

**Steven C. Berman**  
sberman@stollberne.com

**Mark Weiner**  
mweiner@everytown.org

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*Via Email*

Sarah Hanson  
County Counsel  
Columbia County  
230 Strand Street  
St. Helens OR 97051

Re: Columbia County Measure 5-278

Dear Ms. Hanson:

We write on the behalf of the Oregon Chapter of Moms Demand Action regarding Columbia County Measure 5-278 (the “Measure”). The Measure was narrowly approved by Columbia County voters at the November 3, 2020 General Election; it passed by just 525 votes. The Measure violates the United States Constitution, the Oregon Constitution and Oregon’s firearms preemption statute. We respectfully submit that a validation action pursuant to ORS 33.710 would be the most efficient way for the County to resolve issues regarding the Measure’s validity.

The Measure, which its supporters refer to as a “Second Amendment Sanctuary Ordinance,” purports to invalidate nearly every state and federal law relating to firearms meant to ensure the safety of the public. The Measure creates civil penalties and a private right of action against County officials who enforce those laws. The Measure exposes County employees and officials to liability for simply following state and federal law. As is discussed below, the County does not have the authority to pass measures that contradict state and federal laws, let alone invalidate them. The Measure is inconsistent with Oregon law, and is plainly unconstitutional.

The Measure is rooted in the flawed premise that “[l]ocal governments have the legal authority to refuse to cooperate with state and federal firearms laws . . . and to proclaim a Second Amendment Sanctuary.” Measure, § 2(K). From that premise, the Measure contains two broad operative provisions. Specifically, Section 3(A) of the Measure provides that no “agent, employee, or official of Columbia County . . . while acting in their official capacity” shall:

- “1) Knowingly and willingly, participate in any way in the enforcement of any Extraterritorial Act, as defined herein; or
- “2) Utilize any assets, county funds, or funds allocated by any entity to 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.”

The term “Extraterritorial Act” is defined to include “[a]ll local, state and federal acts, laws, rules or regulations, originating from jurisdictions outside of Columbia County, which restrict or affect an individual person’s general right to keep and bear arms, including firearms, firearm accessories or ammunition.” *Id.*, § 4(1) (emphasis added). Such “Acts” “shall be treated as if they are null, void and of no effect.” *Id.* The Measure goes on to provide examples of “void” Extraterritorial Acts, including, among other broad categories, “[a]ny registration and background check requirements on firearms, firearm accessories, or ammunition for citizens” and “[a]ny prohibitions, regulations, and/or use restrictions related to ownership of non-fully automatic firearms.” *Id.*, §§ 4(1)(d), (g). The Measure contains a few narrow exceptions, including the ambiguous exception that “[t]he protections provided in [the Measure] do not apply to persons who have been convicted of felony crimes.” *Id.*, § 4(6)(a). The Measure also purports to create a private right of action for any “injured party,” and waives sovereign and governmental immunity for any County official in such a case. *Id.*, § 5.

The Measure is in direct violation of well-settled Oregon law that local governments cannot enact measures that are incompatible with state law. The Oregon Supreme Court has set forth the governing rule repeatedly: “[W]hen a local enactment is found incompatible with a state law in an area of substantive law, the state law will displace the local rule.” *City of La Grande v. Pub. Employees Ret. Bd.*, 281 Or 137, 148, *on reh’g*, 284 Or 173 (1978). A local enactment is incompatible with state law if “the two cannot operate concurrently or [] the legislature intended the state law to be exclusive.” *State v. Tyler*, 168 Or App 600, 603-04 (2000); *see also Ashland Drilling, Inc. v. Jackson Cty.*, 168 Or App 624, 634 (2000) (home rule county enactments are invalid if the “local regulation conflicts with state law or is clearly intended to be preempted”), *review denied*, 331 Or 429 (2000). To put it another way, “[i]f the [local] ordinance prohibits conduct that the [state] statute permits, the laws are in conflict and the ordinance is displaced” under the Oregon Constitution. *Ashland Drilling*, 168 Or App at 635, *quoting City of Eugene v. Kruk*, 128 Or App 415, 417 (1994).

