

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

Hon. Ted E. Grove

THE COLUMBIA COUNTY RESIDENTS'
MOTION FOR SUMMARY JUDGMENT

Statutory Fee: ORS 21.200(1)(a)

Hearing Date: July 21, 2021 – 10:30 a.m.

THE COLUMBIA COUNTY RESIDENTS' MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

1

2 I. INTRODUCTION 1

3 II. BACKGROUND 2

4 A. The SASO and the Measures 2

5 1. Measures 5-270 and 5-278..... 2

6 2. Text of the SASO..... 4

7 3. Fate of Similar Ordinances 6

8 B. The Columbia County Residents as Interested Parties 6

9 III. APPLICABLE LEGAL STANDARDS 7

10 IV. ARGUMENT 7

11 A. The SASO Is Unconstitutional and Invalid Because It Is Preempted by

12 Oregon Law. 7

13 1. Legal Standards..... 7

14 2. The SASO Is Implicitly Preempted by State Law. 8

15 3. The SASO Is Expressly Preempted by Oregon’s Express Firearms

16 Preemption Statute. 10

17 B. The SASO Is Unconstitutional and Invalid Because It Is Preempted by

18 Federal Law. 11

19 C. The SASO Is Unconstitutional and Invalid Because It Does Not Address

20 “Matters of County Concern.” 13

21 D. Other Issues..... 14

22 E. The SASO is Inseverable 14

23 V. CONCLUSION..... 16

24 TABLE A: STATE FIREARMS LAWS THAT PREEMPT THE SASO 18

25 TABLE B: OTHER STATE LAWS THAT PREEMPT THE SASO 19

26 TABLE C: FEDERAL FIREARMS STATUTES THAT PREEMPT THE SASO 19

1 **MOTION**

2 Pursuant to ORCP 47 A, interested parties Robert Pile, Shana Cavanaugh, Brandee
3 Dudzic, and Joe Lewis (the “Columbia County Residents”) move for summary judgment. The
4 Columbia County Residents respectfully request that the Court grant their motion for summary
5 judgment and declare the Columbia County Second Amendment Sanctuary Ordinance
6 unconstitutional and inconsistent with Oregon and federal law, and enjoin its enforcement.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. INTRODUCTION**

9 This validation proceeding concerns the legality and constitutionality of the Columbia
10 County Second Amendment Sanctuary Ordinance (the “SASO”). The SASO is Columbia
11 County’s formal adoption and enactment of two recent voter-approved initiative measures –
12 Measure 5-270 at the November 6, 2018 General Election and Measure 5-278 at the November
13 3, 2020 General Election (the “Measures”). The SASO purports to invalidate nearly every state
14 and federal law relating to firearms meant to ensure the safety of the public, and creates civil
15 penalties and a private right of action against County officials who enforce those laws. The
16 SASO also exposes County employees and officials to liability for simply following state and
17 federal law. As is discussed below, the County does not have the authority to pass ordinances
18 that contradict state and federal laws, let alone invalidate them. The SASO is inconsistent with
19 Oregon law, and plainly unconstitutional under the state and federal constitutions.

20 In this proceeding, Columbia County filed a petition seeking guidance related to its
21 authority to enact the SASO, including requesting a determination of whether state and/or federal
22 law preempt the SASO. The Columbia County Residents join this proceeding to present to the
23 Court why Initiative Measures 5-270 and 5-278, as codified by the SASO, are plainly
24 unconstitutional and inconsistent with Oregon and federal law.

1 **II. BACKGROUND**

2 **A. The SASO and the Measures**

3 **1. Measures 5-270 and 5-278**

4 The SASO is the County’s implementation of Measure 5-270 and Measure 5-278. *See*
5 Petition for Validation of Local Government Action (the “Petition”), Ex. 1 at 1; Exs. 2
6 (“Measure 5-270”), 3 (“Measure 5-278”). At the November 6, 2018 General Election, Columbia
7 County voters approved Measure 5-270,¹ entitled “Second Amendment Preservation Ordinance,”
8 with 13,204 “yes” votes and 10,869 “no” votes. Declaration of Steven C. Berman (“Berman
9 Decl.”), Ex. 1 (Certified Final Summary Report of November 6, 2018 Columbia County
10 Election). Measure 5-270 purports to declare that:

11 [A]ny regulation of the right to keep and bear arms or ancillary firearms rights
12 that violate the Second, Ninth, or Tenth Amendments to the Constitution of the
13 United States of America, or Article 1, sections 27 and 33 of the Constitution of
14 the State of Oregon, as articulated herein, shall be regarded by the People on and
in Columbia County as unconstitutional; a transgression of the Supreme Law of
the Land and its spirit of Liberty, and therefore by necessity void ab initio.

15 Measure 5-270, § 2(C). Measure 5-270 prohibits Columbia County from using government
16 funds, resources, and employees “for the purpose of enforcing any element of such acts, laws,
17 orders, mandates, rules or regulations, that infringe on the right by People to keep and bear
18 arms,” which it describes as including “registration requirements, restrictions on gun possession,
19 ownership, or usage,” as well as “background check requirements beyond those customarily
20 required at time of purchase prior to December 2012.” Measure 5-270, § 2(D)(1). Measure 5-
21 270 also states it is the duty of the Columbia County Sheriff “to determine as a matter of internal
22 policy and county concern per ORS 203.035, whether any federal, state or local regulation
23 affecting firearms, firearms accessories and ammunition, that is enforceable within his/her
24 jurisdiction, violates the Second, Ninth, or Tenth Amendments to the Constitution of these

25 _____
26 ¹ The full text of Measure 5-270 can be found in Exhibit 2 of the Petition.

