing in IP 19-1 affects or amends who can give
19 citations for violations of the Enforcement Ordinance. The Enforcement Ordinance itself does
20 not authorize nor discuss at all who can give citations for firearm violations, the Enforcement
21 Ordinance simply does not apply to firearms in any way. Specifically, the substantive scope of
22 the Enforcement Ordinance is very limited. It is limited by its own terms to the statutes listed in
23 it. The Enforcement Ordinance does not authorize the county to enforce every single state law in

1 the books nor every administrative rule. Far from it, as the Enforcement Ordinance only allows
2 the county to enforce a handful of specific state statutes. Thus, the existence of an “Enforcement
3 Ordinance” which gives the county the authority to enforce those handful of statutes would not
4 be “amended” by the passage of a new unrelated ordinance relating to firearms. SASO and its
5 prohibition on enforcement of extraterritorial firearm regulations, is not covered by, and has no
6 relation to the topics covered in the Enforcement Ordinance. In conclusion, IP 19-1 and the
7 county’s Enforcement Ordinance are simply so unrelated and unconnected that there is no
8 reasonable way to argue that IP 19-1 amends some language in the Enforcement Ordinance.

9 **IP 19-1 does not amend the SAPO.**

10 As to the other issue presented for the first time in the County Clerk’s sur-response about
11 SAPO, it is simply untrue. County Counsel tried to assert that SASO amends SAPO, but again
12 that argument fails. They first argued that SASO amends the recitals of SAPO, exposing the
13 stretching nature of the County’s argument. The recitals for any bill or measure, apply to that
14 bill or measure only, nothing else. The scope and applicability of the substantive portions of
15 SASO and SAPO are different. The County admitted that the two are different on who can
16 enforce them¹, and there are other differences. Petitioner pointed out that the SAPO contains a
17 prohibition on the Government doing certain things, while SASO has a different prohibition on
18 individuals acting in their official capacity. Specifically, SAPO said, “The Columbia County
19 Government shall not ... and SAPO established that it was the duty of the Sheriff of Columbia
20 County to determine whether state or local regulations affecting firearms violates the 2nd, 9th or
21 10th Amendments to the United States Constitution. In contrast SASO applies to agents,

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23 ¹ Oral Argument Audio 11:48:00- 11:48:13. Petitioner notes that the audio file was made available
on Friday 3/22/2019 and should be available for review.

1 departments, employees, or officials acting in their official capacity. So SASO applies to
 2 individuals, rather than the County as a municipal entity. Thus, because the ordinance applies to
 3 different legal “persons” and is enforceable against different legal “persons” it does not matter
 4 that they both relate to firearms. It wouldn’t even matter if the two had the same prohibition or
 5 the same penalty because they apply to different persons. But SASO and SAPO also have
 6 different prohibitions and different penalties. The SASO prohibition applies to the things
 7 defined by the ballot measure to be Extraterritorial Acts. SAPO applied to things that the Sheriff
 8 determines to be violations of the 2nd, 9th or 10th Amendments to the U.S. Constitution. The
 9 Sheriff enforces and determines violations of SAPO, the sheriff plays no specific role in SASO.

10 The two ordinances apply different prohibitions, to different legal persons, and have
 11 different penalties. Petitioner Brumbles is the chief petitioner of each, his language and his
 12 intent on the documents controls until the voters speak through the ballot box. Thus, the clerk’s
 13 untimely argument fails anyway because the SASO doesn’t change that or amend the SAPO in
 14 any way. The County Clerk’s counsel essentially admitted this when she said, “Our position is
 15 not that general laws have been amended”. Oral Arg. Audio 11:38:08-11:38:13. When there
 16 isn’t an addition, deletion, or change to the text of an existing general law, then the proposed
 17 initiative meets the full text rule. *Kerr v. Bradbury*, 193 Or App 304, 310 (2004) citing *Schnell*
 18 *v. Appling*, 238 Or 202, 204-05 (1964).

19 CONCLUSION

20 For the reasons explained above, the Court should reverse the County Clerk’s rejection and
 21 the voters of Columbia County should be given the opportunity to gather signatures on this
 22 measure and decide for themselves if SASO is the policy they choose to enact as an ordinance. IP
 23 19-1 complies with the full text rule and relates to a single subject that is legislative in nature.

1 DATED this 25nd day of March 2019.

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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 25th of March 2019 I caused a true copy of SUPPLEMENTAL
3 BRIEF IN SUPPORT OF PETITION CHALLENGING COUNTY CLERK’S MEASURE 19-1
4 DETERMINATION to be served upon the following named parties, or their registered agents or
5 their attorney by first class mail as indicated below and addressed to the following:

6 Raven C. Brumbles
67251 Maple Crest Road
7 Deer Island, OR 97054

8 Sarah Hansen
Columbia County Counsel
9 230 Strand St.
St. Helens OR 97051
10

11
12 Mailing was done by X first class mail, and by certified or registered mail,
13 return receipt requested with restricted delivery, or express mail, eFiling X , and e-mail
14 .

15 DATED this 25th day of March 2019.

16 Tyler Smith & Associates, P.C.

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