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

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

Petitioner,

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

Case No. 21CV12796

THE ATTORNEY GENERAL'S MOTION FOR
SUMMARY JUDGMENT

ORS 20.140 - State fees deferred at filing

Hearing Date: July 21, 2021 – 10:30am

MOTION

The Attorney General moves for summary judgment under ORCP 47, asking the Court to declare that the Columbia County Second Amendment Sanctuary Ordinance, enacted by Ordinance No. 2021-1, is invalid. The Attorney General’s motion is supported by the pleadings and papers on file and the points and authorities set forth below.

MEMORANDUM OF LAW

I. INTRODUCTION

The Columbia County Second Amendment Sanctuary Ordinance (“SASO” or “Ordinance”) declares that state and federal laws “affecting the right to keep and bear arms” are “null, void and of no effect in Columbia County, Oregon.” “No county has the authority to do that.” *State v. Logsdon*, 165 Or App 28, 33 (2000) (invalidating a county charter “declar[ing] that no one ... may enforce any [state or federal] law that is contrary to” the county’s limitations on search and seizure). Because a county ordinance cannot supersede a valid state or federal law, the Ordinance is preempted. As a result, this Court should declare the Ordinance is invalid.

1 **II. BACKGROUND**

2 The Attorney General refers the Court to Columbia County’s Petition for a
3 comprehensive discussion of the Ordinance’s history and mandates. Three provisions of this
4 Ordinance are of particular import in this proceeding.

5 Section 4(A) nullifies state and federal firearms laws and prohibits county officials from
6 enforcing those laws, with certain enumerated exceptions:

7 All local, state and federal acts, laws, rules or regulations,
8 originating from jurisdictions outside of Columbia County, which
9 restrict or affect an individual person’s general right to keep and
10 bear arms, including firearms, firearm accessories or ammunition
... 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.

11 Section 2(A)–(B) further prohibits every “agent, employee, or official of Columbia
12 County” from “[k]nowingly and willingly, participate in any way in the enforcement of” those
13 laws or “[u]tilize any assets, county funds, or funds allocated by any entity to the county, in
14 whole or in part, to engage in activity that aids in the enforcement or investigation related to
15 personal firearms, firearm accessories, or ammunition.”

16 Sections 5 and 6 enforce that prohibition. Section 5 allows civil penalties to be levied
17 against Columbia County officials who violate the Ordinance, while Section 6(A) creates a
18 private cause of action providing that any official who violates the Ordinance is “liable to the
19 injured party in an action at law, suit in equity, or other proper proceeding for redress.”

20 **III. SUMMARY JUDGMENT STANDARDS**

21 Except where otherwise provided by statute, “the practice and procedure” in a validation
22 proceeding “shall follow the practice and procedure of an action not triable by right to a jury...”
23 ORS 33.720(1). Thus, summary judgment should be granted if there is no genuine issue of
24 material fact, and the moving party is entitled to judgment as a matter of law. ORCP 47 C.

1 IV. ARGUMENT

2 A. The Ordinance is Preempted by State Law

3 1. Legal Standards

4 State law preempts county civil laws that conflict with state law, expressly or impliedly.

5 State law expressly preempts local civil law when the “text, context, and legislative history of the
6 statute ‘unambiguously expresses an intention to preclude local governments from regulating’ in
7 the same area as that governed by the statute.” *Rogue Valley Sewer Services v. City of Phoenix*,
8 357 Or 437, 450–51 (2015) (quoting *Gunderson, LLC v. City of Portland*, 352 Or 648, 663
9 (2012)) (emphasis omitted). State law impliedly preempts local civil law when the two are in
10 conflict, meaning that compliance with both state and local law is “‘impossible.’” *Id.* at 455
11 (quoting *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or App 457, 474 (2010)).
12 “An ordinance is said to ‘conflict’ with a state statute if the ordinance either prohibits conduct
13 that the statute permits, or permits conduct that the statute prohibits.” *State v. Krueger*, 208 Or
14 App 166, 169 (2006).

15 The analysis of state criminal laws’ compatibility with local law is similar to the analysis
16 of civil laws. However, “[t]he analysis of compatibility begins then with the assumption that
17 state criminal law displaces conflicting local ordinances” *City of Portland v. Dollarhide*, 300
18 Or 490, 501 (1986) (emphasis omitted).