1 United States, or Article 1, sections 27 and 33 of the Constitution of the State of Oregon, as
2 articulate[d] herein.” *Id.*, § 2(E). Finally, Measure 5-270 provides for civil penalties to be
3 imposed against anyone found to violate Measure 5-270, with fines up to \$2,000 for an
4 individual and \$4,000 for a corporation. *Id.*, § 3. Presumably, these fines would be levied
5 against members of the Columbia County government who authorized funds or resources for the
6 purpose of enforcing covered state and federal law.

7 Two years later, at the November 3, 2020 General Election, the voters of Columbia
8 County approved Measure 5-278² by a narrow margin of 525 votes (with 15,641 “yes” votes and
9 15,116 “no” votes). *See* Berman Decl., Ex. 2 (Certified Final Summary Report of November 3,
10 2020 Columbia County Election). Although many of the provisions of this initiative are similar
11 or identical to Measure 5-270, Measure 5-278 includes three key differences. First, Measure 5-
12 278 prohibits any “agent, employee, or official of Columbia County” from “knowingly and
13 willingly, participating in any way in the enforcement of any Extraterritorial Act,” a term it goes
14 on to define, and from “utili[zing] any assets * * * to engage in activity that aids in the
15 enforcement or investigation related to personal firearms, firearm accessories, or ammunition.”
16 Thus, while Measure 5-270 prohibited the “Columbia County Government” from “authoriz[ing]
17 or appropriat[ing]” resources, Measure 5-278 sweeps into its scope (and creates liability for) any
18 “agent, employee or official” who participates in any way in the enforcement of covered state or
19 federal laws. Second, Measure 5-278 includes a narrow list of exceptions, including that the
20 Measure “do[es] not apply to persons” who have been convicted of felony crimes, is not intended
21 to affect the prosecution of crimes including use or possession of a firearm as an aggravating
22 factor or an enhancement, and does not permit the possession of firearms in state or federal
23 buildings. Measure 5-278, § 4(6)(a), (b), (c). Third, in addition to civil penalties, Measure 5-278
24 creates a private right of action under which an “injured party” may bring suit against “[a]ny

25 _____

26 ² The full text of Measure 5-278 can be found in Exhibit 3 of the Petition.

1 entity, person, official, agent, or employee of the Columbia County who knowingly violates this
2 ordinance, while acting under the color of any state or federal law,” and allows for a recovery of
3 attorney fees. *Id.*, § 5.

4 On March 31, 2021, the Board of County Commissioners for Columbia County adopted
5 Ordinance No. 2021-1, which was “intended to amend the Second Amendment Sanctuary
6 Ordinance [Measure 5-278] to incorporate provisions of the Second Amendment Preservation
7 Ordinance [Measure 5-270] where it differs from the Second Amendment Sanctuary Ordinance,
8 to format the Ordinance consistent with County practice and to correct scrivener errors in the
9 Acts while preserving the intent of the voters,” and to then repeal Measure 5-270. Ordinance
10 2021-1 at 1–2.³ As is shown by Exhibit A to Ordinance No. 2021-1, except for correcting
11 grammatical and formatting issues, the SASO is a verbatim enactment of Measure 5-270 as
12 modified by Measure 5-278. Ordinance 2021-1 is the proper procedural mechanism to adopt and
13 enact the Measures passed by the County’s voters.

14 2. Text of the SASO⁴

15 The SASO is rooted in the flawed premise that “[l]ocal governments have the legal
16 authority to refuse to cooperate with state and federal firearms laws * * * and to proclaim a
17 Second Amendment Sanctuary.” SASO, § 1(K). From that premise, the SASO contains two
18 broad operative provisions. Specifically, Section 2(A) of the SASO provides that no “agent,
19 employee, or official of Columbia County * * * while acting in their official capacity” shall:

20

21 ³ The SASO adopted by Columbia County is attached as Exhibit A to Ordinance 2021-1. The
22 Columbia County Board of Commissioners adopted Ordinance 2021-1 and the SASO on March
23 31, 2021. Ordinance 2021-1 (including the SASO) becomes effective 90 days after passage, on
24 June 29, 2021. ORS 203.045(9). However, at the June 10, 2021 scheduling conference on this
matter, the Court stayed Ordinance 2021-1 until this proceeding is resolved.

25 ⁴ Because the SASO combines, amends and incorporates the Measures, for simplicity, the
26 remainder of this brief will refer to only the “SASO.” However, all arguments apply to the
Measures themselves as well. The full text of the SASO can be found as Exhibit A to Exhibit 1
of the Petition.

1 1) Knowingly and willingly, participate in any way in the enforcement
2 of any Extraterritorial Act, as defined herein; or

3 2) Utilize any assets, county funds, or funds allocated by any entity to
4 the county, in whole or in part, to engage in any activity that aids in the
 enforcement or investigation relating to personal firearms, firearm
 accessories, or ammunition.