A local measure which penalizes the enforcement of state law clearly conflicts with that state law. The Measure would prohibit the “conduct” of enforcing state statutes, something self-evidently “permitted” by those state statutes. For example, ORS 166.412 creates background check requirements (the “State Background Check Statute”) on all gun sales before a gun dealer may transfer a firearm to a potential purchaser; if a gun dealer sells a firearm without conducting a background check, they commit a crime. ORS 166.418. This statute, like all state criminal statutes, permits County law enforcement to enforce it; indeed, it is the statutory *duty* of the

sheriff “to arrest and commit... all persons guilty of public offenses.” ORS 206.010. Yet because the Measure includes in its definition of “void” Extraterritorial Acts any “background check requirements on firearms,” the Measure prohibits the sheriff from enforcing the State Background Check Statute. Thus, the sheriff or any other County official who enforced the background check requirement by investigating or arresting a gun dealer who violated the statute by selling a firearm without a background check would face fines and – underscoring the absurdity of the Measure – a lawsuit for damages *by the gun dealer* who committed the crime. The same conflict with state law exists for many firearms-related laws throughout Oregon statutes, including prohibitions on concealed carry without a license and various location restrictions on firearms, such as carrying firearms in hospitals. *See* ORS 166.250 and ORS 166.370.<sup>1</sup>

The County also cannot contravene federal law, pursuant to the Supremacy Clause of the U.S. Constitution. *See La Grande*, 281 Or at 142 (“the validity of local action depends . . . on whether it contravenes state or federal law”); *AT&T Communications of the Pacific Northwest, Inc. v. City of Eugene*, 177 Or App 379, 401 (2001) (“[t]he Supremacy Clause of the United States Constitution, Article VI, clause 2, invalidates state or local laws interfering with, and being contrary to, federal law”), *review denied*, 334 Or 491 (2002). The Measure conflicts with a slew of federal firearms statutes meant to protect the public and law enforcement. For example, like Oregon, there is a federal background check requirement imposed on all licensed gun dealers before they can transfer a firearm. *See* 18 USC § 922(t) (the “Federal Background Check Statute.”). Yet, for the same reasons outlined above, the Measure considers this an “Extraterritorial Act” rendered “null, void and of no effect.” Measure, § 4. This is but one of several federal laws Congress enacted to ensure the safety of the public that the Measure invalidates. *See, e.g.*, 18 USC § 922(g) (prohibiting possession of firearms by persons addicted to controlled substances and unlawful aliens); 18 USC § 922(i) and (j) (prohibiting sale or possession of stolen firearms); 18 USC § 922(k) (prohibiting possession of firearms with obliterated serial numbers); § 922(a)(8) (prohibiting sale of armor-piercing ammunition).

The Measure also contravenes Oregon’s express firearms preemption statute, ORS 166.170 (the “Firearms Preemption Statute.”), which provides that, “[e]xcept as expressly authorized by state statute, no county . . . 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 subsection are void.” The Measure regulates the sale, transfer, ownership and possession of

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<sup>1</sup>Additionally, the background check law provides that, “No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section provided the employee, official or agency acts in good faith and without malice.” ORS 166.412(6). The Measure directly conflicts with this law by creating civil liability. Measure, § 5.

firearms by setting the boundaries, in Columbia County, of what behavior is legal and what is unlawful. The Firearms Preemption Statute makes clear that such activity “is clearly intended to be preempted” by the legislature. *Ashland Drilling, Inc.*, 168 Or App at 634. *See, e.g., Oregon Firearms Foundation v. Board of Higher Educ.*, 245 Or App 713, 719 (2011) (striking down State Board of Higher Education’s prohibition on possession of firearms on university campuses as preempted).

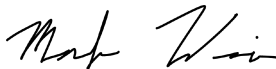
In sum, as the Oregon Supreme Court has declared, “[l]ocal governments . . . are barred from . . . creating a ‘safe haven’ for outlaws by legalizing, within the boundaries of the city, that which the legislature has made criminal statewide.” *City of Portland v. Jackson*, 316 Or 143, 146 (1993). The Measure is unconstitutional because it contradicts state and federal firearms laws.

Our position is entirely consistent with the conclusion reached by other courts in Oregon. During the 2020 election cycle, judges in both Grant and Harney County concluded that nearly identical initiative petitions were unconstitutional and ruled those initiatives could not be placed on the ballot. The opinions in those cases are enclosed with this letter. Clatsop County’s District Attorney publicly criticized as unconstitutional a nearly identical measure that was rejected by Clatsop County voters at the November 3, 2020 election. *See* “Voters Reject Second Amendment Sanctuary,” Nicole Bates, *The Daily Astorian*, Nov. 3, 2020 (“District Attorney Ron Brown had said that he believes the measure was unconstitutional”). No Oregon court has upheld a challenged “Second Amendment Sanctuary” ordinance. Given that the Measure is constitutionally suspect, we respectfully submit that the most appropriate course of action would be for the County to pursue a validation proceeding, pursuant to ORS 33.710, to ask a court to determine the legality and constitutionality of the measure.

Very truly yours,



Steven C. Berman  
Stoll Stoll Berne Lokting & Shlachter, P.C.



Mark Weiner  
Everytown Law