

**TESTIMONY OF JOHN DILORENZO, JR.  
BEFORE THE HOUSE COMMITTEE ON RULES  
IN OPPOSITION TO H.B. 3433**

**April 15, 2015**

Good afternoon Chair Hoyle and members of the committee. For the record, my name is John DiLorenzo. I am a partner of the law firm of Davis Wright Tremaine and am here this morning on behalf of my long-time client, Oregonians for Food and Shelter (OFS), to oppose H.B. 3433.

As many of you know, OFS has been active both in the Legislature and in the initiative process on behalf of those who rely on modern farming methods to bring their crops to market.

I have represented OFS and its members on a number of occasions for the purpose of testing the constitutionality of local initiatives.

Article IV Section 1(2)(d) of the Oregon Constitution requires all initiative petitions to include the full text of the law which they propose. In addition, that section also requires any proposed law to embrace one subject only and matters properly connected therewith.

The Constitution extends these requirements to county, municipal and district-wide initiatives.

ORS 230.175, ORS 230.375 and ORS 255.145 require county, city or local district officials to first ensure that the initiatives which are proposed by citizen petition first comply with the procedural requirements in the Oregon Constitution.

ORS 255.140 creates a procedure whereby a local initiative petition can first be tested in court to determine whether it meets those constitutional requirements.

House Bill 3433 does away with those requirements and, in Section 3 of the Bill, repeals the entire pre-election determination procedure in ORS 255.140. In addition, it repeals ORS 250.175 and 250.275 which control how local officials prepare ballot titles for county measures and city measures.

If the Legislature enacted House Bill 3433, the constitutional requirements would still remain. Litigants would be free to challenge whether a local initiative complied with procedural requirements of the

Constitution at any time. We, along with many others who both propose and resist initiatives, believe that it is better to have a court make those determinations prior to the time a local district, city or county had expended the taxpayer funds necessary to conduct an election and prior to the time that the proponents and opponents have expended large sums of money to campaign for or against the measure.

I am attaching my testimony a recent example which shows how a court goes about examining a proposed local initiative for constitutional compliance. The orders attached related to a local food system ordinance which was filed on September 20, 2013 in Lane County. By September 27, the County Clerk had issued a written determination concerning whether the measure complied with Article IV, Section 1(2)(d) of the Constitution. Shortly thereafter, on October 4, the Lane County Counsel prepared a ballot title and filed the same with the Lane County Clerk. On October 15, my client filed a case in the Circuit Court seeking a court determination as to whether the measure truly complied with these constitutional provisions. Shortly thereafter, the chief

petitioner intervened, the matter was briefed, and expeditiously decided. In that case, the Court ruled that the proponents failed to comply with the full text rule of the Constitution and furthermore violated the single subject rule in numerous particulars. The Court therefore ordered that the initiative not be authorized for circulation.

Had House Bill 3433 been enacted, these determinations would have likely been made after the proponents had expended great time and effort to gather their signatures, after Lane County had spent significant dollar resources in placing the measure on the ballot, and after the proponents and the opponents had expended large sums to campaign for or against the measure. Only after all of that would this particular measure have been declared invalid by the courts.

The current process saves all concerned, and especially local governments, from having to expend resources for nothing.

House Bill 3433 makes no practical sense for either proponents or opponents of initiative petitions. You should take no further action on this Bill.

Thank you for your time and courtesies. I am available to answer any questions you may have.

**DiLorenzo, John**

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**From:** Matt.D.IPSON@ojd.state.or.us  
**Sent:** Tuesday, March 18, 2014 4:56 PM  
**To:** DiLorenzo, John; ann@kneelandlaw.net; andy.clark@co.lane.or.us  
**Subject:** Order - Case Numbers 161319627 and 161319628  
**Attachments:** Order - Reerslev v. Betschart 161319628.pdf; Order - Reerslev v. Dingle 161319627.pdf

Counsel,

Judge Charles Carlson signed the attached orders on March 18, 2014.

*(See attached file: Order - Reerslev v. Betschart 161319628.pdf)(See attached file: Order - Reerslev v. Dingle 161319627.pdf)*

Regards,

Matt Ipson  
Judicial Clerk to the Hon. Charles Carlson  
Lane County Circuit Court  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

JOHN REERSLEV,

Petitioner,

v.