5 The two provisions differ in their scope. With respect to Subsection (2)(A)(1), the term
6 “Extraterritorial Act” is defined to include “[a]ll local, state and federal acts, laws, rules or
7 regulations, originating from jurisdictions outside of Columbia County, which restrict or affect
8 an individual person’s general right to keep and bear arms, including firearms, firearm
9 accessories or ammunition.” *Id.*, § 4(A). Such “Extraterritorial Acts” “shall be treated as if they
10 are null, void and of no effect.” *Id.* The SASO goes on to provide examples of “void”
11 Extraterritorial Acts, including, among other broad categories, “[a]ny registering or tracking of
12 firearms, firearm accessories, or ammunition”; “[a]ny registration and background check
13 requirements on firearms, firearm accessories, or ammunition for citizens, beyond those
14 customarily required at time of purchase prior to December, 2012”; and “[a]ny prohibitions,
15 regulations, and/or use restrictions related to ownership of non-fully automatic firearms.” *Id.*,
16 §§ 4(A)(2), (4), (7).

17 Subsection (2)(A)(2) is not limited to “Extraterritorial Acts.” Rather, it prohibits any
18 County agent or official from utilizing any County assets to engage in any activity that aids in
19 “the enforcement or investigation relating to personal firearms, firearm accessories, or
20 ammunition.” In other words, this subsection purports to ban the investigation of any violation
21 of law involving a firearm whatsoever, presumably including even an active shooting.

22 The SASO contains a few narrow exceptions; for example, it states that it “does not
23 permit or otherwise allow the possession of firearms in State or Federal buildings.” *Id.*,
24 § 4(B)(3). The SASO also purports to create civil penalties, *id.*, § 5, and a private right of action
25 for any “injured party,” waives sovereign and governmental immunity for any County official in
26

1 such a case, and provides for attorneys fees to a prevailing party “other than the government of
2 Columbia County or any political subdivision of the county.” *Id.*, § 6.

3 **3. Fate of Similar Ordinances**

4 During the 2020 election cycle, judges in both Grant and Harney County concluded that
5 nearly identical initiative petitions were unconstitutional and ruled those initiatives could not be
6 placed on the ballot. *See* Declaration of Steven C. Berman (“Berman Decl.”), Exs. 3, 4.

7 **B. The Columbia County Residents as Interested Parties**

8 Robert Pile, Shana Cavanaugh, Brandee Dudzic and Joe Lewis are all residents, electors
9 who are registered to vote, and taxpayers in Columbia County. Declaration of Robert Pile in
10 Support of the Columbia County Residents’ Motion for Summary Judgment (“Pile Decl.”);
11 Declaration of Shana Cavanaugh in Support of the Columbia County Residents’ Motion for
12 Summary Judgment (“Cavanaugh Decl.”); Declaration of Brandee Dudzic in Support of the
13 Columbia County Residents’ Motion for Summary Judgment (“Dudzic Decl.”); Berman Decl.,
14 Ex. 5 (Declaration of Joe Lewis in Support of the Columbia County Residents’ Motion for
15 Summary Judgment (“Lewis Decl.”)).

16 Each Resident also has a particular interest in this litigation. Mr. Pile has a child who
17 attends public school in Columbia County and he is a member of Moms Demand Action—
18 Oregon. Pile Decl., ¶¶ 2, 3.⁵ Ms. Cavanaugh is the founder of Moving Forward Columbia
19 County and has two children in public schools in Columbia County. Cavanaugh Decl., ¶¶ 3, 4.
20 Ms. Dudzic, a veteran, has two children who currently attend public schools in Columbia County
21 and one child who recently graduated from public school in Columbia County. Dudzic Decl., ¶¶
22 3, 4. Mr. Lewis was a Scappoose school board member for 15 years and is also a survivor of the
23 Kent State shooting of 1970, where he was wounded as an 18-year-old freshman. Lewis Decl.,

24 ⁵ Moms Demand Action is a grassroots movement of Americans fighting for public safety
25 measures that can protect people from gun violence. Pile Decl., ¶¶ 4, 5. Moms Demand Action
26 has established a local volunteer chapter in every state, and is part of Everytown for Gun Safety,
the largest gun violence prevention organization in the country with more than six million
supporters. *Id.*, ¶ 5.

1 ¶¶ 4, 5. Each Resident joins this proceeding to present to the Court why Initiative Measure 5-
2 270, Initiative Measure 5-278, and the SASO are unconstitutional and inconsistent with federal
3 and Oregon law. Pile Decl., ¶ 6, Cavanaugh Decl., ¶ 5, Dudzic Decl., ¶ 5, Lewis Decl., ¶ 5.

4 **III. APPLICABLE LEGAL STANDARDS**

5 Summary judgment is appropriate where “the pleadings, depositions, affidavits,
6 declarations and admissions on file show that there is no genuine issue as to any material fact
7 and that the moving party is entitled to prevail as a matter of law.” ORCP 47 C. Here, where
8 there are no disputed issues of material fact, summary judgment is appropriate to resolve the
9 issues raised in the Petition.

10 **IV. ARGUMENT**

11 The SASO is unconstitutional and invalid for a variety of reasons. It is implicitly
12 preempted by a slew of state statutes it seeks to invalidate, and explicitly preempted by Oregon’s
13 firearms preemption statute. ORS 166.170. It also is preempted by federal law pursuant to the
14 Supremacy Clause of the U.S. Constitution. Finally, because it is outside of the scope of the
15 County’s powers to enact (or its voters to pass) such a law, the SASO does not address “matters
16 of county concern.”