19 State law violates a county’s home rule authority only if it is “addressed to a concern of
20 the state with the structure and procedures of local” government and is not “justified by a need to
21 safeguard the interests of persons or entities affected by the procedures of local government.”
22 *City of La Grande v. Public Emp. Ret. Bd.* (“*La Grande/Astoria*”), 281 Or 137, 156 (1978). For
23 counties that have not adopted a home rule charter, like Columbia County, ORS 203.035
24 establishes the same standard by statute. *See GTE Nw. Inc. v. Oregon Pub. Util. Comm’n*, 179 Or
25 App 46, 52 (2002) (quoting *Allison v. Washington Cnty.*, 24 Or App 581, 548 (1976))
26 (interpreting ORS 203.035 to provide that “‘in the absence of state preemption or a limiting

1 charter provision, home rule and general law counties have the same legislative authority.”).
2 “[A] county's general police power does not extend to matters that have been preempted by
3 state law.” *Pac. Nw. Bell Tel. Co. v. Multnomah Cty.*, 68 Or App 375, 378 (1984).

4 **2. State law expressly preempts the Ordinance.**

5 **a. ORS 166.170 preempts the Ordinance.**

6 With limited, enumerated exceptions, ORS 166.170(1) expressly preempts local firearm
7 ordinances:

8 Except as expressly authorized by state statute, the authority to
9 regulate in any matter whatsoever the sale, acquisition, transfer,
10 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.

11 To eliminate any doubt that a county lacks authority to regulate guns absent express
12 authorization, ORS 166.170(2) provides:

13 Except as expressly authorized by state statute, no county ... may
14 enact civil or criminal ordinances, including but not limited to
15 zoning ordinances, to regulate, restrict or prohibit the sale,
16 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 subsection are void.

17 None of the statutory exceptions to this broad prohibition on county gun laws save the
18 Ordinance. *See* ORS 166.171 (authorizing county ordinances “to regulate, restrict or prohibit the
19 discharge of firearms” with certain exceptions); ORS 166.173 (authorizing county ordinances “to
20 regulate, restrict or prohibit the possession of loaded firearms in public places” with certain
21 exceptions); ORS 166.176 (exempting certain “county ordinance[s] that [were] in effect on
22 November 2, 1995” from preemption under ORS 166.170).

23 Taken together, these statutory provisions bar “enacted laws by municipal authorities
24 acting on their organic authority as a governmental entity.” *Oregon Firearms Educ. Found. v.*
25 *Bd. of Higher Educ.*, 245 Or App 713, 720 (2011) (quoting *Doe v. Medford Sch. Dist.* 549C, 232
26 Or App 38, 57 (2009)) (internal quotations omitted). This legislation was enacted to “avoid[] a

1 patchwork quilt of local government laws inconsistently regulating the use of firearms.” *Id.* at
2 721 (quoting *Medford School Dist. 549C*, 232 Or App at 57–58) (emphasis omitted).

3 ORS 166.170 expressly preempts the Ordinance. Any “exercise of an ‘authority to
4 regulate’ firearms that is *not expressly authorized by the Legislative Assembly* ... is preempted
5 by ORS 166.170(1).” *Oregon Firearms v. Board of Higher Educ.*, 245 Or App 713, 723 (2011)
6 (emphasis added). The Ordinance provides, *inter alia*, that “state ... laws ... which ... affect ...
7 an individual person’s right to keep and bear arms ... shall be treated as if they are null, void and
8 of no effect in Columbia County, Oregon.” Ordinance, § 4.A. The state laws the Ordinance
9 purports to void include, for example, firearm registration requirements and bans on particular
10 firearms. Ordinance §§ 4.A.2, 4.A.5. These provisions seek to “regulate ... the sale, acquisition,
11 transfer, ownership, [and] possession ... of firearms,” ORS 166.170(2), precisely what state law
12 prohibits counties from legislating. *See Rogue Valley Sewer Servs.*, 357 Or at 450–51.

13 **b. County law cannot render state laws “null, void and of no effect.”**

14 The Ordinance’s attempt to nullify state law also fails for a second reason: the county is
15 powerless to supersede state law unless the county’s law concerns solely its political form. But
16 when general state statutes conflict with a county ordinance, state law prevails. The state gun
17 laws that the Ordinance purports to nullify are “general law[s] ... addressed primarily to
18 substantive social, economic, or other regulatory objectives of the state.” *La Grande/Astoria*, 281
19 Or at 156. For that reason, they “prevail[] over contrary policies preferred by some local
20 governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with
21 the local community’s freedom to choose its own political form.” *Id.* Neither the State’s gun
22 statutes nor the Ordinance concern “the structure and procedures of local” government. *Id.* at
23 156. Thus, state law prevails.

24 The Court of Appeals has applied these principles to invalidate a county’s enactment that
25 purports to displace state law within the county’s borders. *State v. Logsdon* concerned a county
26 charter that “declare[d] that no one—no ‘individual, group, or federal, state or local

1 governmental body or agency’—may enforce any law that is contrary to” the charter’s limits on
2 searches and seizures. 165 Or App 28, 33 (2000). The Court of Appeals held that the law was
3 “invalid,” because “[n]o county has the authority to do that.” *Id.*; *City of Roseburg v. Roseburg*
4 *City Firefighters, Loc. No. 1489*, 292 Or 266, 277 (1981) (“As substantive legislation, state law
5 prevails unless it unlawfully interferes with the structure of local government.”). This case is the
6 same: the Ordinance purports to invalidate federal and state law within Columbia County. The
7 county lacks the authority to do so. The Ordinance is invalid.