CHERYL BETSCHART, in her capacity as  
Lane County Clerk,

Respondent,

and

LYNN BOWERS,

Intervenor-Respondent,

Case No. 16-13-19628

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND  
ORDER

THIS MATTER came before the Court for oral argument on February 18, 2014 on Petitioner's Motion for Summary Judgment. Petitioner appeared through his attorney John DiLorenzo and Intervenor-Respondent appeared in person and through her attorney Ann Kneeland. Respondent did not submit either written or oral arguments to the Court. The Court having considered the filings of the parties and the arguments of Counsel, now therefore makes the following findings of fact and conclusions of law:

I. Findings of Fact

1. On September 20, 2013, the proposed Local Food System Ordinance of Lane County was filed with Lane County Elections by its chief petitioner, Lynn Bowers.
2. On September 27, 2013, County Clerk Cheryl Betschart issued a written determination that the proposed initiative measure complied with Section 1(2)(d), Article IV of the Oregon Constitution.
3. On October 4, 2013, Stephen Dingle, in his capacity as Lane County Counsel, prepared a ballot title and filed the same with the Lane County Clerk.
4. On October 15, 2013, Petitioner John Reerslev, a dissatisfied voter, filed a Petition in the Lane County Circuit Court for Determination of Initiative Measure Compliance with Constitutional Provision under ORS 250.168.

5. On October 31, 2013, the Court granted Lynn Bowers' Motion to Intervene.
6. On November 26, 2013, Petitioner filed this Motion for Summary Judgment.

## II. Conclusions of Law

Section 1(2)(d), Article IV of the Oregon Constitution provides: "An initiative petition shall include the full text of a proposed law or amendment to the Constitution. A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith."

The proposed Local Food System Ordinance of Lane County does not comply with either the "full text" requirement or the "one subject" rule set forth in Section 1(2)(d). Non compliance with either requirement is fatal to the proposed initiative.

### *a. "Full Text" Compliance*

Section 10 of the proposed initiative measure provides: "All inconsistent provisions within the county code of Lane County are hereby repealed, but only to the extent necessary to remedy the inconsistency." The proposed measure never identifies which provisions of the Lane County Code are inconsistent and, consequently, repealed. The Court finds that by repealing provisions of the Lane County Code without specifying which provisions are to be repealed, the proposed measure violates the full text requirement set forth in Article 4, Section 1(2)(d) of the Oregon Constitution.

The public has a right to be apprised of the effect that proposed initiatives might have on existing statutes. At a minimum, to comply with the constitutional requirement to provide the "full text" of the measure, the proposed initiative measure must specify the repealed provisions by number in order to ensure that voters know from reading the measure which existing parts of the Lane County Code they are voting to repeal and which they are not.

The relevant constitutional provision requiring the full text of proposed measures—Article 4, Section 1(2)(d)—carries the same meaning as Article 4, Section 22. Section 22 applies to the Legislative Assembly, and Section 1(2)(d) applies to the people. Both sections require that those voting on proposed legislation be provided with the full text of the proposed law. *See Kerr v. Bradbury*, 193 Or. App. 304, 314 (2004). In analyzing Section 22, the *Kerr* court observed:

"[W]e know that the framers of the Oregon Constitution enacted Article IV, Section 22, to ensure that legislators not be required to vote on legislation 'in the dark' that is, without knowing the effect of the proposed enactment on existing statutes." *Id.* At 325.

The concern expressed in *Kerr* is just as applicable to the public voting on ballot measures as it is to legislators voting on proposed legislation. Section 10 of the proposed initiative would leave the public 'in the dark' without knowing the effect of the proposed initiative measure on existing law. Just as a legislative measure cannot repeal provisions without stating the provisions, a county measure cannot. The public must be advised what provisions of the county code they are repealing by enacting an ordinance by referendum.



b. "Single-Subject" Rule

The Court recognizes that the proposed measure raises issues that are very important to a considerable number of Lane County citizens and may be subject to a future submission. For this reason the Court will further address the "single subject" rule issues raised by the Petitioner. The Court finds that the proposed initiative measure violates Section 1(2)(d), Article IV of the Oregon Constitution by embracing more than one subject. The Oregon Supreme Court set forth a method for analyzing the "single-subject" rule in *OEA v. Phillips*, 302 Or. 87, 100 (1986):

"A measure must first be scrutinized to determine whether it embraces more than one subject. If it does, it offends the constitutional limitation even if the subjects are 'properly connected,' and that is the end of the inquiry. If it does not, the single subject must be identified. When that is done, and if the proposal embraces no other matters, there is no need to inquire into proper connection. \*\*\*

"If the proposal embraces one subject only and also other 'matters,' then, and only then, it must be determined whether those other matters are properly connected with the subject."