17 **A. The SASO Is Unconstitutional and Invalid Because It Is Preempted by** 18 **Oregon Law.**

19 **1. Legal Standards**

20 Local ordinances which are preempted by state law are unconstitutional. *City of*
21 *Corvallis v. Pi Kappa Phi*, 293 Or App 319, 331, 428 P3d 905 (2018); *Allison v. Washington*
22 *County*, 24 Or App 571, 581, 548 P2d 188 (1976) (“General grants of power to counties convey
23 exactly that broad grant articulated therein, except that which is preempted by state law.”); *see*
24 *also* ORS 203.060 (“Ordinances adopted under ORS 203.030 to 203.075 shall be subject to
25 judicial review and invalidation on account of unreasonableness, procedural error in adoption, or
26 conflict with paramount state law or constitutional provision.”). As the Oregon Supreme Court

1 explained in *City of La Grande v. Public Employees Retirement Board*, 281 Or 137, 148, 576
2 P2d 1204 (1978), “when a local enactment is found incompatible with a state law in an area of
3 substantive law, the state law will displace the local rule.” A local enactment is incompatible
4 with state law if “the two cannot operate concurrently or [] the legislature intended the state law
5 to be exclusive.” *State v. Tyler*, 168 Or App 600, 603-04, 7 P3d 624 (2000); *see also AT&T*
6 *Commc’ns of the Pac. Nw., Inc. v. City of Eugene*, 177 Or App 379, 395, 35 P3d 1029 (2001)
7 (“[L]ocal government authority may be preempted in either of two ways: It may be preempted
8 expressly, or it may be preempted implicitly, by virtue of the fact that it cannot operate
9 concurrently with state or federal law.”); *Ashland Drilling, Inc. v. Jackson Cty.*, 168 Or App 624,
10 634, 4 P3d 748 (2000), *review denied*, 331 Or 429 (2000) (local county enactments are invalid if
11 the “local regulation conflicts with state law or is clearly intended to be preempted”).

12 2. **The SASO Is Implicitly Preempted by State Law.**

13 The SASO is implicitly preempted because it purports to invalidate numerous state laws
14 and punish local enforcement of those laws. Often, determining whether a local law conflicts
15 with state law requires a careful and considered analysis. *See, e.g., Ashland Drilling, Inc.*, 168
16 Or App at 634. Here, however, no such studious contemplation is necessary, because the very
17 purpose of the SASO is to conflict with state law. Clearly, the SASO cannot “operate
18 concurrently” with the very laws it declares invalid; rather, the operation of the SASO, by its
19 very nature, “makes it impossible to comply with” numerous state statutes. *See Tyler*, 168 Or
20 App at 603–04; *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or App 457, 474, 228
21 P3d 650 (2010).

22 The SASO prohibits any “agent, employee, or official of Columbia County * * * while
23 acting in their official capacity” from “[k]nowingly and willingly, participat[ing] in any way in
24 the enforcement of any Extraterritorial Act, as defined herein.” SASO § 2(A)(1); *see also*
25 Measure 5-270, § D(1); Measure 5-278, § 3(A). The expansive definition of “Extraterritorial
26 Act” envelops numerous state laws. *See SASO* §§ 2(A)(1), 4(A). For example, ORS 166.435

1 creates background check requirements (the “State Background Check Statute”) for most private
2 gun sales before a transferor who is not a gun dealer or licensed manufacturer may transfer a
3 firearm to a potential purchaser. If such a transferor sells a firearm without conducting a
4 background check through a licensed gun dealer, they commit a crime. ORS 166.435(5)(a)–(b).
5 This statute, like all state criminal statutes, provides for enforcement by County law
6 enforcement; indeed, it is the statutory *duty* of the sheriff “to arrest and commit * * * all persons
7 guilty of public offenses.” ORS 206.010. Yet because the SASO includes in its definition of
8 “void” Extraterritorial Acts any “background check requirement on firearms * * * beyond those
9 customarily required at time of purchase prior to December, 2012,” the SASO prohibits the
10 sheriff – a County officer (ORS 204.005) – from enforcing the State Background Check Statute,
11 which was enacted in 2015. SASO § 4(A)(4); *see* ORS 166.435. Thus, the sheriff or any other
12 County official who enforced the State Background Check Statute pursuant to their legal duty by
13 investigating or arresting a transferor who violated the statute by selling a firearm without a
14 background check would face fines and – underscoring the absurdity of the SASO – a lawsuit for
15 damages *by the individual* who committed the crime.

16 Even more broadly, the SASO prohibits the sheriff or any other County official from
17 utilizing any assets of the county “in whole or in part, to engage in activity that aids in the
18 enforcement or investigation related to personal firearms, firearm accessories or ammunition.”
19 SASO, § 2(A)(2). In other words, county officials cannot use county assets to investigate
20 *anything* related to firearms, not just those statutes defined as Extraterritorial Acts, given that
21 Section 2(A)(2) is not limited to Extraterritorial Acts. Egregiously, under the plain wording of
22 Section 2(A)(2), and despite any other exceptions in the SASO, it appears that Columbia County
23 officials could not use county assets to investigate an active shooting, if the shooting involved
24 “personal firearms, firearm accessories or ammunition,” as such situations invariably do. *See*
25 SASO, § 2(A)(2). This obviously conflicts with several state statutes that forbid the shooting of
26 others. *See* ORS 166.220 (unlawful use of weapon); 166.190 (pointing firearm at another).