8 **c. County officials’ statutory duties preempt the Ordinance.**

9 The Ordinance also provides that “[n]o agent, employee, or official of Columbia
10 County..., while acting in their capacity, shall ... [k]nowingly and willingly participate in any
11 way in the enforcement of any” state gun law, or, even more broadly, “[u]tilize any assets county
12 funds, or funds allocated by any entity to the county ... to engage in activity that aids in the
13 enforcement or investigation related to personal firearms, firearm accessories, or ammunition.”
14 § 2.A. These prohibitions conflict with state law for the same reasons detailed elsewhere: they
15 flout the express preemption of local gun regulations (§ III.A.2.a, above) and state criminal laws
16 (§ III.A.3., below).

17 These provisions are also invalid because they conflict with county officials’
18 constitutional statutory duties. Under the home rule provision of Article VI, Section 10, county
19 officers “shall among them exercise all the powers and perform all the duties, as distributed by
20 the county charter or by its authority, now or hereafter, by the Constitution or laws of this state,
21 granted to or imposed upon any county officer.” In turn, by statute, “[b]efore entering upon any
22 elective office...the person... must fil[e]... [an] oath of office ... to the effect that the person will
23 support the Constitution of the United States and of this state” ORS 204.020. The

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1 Ordinance’s requirement that a county official not enforce a duly enacted state law directly
2 conflicts with this requirement.

3 The Ordinance also conflicts with the specific duties of the Columbia County Sheriff
4 imposed by state law. “[I]t is the sheriff’s duty to [a]rrest and commit to prison all persons who
5 break the peace, or attempt to break it, and all persons guilty of public offenses.” ORS 206.010;
6 *see also* ORS 204.635 (providing that the sheriff may delegate these duties to deputies). “Public
7 offenses” simply means the criminal laws, including ORS 166.180–166.470. *See State v. Jacobs*,
8 55 Or App 406, 410–11 & n.1 (1981). Thus, a sheriff has a statutory duty to enforce the state
9 criminal gun laws. The Ordinance’s contrary instruction that the sheriff must turn a blind eye to
10 violations of these statutes is therefore preempted.

11 Finally, the penalty and civil liability provisions aimed at county officials conflict with
12 state statutes as well. For example, ORS 166.412(6), which governs background checks of
13 firearm purchasers, provides that “[n]o public employee, official or agency shall be held
14 criminally or civilly liable for performing the investigations required by this section provided the
15 employee, official or agency acts in good faith and without malice.” The civil penalty (Section 5)
16 and civil liability (Section 6) provisions of the Ordinance expressly conflict with this provision.

17 **3. Criminal statutes (ORS 166.180–166.470) preempt the Ordinance.**

18 The Ordinance also purports to “nullify” the State’s criminal laws. *See* Ordinance
19 § 4.A.1–4.A.9. In other words, conduct that would be criminal in Oregon’s other 35 counties
20 would be legal in Columbia County. A county lacks authority to establish such an exception to
21 Oregon’s criminal laws.

22 “Since ... 1924, [the Oregon Supreme Court] consistently has held that the validity of
23 local criminal legislation turns on whether it conflicts with state legislation.” *City of Portland v.*
24 *Jackson*, 316 Or 143, 151 (1993). “An ordinance is said to ‘conflict’ with a state statute if the
25 ordinance either prohibits conduct that the statute permits, or permits conduct that the statute
26 prohibits.” *Krueger*, 208 Or App at 169. Criminal statutes are presumed to conflict absent a clear

1 indication to the contrary. *See City of Portland v. Dollarhide*, 300 Or 490, 501 (1986)
2 (“state *criminal* law displaces conflicting local ordinances which prohibit and punish the same
3 conduct, absent an apparent legislative intent to the contrary”).

4 The Ordinance directly conflicts with the State’s criminal laws by purporting to permit
5 what the State’s criminal laws prohibit. *See* ORS 166.180–166.470. The Ordinance conflicts with
6 state law by purporting to nullify all laws, including criminal laws, that “restrict or affect an
7 individual person’s right to keep and bear arms, including firearms....” For example, ORS
8 166.435 (adopted in 2015) makes, with certain exceptions, selling a firearm without a criminal
9 background check on a purchaser a misdemeanor. But the Ordinance purports to displace state
10 laws: “[a]ny ... background check requirement on firearms ... for citizens, beyond those
11 customarily required at purchase prior to December 2012.” Ordinance § IV.A.4. In the face of
12 such direct conflicts with state criminal statutes, the Ordinance yields to state law.