The Court in *OEA* further observed that the "purpose [of a proposed measure] is not to be confused with [its] subject." *Id.*

Here, the stated purpose of the proposed initiative measure is the creation and protection of the local food system. However, the measure embraces numerous subjects to achieve that purpose.

First, section 3 of the measure bans any person or entity from engaging in the use of genetically engineered organisms for any purpose. It is not limited to food crops which is the subject of the measure. As worded it would apply to medical research, alternative energy research and all aspects of agriculture whether involving food crops or not.

Section 6 of the proposed measure modifies the law of corporations within Lane County and purports to invalidate any conflicting law adopted by the State of Oregon, State agency regulations, federal law, federal regulatory provisions, or international treaty. Section 2(b) and 3(d) of the measure go so far as to suspend the law of patents in Lane County as to seed of any kind. Putting aside for the moment the obvious constitutional issues such provisions would raise, they clearly embrace a multitude of subjects. Finally, Section 7 calls for a state constitutional change that elevates community rights above any of those claimed by corporations when community rights conflict with corporate privileges.

Since the Court finds that the proposed measure embraces more than one subject, that is the end of the inquiry under *OEA v. Phillips*, *id.* at 100.

Now, therefore;

IT IS HEREBY ORDERED that Petitioner's Motion for Summary Judgment be, and hereby is, GRANTED. The proposed initiative measure may not be circulated and shall not receive a ballot title.

DATED this \_\_\_\_ day of March, 2014.

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CHARLES D. CARLSON  
CIRCUIT COURT JUDGE

Prepared by: M. Ipson

C: John A. DiLorenzo, Jr.  
Anne B. Kneeland  
H. Andrew Clark

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

JOHN REERSLEV,

Petitioner,

v.

STEPHEN DINGLE, in his capacity as Lane  
County Counsel, and ALEX GARDNER, in his  
capacity as Lane County District Attorney,

Respondent,

and

LYNN BOWERS,

Intervenor-Respondent,

Case No. 16-13-19627

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND  
ORDER

THIS MATTER came before the Court for oral argument on February 18, 2014 on the Petition to Seek Alternative Ballot Title. Petitioner appeared through his attorney John DiLorenzo and Intervenor-Respondent appeared in person and through her attorney Ann Kneeland. Respondent did not submit either written or oral arguments to the Court. The Court having considered the filings of the parties and the arguments of Counsel, now therefore makes the following findings of fact and conclusions of law:

I. Findings of Fact

1. On September 20, 2013, the proposed Local Food System Ordinance of Lane County was filed with Lane County Elections by its chief petitioner, Lynn Bowers.
2. On September 27, 2013, County Clerk Cheryl Betschart issued a written determination that the proposed initiative measure complied with Section 1(2)(d), Article IV of the Oregon Constitution.
3. On October 4, 2013, Stephen Dingle, in his capacity as Lane County Counsel, prepared a ballot title and filed the same with the Lane County Clerk.
4. On October 15, 2013, Petitioner John Reerslev, a dissatisfied voter, filed a Petition in the Lane County Circuit Court to seek an alternative ballot title.
5. On October 31, 2013, the Court granted Lynn Bowers' Motion to Intervene.

## II. Conclusions of Law

This matter is moot, the Court having determined in the companion case (*Reerslev v. Betschart*, Lane County Case No. 161319628) that the proposed initiative measure does not comply with constitutional provisions under ORS 250.168.

DATED this \_\_\_ day of March, 2014.

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CHARLES D. CARLSON  
CIRCUIT COURT JUDGE

Prepared by: M. Ipson

C: John A. DiLorenzo, Jr.  
Anne B. Kneeland  
H. Andrew Clark