1 Furthermore, Oregon’s background check law for gun dealers provides that, “[n]o public
2 employee, official or agency shall be held criminally or civilly liable for performing the
3 investigations required by this section provided the employee, official or agency acts in good
4 faith and without malice.” ORS 166.412(6). The SASO directly conflicts with this law by
5 creating civil penalties and liability. SASO, §§ 5, 6.

6 The same conflict with state law exists for at least 30 firearms-related laws throughout
7 Oregon statutes, including prohibitions on concealed carry without a license and various location
8 restrictions on firearms, such as carrying firearms in hospitals. *See* ORS 166.250 and ORS
9 166.370; *see also* Table A (listing firearms-related state laws that preempt the Measures and the
10 SASO).⁶ Enforcement of any of these laws would run afoul of the SASO and expose County
11 officials, including law enforcement, to liability.

12 Thus, a slew of state laws implicitly preempt the SASO, because the SASO cannot
13 “operate concurrently” with the state laws it declares void.

14 **3. The SASO Is Expressly Preempted by Oregon’s Express Firearms**
15 **Preemption Statute.**

16 Additionally, the SASO is expressly preempted by state law. ORS 166.170 (the
17 “Firearms Preemption Statute”), provides that:

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

21 (2) Except as expressly authorized by state statute, no county, city or other
22 municipal corporation or district may enact civil or criminal ordinances, including
23 but not limited to zoning ordinances, to regulate, restrict or prohibit the sale,
24 acquisition, transfer, ownership, possession, storage, transportation or use of
25 firearms or any element relating to firearms and components thereof, including
26 ammunition. Ordinances that are contrary to this subsection are void.⁷

24 ⁶ The SASO is also implicitly preempted by at least 17 other state laws that are not explicitly
25 firearms related. *See* Table B.

26 ⁷ ORS 166.171, ORS 166.173, and ORS 166.176 enumerate limited exceptions to ORS 166.170,
none of which apply here.

1 The SASO regulates the sale, transfer, ownership and possession of firearms by
2 purporting to set the boundaries in Columbia County of what behavior is legal and what is
3 unlawful. For example, the SASO purports to invalidate “[a]ny prohibitions, regulations, and/or
4 use restrictions related to ownership of non-fully automatic firearms” and exposes to liability any
5 County employees, agents, or officials who attempt to enforce such laws. SASO, § 4(A)(7).
6 Such provisions are clear attempts to regulate firearm usage and ownership in Columbia County.
7 The Firearms Preemption Statute makes clear that attempts at such regulation are “clearly
8 intended to be preempted” by the legislature. *Ashland Drilling, Inc.*, 168 Or App at 634; *see*,
9 *e.g., Or. Firearms Found. v. Bd. of Higher Educ.*, 245 Or App 713, 719, 264 P3d 160 (2011)
10 (striking down State Board of Higher Education’s prohibition on possession of firearms on
11 university campuses as preempted). Thus, the SASO is explicitly preempted by the Firearms
12 Preemption Statute.

13 **B. The SASO Is Unconstitutional and Invalid Because It Is Preempted by**
14 **Federal Law.**

15 Additionally, the County also cannot contravene federal law, pursuant to the Supremacy
16 Clause of the United States Constitution. *See City of La Grande*, 281 Or at 143 (“[T]he validity
17 of local action depends... on whether it contravenes state or federal law”); *AT&T Commc’ns*,
18 177 Or App at 401 (“The Supremacy Clause of the United States Constitution, Article VI, clause
19 2, invalidates state or local laws interfering with, and being contrary to, federal law.”). The
20 SASO does exactly that.

21 “[F]undamentally, a municipality is merely a political subdivision of the State from
22 which its authority derives.” *Kramer v. City of Lake Oswego*, 365 Or 422, 449, 446 P3d 1
23 (quoting *United Building & Constr. Trades v. Mayor*, 465 US 208, 215 (1984)), *opinion adhered*
24 *to as modified on reconsideration*, 365 Or 691, 455 P3d 922 (2019). Therefore, “what would be
25 unconstitutional if done directly by the State can no more readily be accomplished by a city
26 deriving its authority from the State.” *Id.* (quoting *United Building*, 465 US at 215). In other

1 words, local ordinances and measures, like state laws, cannot contravene federal law. *See*
2 *Burbank v. Lockheed Air Terminal, Inc.*, 411 US 624, 625 (1973) (city’s ordinance which made
3 it unlawful for jet aircraft to take off from local airport during certain hours was preempted by
4 the Federal Aviation Act pursuant to the Supremacy Clause); *City of Auburn v. Qwest Corp.*, 260
5 F3d 1160, 1180 (9th Cir 2001) (“Under the Supremacy Clause, a local law is nullified to the
6 extent that it actually conflicts with federal law by standing as an obstacle to the accomplishment
7 and execution of the full purposes of Congress”; ruling that local ordinances contrary to the
8 federal Telecom Act are preempted).