13 **4. State law impliedly preempts the Ordinance.**

14 Laws are impliedly preempted when “both [state law and local law] cannot operate
15 concurrently.” *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or App 457, 471
16 (2010) (quoting *La Grande/Astoria*, 281 Or at 156) (brackets in original). Even if the Court were
17 to hold the conflicts detailed above do not expressly preempt the Ordinance, they would still
18 impliedly because these state statutes cannot operate concurrently with the Ordinance.

19 **B. The Ordinance is Preempted by Federal Law.**

20 The Ordinance also seeks to displace federal laws “affecting the right to keep and bear
21 arms” by providing they are “null, void and of no effect in Columbia County, Oregon.”
22 Ordinance, § 4.A. But valid federal statutes exercising Congress’s enumerated powers preempt
23 local law, not the other way around. *See, e.g., Gonzales v. Raich*, 545 US 1, 29 (2005) (“The
24 Supremacy Clause unambiguously provides that if there is any conflict between federal and state
25 law, federal law shall prevail.”); *Emerald Steel Fabricators, Inc. v. Bureau of Lab. & Indus.*, 348
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1 Or 159, 180 (2010) (“Congress has the authority under the Supremacy Clause to preempt state
2 laws that affirmatively authorize” conduct violating federal law).

3 These foundational principles apply with equal force in the context of gun safety
4 regulation. This case is strikingly similar to *Montana Shooting Sports Ass’n v. Holder*, which
5 considered a Montana statute that provided that so long as conduct conformed to the Montana
6 Firearms Freedom Act, the conduct was “not subject to federal law or federal regulation.” 727
7 F3d 975 (9th Cir. 2013). The Ninth Circuit held, because Congress’s Commerce Clause power
8 allowed it to enact gun regulations, Montana’s contrary law “is necessarily preempted and
9 invalid.” *Id.* at 982–83; *see also Raich*, 545 US at 29 (“[L]imiting the activity to [actions] ‘in
10 accordance with state law’ cannot serve to place respondents’ activities beyond congressional
11 reach.”); *Logsdon*, 165 Or App at 32 (“whatever else local government authority may entail, it
12 does not include governing the conduct of state and federal officials”).

13 The analysis of this Ordinance is no more complicated. The Ordinance purports to nullify
14 federal gun laws, even if those laws are a valid exercise of the federal government’s
15 constitutional authority. A county has no power to do so. This Court should therefore declare the
16 Ordinance invalid.

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V. CONCLUSION

The Court should declare the Ordinance invalid.

DATED June 24, 2021.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Brian Simmonds Marshall
BRIAN SIMMONDS MARSHALL #196129
Senior Assistant Attorney General
Trial Attorney
Tel (971) 673-1880
Fax (971) 673-5000
Brian.S.Marshall@doj.state.or.us
Of Attorneys for the Attorney General

CERTIFICATE OF SERVICE

I certify that on June 24, 2021, I served the foregoing THE ATTORNEY GENERAL'S MOTION FOR SUMMARY JUDGMENT upon the parties hereto by the method indicated below, and addressed to the following:

Sarah E Hanson
Columbia County Counsel Office
230 Strand Rm 20
Saint Helens OR 97051
Of Attorneys for Petitioners

HAND DELIVERY
 MAIL DELIVERY
 OVERNIGHT MAIL
 E-MAIL
 SERVED BY E-FILING

Steven C. Berman
Lydia Anderson-Dana
Stoll Stoll Berne Lokting & Shlachter P.C.
209 SW Oak St., Ste. 500
Portland, OR 97204
*Of Attorneys for Robert Pile,
Shana Cavanaugh, Brandee Dudzic,
and Joe Lewis*

HAND DELIVERY
 MAIL DELIVERY
 OVERNIGHT MAIL
 E-MAIL
 SERVED BY E-FILING

Len Kamdang
Mark Weiner
EVERYTOWN LAW
450 Lexington Ave.
P.O. Box 4184
New York, NY 10017
*Of Attorneys for Robert Pile,
Shana Cavanaugh, Brandee Dudzic,
and Joe Lewis*

HAND DELIVERY
 MAIL DELIVERY
 OVERNIGHT MAIL
 E-MAIL
 SERVED BY E-FILING

1 Tyler Smith
Tyler Smith & Associates P.C.
2 181 N. Grant St., Ste. 212
3 Canby, OR 97013
Of Attorneys for Movants

HAND DELIVERY
 MAIL DELIVERY
 OVERNIGHT MAIL
 E-MAIL
 SERVED BY E-FILING

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s/ Brian Simmonds Marshall
BRIAN SIMMONDS MARSHALL #196129
Senior Assistant Attorney General
Trial Attorney
Tel (971) 673-1880
Fax (971) 673-5000
Brian.S.Marshall@doj.state.or.us
Of Attorneys for the Attorney General