9 As it does with Oregon laws, the SASO directly conflicts with a slew of federal firearms
10 statutes meant to protect the public and law enforcement; again, that is its intended purpose. For
11 example, federal law prohibits the possession of a firearm by a person with a previous conviction
12 of a misdemeanor crime of domestic violence. *See* 18 USC § 922(g)(9). Yet the SASO prohibits
13 county officials from participating in any way in the enforcement of “[a]ny Extraterritorial Act
14 forbidding the possession * * * of any firearm, firearm accessory, or ammunition by citizens of
15 the legal age of eighteen and over.” SASO § 4(A)(5). This is but one of several federal laws
16 Congress enacted to ensure the safety of the public that the SASO invalidates. *See, e.g.*, 18 USC
17 § 922(g)(3) & (8) (prohibiting possession of firearms by persons addicted to controlled
18 substances and individuals subject to intimate partner restraining orders); 18 USC § 922(i) and
19 (j) (prohibiting sale or possession of stolen firearms); 18 USC § 922(k) (prohibiting possession
20 of firearms with obliterated serial numbers); § 922(a)(8) (prohibiting sale of armor-piercing
21 ammunition).⁸ The SASO effectively would prevent local law enforcement from investigating
22 any action that could implicate federal law – such as possession of a firearm by a person with a
23 domestic violence conviction or the sale of armor piercing bullets – and subject local law
24 enforcement to liability if they do so.

25

26 ⁸ See Table C for a full list of federal laws that preempt the SASO.

1 Thus, the SASO is preempted for the additional reason that it is in violation of the
2 Supremacy Clause.

3 **C. The SASO Is Unconstitutional and Invalid Because It Does Not Address**
4 **“Matters of County Concern.”**

5 The SASO is not a proper exercise of County lawmaking authority, because it does not
6 address or involve matters of county concern. It is established law that “the validity of local
7 action depends, first, on whether it is authorized by the local charter or by a statute, * * * second,
8 on whether it contravenes state or federal law.” *City of La Grande*, 281 Or at 142. In general
9 law counties like Columbia County,⁹ the county’s power to enact ordinances is derived from
10 ORS 203.035, which allows counties authority “over matters of county concern.” *See Allison*, 24
11 Or App at 581 (“General law counties derive their legislative power from specific statutory
12 grants and from the broad general statutory grant in ORS 203.035 of authority ‘over matters of
13 county concern.’”).¹⁰ When state law has preempted a county’s authority to legislate or regulate
14 a particular matter, the matter is not a “matter of county concern.” *Id.* at 581.

15 As is discussed above, the SASO is preempted by state law (and federal law).
16 Accordingly, it is not a matter of county concern, and is invalid and unconstitutional for that
17 additional reason.

18
19 ⁹ Columbia County, which has not adopted a county charter, is a general law county, as opposed
20 to a home rule county. *Allison v. Washington Cty.*, 24 Or App 571, 581, 548 P2d 188 (1976)
21 (“Home rule counties derive their legislative power from Art. VI, s 10 of the Oregon
22 Constitution and from their individual charters. Art. VI, s 10 grants home rule counties authority
23 ‘over matters of county concern.’ General law counties derive their legislative power from
24 specific statutory grants and from the broad general statutory grant in ORS 203.035 of authority
25 ‘over matters of county concern.’”). Columbia County’s status as a general law county does not
26 affect this matter. *See id.* at 581 (“ORS 203.035 (which became law via Oregon Laws 1973, ch.
282) obliterates most distinctions between the powers of general law counties and home rule
counties.”).

¹⁰ The same limitations on authority apply to ordinances adopted by initiative. *See Allison*, 24 Or
App at 581 (“Under the Oregon initiative and referendum system, the citizens and the legislative
body have the same legislative authority. Given that the local legislative body has authority over
matters of local concern, so does the local electorate.”).

1 **D. Other Issues**

2 In addition to the constitutional issues addressed above, there are several other reasons
3 the SASO is unlawful:

- 4 • The SASO exceeds the County’s regulatory authority set forth in ORS 166.176, ORS
5 166.171, and ORS 166.173.
- 6 • The SASO does not apply within incorporated cities in Columbia County despite ORS
7 203.030, because cities must consent to county ordinances applying within their
8 boundaries.
- 9 • The Columbia County Sheriff does not have authority pursuant to ORS 203.035 to make
10 binding determinations as to whether any federal, state or local regulation affecting
11 firearms violates either the federal or state constitution.
- 12 • The SASO is void for vagueness.

11 **E. The SASO is Inseverable**

12 The illegal, unenforceable and unconstitutional provisions of the Measures and the SASO
13 render the Measures and SASO invalid in their entirety. ORS 174.040 describes when a statute
14 should be considered severable or inseverable:

15 It shall be considered that it is the legislative intent, in the enactment of any
16 statute, that if any part of the statute is held unconstitutional, the remaining parts
shall remain in force unless:

- 17 (1) The statute provides otherwise;
- 18 (2) The remaining parts are so essentially and inseparably connected with
19 and dependent upon the unconstitutional part that it is apparent that the
20 remaining parts would not have been enacted without the unconstitutional
part; or
- 21 (3) The remaining parts, standing alone, are incomplete and incapable of
being executed in accordance with the legislative intent.

22 ORS 174.040 applies to ordinances. *See City of Portland v. Dollarhide*, 300 Or 490, 504, 714
23 P2d 220 (1986) (“The same analysis should be employed to determine whether part of an
24 ordinance, if held to be unconstitutional, should be severed from the remaining parts.”).

25 The SASO is inseverable for two reasons. First, the SASO (and Measures) were
26 improperly adopted because they are preempted by state and law and are not on “matters of

1 county concern”; an ordinance which is improperly adopted is wholly invalid and the
2 severability analysis does not apply. *See Lane Transit Dist. v. Lane Cty.*, 327 Or 161, 169–70,
3 957 P2d 1217 (1998) (where an ordinance “suffers from a defect that makes the very act of
4 submitting it to a vote legally inappropriate,” severability is of no import). A severability clause
5 in an improperly adopted measure or ordinance cannot save the legislation. *See Lane Transit*
6 *Dist.*, 327 Or at 170 (“Here * * * the proposed initiative measure suffers from a defect that
7 makes the very act of submitting it to a vote legally inappropriate. The severability clause thus is
8 inapplicable.”). Accordingly, the severability clauses in the SASO and Measures do not save
9 them.

10 Second, the “statutory presumption of severability” only applies “to statutes that contain
11 an ‘unconstitutional part’ and ‘remaining parts.’” *State v. Borowski*, 231 Or App 511, 526, 220
12 P3d 100 (2009). “[A]t bottom, whether an unconstitutional legislative provision should be
13 severed is a matter of the legislative intent of the enacting body.” *Clear Channel Outdoor, Inc.*
14 *v. City of Portland*, 243 Or App 133, 147, 262 P3d 782 (2011); *see Borowski*, 231 Or App at 526
15 (where a “critical component” of a statute violated the Equal Protection Clause, determining
16 severability “rest[s] on a determination of which option the legislature that enacted the statute
17 would have preferred.”). Here, Columbia County made clear that its legislative intent was to
18 enact an ordinance (and Measures) based on the flawed premise that “[l]ocal governments have
19 the legal authority to refuse to cooperate with state and federal firearm laws that violate those
20 rights and to proclaim a Second Amendment sanctuary for law[-]abiding citizens in their cities
21 and counties.” Petition, Ex. 1, § 1(K). This unconstitutional basis is further underscored in the
22 two operative provisions in the SASO, which prohibit Columbia County agents, employees, and
23 officials from enforcing “Extraterritorial Acts” or using county assets “to engage in any activity
24 that aids in the enforcement or investigation relating to personal firearms, firearm accessories, or
25 ammunition.” Petition, Ex. 1, § 2(A). Given that the Measures and the entire SASO conform to
26

1 this legislative intent, which is also unconstitutional, there is no plausible way to sever this
2 unconstitutional intent from the underlying legislation.¹¹

3 **V. CONCLUSION**

4 For the reasons set forth above, the Columbia County Residents respectfully request that
5 the Court grant their motion for summary judgment and declare the Columbia County Second
6 Amendment Sanctuary Ordinance unconstitutional and inconsistent with Oregon and federal law,
7 and enjoin its enforcement.

8

9 DATED this 24th day of June, 2021.

10

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

11

12

By: s/ Steven C. Berman

13

Steven C. Berman, OSB No. 951769

Lydia Anderson-Dana, OSB No. 166167

14

209 SW Oak Street, Suite 500

15

Portland, OR 97204

Telephone: (503) 227-1600

16

Facsimile: (503) 227-6840

17

Email: sberman@stollberne.com

landersondana@stollberne.com

18

-And-

19

¹¹ Before this Court, the Measures' Chief Petitioner and proponents take an expansive view of the voters' intent in enacting the Measures and the SASO (via the County). They argue that "the filing of the petition in this matter is a violation by the county of both the Initiatives and of that very Ordinance it enacted, both of which prohibit county 'officials' from using county funds and resources 'for the purpose of enforcing any element of such acts, laws, orders, mandates, rules or regulations, that infringe on the right by People to keep and bear arms * * *.'" Motion to Intervene, Case No. 21CV12796 (Columbia Co Cir Ct May 24, 2021). In other words, according to chief petitioner and other proponents, voters intended to enact a law so broad it would prohibit the County from its ordinary acts of debating and adopting the SASO under the requirements of ORS 203.035 through 203.075 or submitting it to judicial review under the requirements of ORS 203.060. The Measures' supporters position conveys that the Measures were intended to have wide-ranging ramifications that render the provisions of the Measures and SASO inseverable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Len Kamdang (admitted *pro hac vice*)
Mark Weiner (admitted *pro hac vice*)
EVERYTOWN LAW
450 Lexington Avenue
P.O. Box 4184
New York, NY 10017
Telephone: 646-324-8115
Email: lkamdang@everytown.org
mweiner@everytown.org

*Attorneys for Robert Pile, Shana Cavanaugh, Brandee
Dudzic, and Joe Lewis*

Trial Attorney: Steven C. Berman, OSB No. 951769

TABLE A: STATE FIREARMS LAWS THAT PREEMPT THE SASO

Statute #	Title
ORS 166.170 to 166.176	Authority to regulate firearms
ORS 166.180	Negligently wounding another
ORS 166.190	Pointing firearm at another; jurisdiction
ORS 166.220	Unlawful use of weapon
ORS 166.240	Carrying of concealed weapon
ORS 166.250	Unlawful possession of firearms
ORS 166.255(1)(b)–(c)	Unlawful possession of firearm or ammunition
ORS 166.272	Unlawful possession of machine guns, certain short-barreled firearms and firearms silencers
ORS 166.275	Possession of weapons by inmates of institutions
ORS 166.320	Springguns, setguns, and related devices
ORS 166.330	Use of firearms with other than incombustible gun wadding
ORS 166.350	Unlawful possession of armor piercing ammunition
ORS 166.360 to 166.380	Possession of weapon or destructive device in public building or court facility
ORS 166.410	Manufacture, importation or sale of firearms
ORS 166.412	Definitions; firearms transaction record; criminal history record check
ORS 166.416	Providing false information in connection with a transfer of a firearm
ORS 166.418	Improperly transferring firearm
ORS 166.425	Unlawfully purchase of firearm
ORS 166.427	Register of transfers of used firearms
ORS 166.429	Firearms used in felony
ORS 166.435	Transfer of firearms; criminal history record check; exceptions; penalty for failure to comply with requirements of this section
ORS 166.438	Transfer of firearms at gun shows; persons who are not gun dealers
ORS 166.450	Alteration, removal, or obliteration of firearm identification number
ORS 166.470	Limitations on sale of firearms
ORS 166.630	Unlawful discharge of weapon
ORS 166.635	Discharging weapon or throwing objects at trains
ORS 166.638	Discharging weapons across airport operational surfaces
ORS 166.645	Hunting in cemeteries prohibited
ORS 166.660	Unlawful paramilitary activity
ORS 166.663	Casting artificial light from vehicle while possessing certain weapons
ORS 821.240 ¹²	Operating snowmobile or all-terrain vehicle while carrying firearm or bow; exemptions; “unloaded” defined; penalties

¹² This statute was not listed in the Petition as a statute that preempts the SASO.

TABLE B: OTHER STATE LAWS THAT PREEMPT THE SASO

Statute #	Title
ORS 206.010	Duties of sheriff (Duties generally)
ORS 204.020	Time of commencement for terms of office; filing certificate of election, oath and undertaking
ORS 294.338	Compliance with Local Budget Law required prior to expenditure or tax certification
ORS 8.670	District Attorneys (Proceedings before magistrates and grand jury)
ORS 8.850	District Attorneys (Offices, supplies, and stenographic assistance)
ORS 8.760	District Attorneys (Authorization of deputy district attorneys and payment of compensation)
ORS 51.050	Criminal jurisdiction; transfer to circuit court
ORS 51.250	Justices of the Peace (Commencement of term of office; required filings)
ORS 1.185	Provision of courtrooms, offices and jury rooms by county; payment of expenses
ORS 419A.016	County Juvenile Department (Powers of director or counselor)
ORS 419A.020	County Juvenile Department (Maintenance and expense costs of juvenile department)
ORS 137.630	Duties of parole and probation officers
ORS 20.077 and related case law	Prevailing party
ORS 30.260 to ORS 30.300	Tort Actions Against Public Bodies

TABLE C: FEDERAL FIREARMS STATUTES THAT PREEMPT THE SASO

Statute #	Title
26 U.S.C § 4181	Firearms (Imposition of tax)
18 U.S.C § 1715	Firearms as nonmailable; regulations
26 U.S.C. §§ 5801–5872	National Firearms Act of 1934 (NFA)
18 U.S.C. § 921 <i>et seq.</i>	Gun Control Act of 1968
18 U.S.C. §§ 921–927, 929(a); 28 U.S.C. § 1 <i>et seq.</i> ; 28 U.S.C. § 845; 28 U.S.C. § 5801; 28 U.S.C. § 5845	Firearm Owner’s Protection Act of 1986 (FOPA)
18 U.S.C. § 922(s); 18 U.S.C. § 923(a), (g)	The Brady Handgun Violence Protection Act of 1993 (Brady Act)
18 U.S.C. § 922(q)	Gun-Free School Zones Act

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing THE COLUMBIA COUNTY RESIDENTS' MOTION FOR SUMMARY JUDGMENT on the following person by electronic service via the Oregon Judicial Department electronic filing system at the person's email address as recorded on the date of service in the electronic filing system or by the alternative means of service indicated below, by serving a true copy, hereby certified as such, with applicable email address or facsimile telephone number at which the party was served, and, upon any mailing, by placing the copy in a sealed envelope, with postage prepaid, addressed to such person at the address stated below and deposited in the mails of the United States Postal Service in Portland, Oregon, on this date:

Sarah Hanson
Office of County Counsel
Columbia County Courthouse, Room 20
St. Helens, OR 97051

- By Hand Delivery
By Facsimile Transmission
By U.S first class mail
By OJD E-File & Serve
By E-mail
Sarah.hanson@columbiacountyor.gov

Brian Simmonds Marshall
Senior Assistant Attorney General
100 SW Market Street
Portland, OR 97201

- By Hand Delivery
By Facsimile Transmission
By U.S first class mail
By OJD E-File & Serve
By E-mail
Brian.S.Marshall@doj.state.or.us

Tyler Smith
Tyler Smith & Associates, PC.
181 N. Grant Street, Suite 212
Canby, OR 97013
Of Attorneys for Raven Chris Brumbles,
Gun Owners of America, Inc., Gun Owners
Foundation, Oregon Firearms Federation, Larry
Erickson, Keith Forsythe, and Ruth Nelson

- By Hand Delivery
By Facsimile Transmission
By U.S first class mail
By OJD E-File & Serve
By E-mail
Tyler@RuralBusinessAttorneys.com

1 DATED this 24th day of June, 2021.

2 STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

3
4 By: s/ Steven C. Berman

Steven C. Berman, OSB No. 951769

Lydia Anderson-Dana, OSB No. 166167

5 209 SW Oak Street, Suite 500

6 Portland, OR 97204

7 Telephone: (503) 227-1600

8 Facsimile: (503) 227-6840

9 Email: sberman@stollberne.com

landersondana@stollberne.com

10 *Attorneys for Robert Pile, Shana Cavanaugh, Brandee
11 Dudzic, and Joe Lewis*