



Corporate Timber Privileges Override Right of Local Self-Government in Lincoln County

Aerial Spray Ban Overturned; Decision to be Appealed

October 1, 2019

FOR IMMEDIATE RELEASE

Media Contact: Mary Geddry

cooscommons@gmail.com

541-551-1492

www.orcrn.org

For over two years aerial spraying has been banned in Lincoln County after voters adopted Measure 21-177 in May 2017. On September 23rd circuit court Judge Sheryl Bachart issued her ruling in the case of *Rex Capri and Wakefield Farms, LLC vs. Dana W. Jenkins and Lincoln County* making the determination that the local ban exceeded the authority of the local government based on state preemption of pesticide use.

With that, and despite the fact that corporate timber operations have successfully continued over the last 2 years without aerial spraying, the court has overturned the law. That action was done in direct violation of the people's fundamental right of local community self-government.

"In a choice between unconstitutional state law that protects corporate profits over the health and safety of communities, the judge chose to protect corporate profits" said Rio Davidson of Lincoln County Community Rights. "The fight for our legal, constitutional, and fundamental right of local self-government marches on, and it is going to take the political will of the people to make it a reality if we ever want to stop living under the thumb of corporate government."

Lincoln County Community Rights (LCCR) was granted intervenor in the case that was filed against Lincoln County. Also significant in this litigation was the Siletz River watershed filing to be part of the case but being denied intervention. Since this case began in 2017 voters in Toledo, Ohio adopted a Lake Erie Bill of Rights (February 2019) and closer to Oregon, the Yurok Tribe of northern California adopted a law to secure and protect the rights of the Klamath River (May 2019). Both of those actions were taken in recognition of the failure of so-called environmental laws to protect the environment.

In the decision, Judge Bachart did affirm that the citizen initiative was “lawfully presented” and “lawfully enacted” by the voters of Lincoln County but ruled that the law cannot stand because of state preemption on pesticide use. The judge did not seriously weigh the argument of local self-government being exercised to protect rights against less protective state preemption by merely stating:

Oregon does not recognize an independent right of local community self-government that is fundamental, inherent, inalienable, and constitutional. Defendant Intervenor's reliance on the Declaration of Independence, the Preamble of the Constitution, the Ninth Amendment and the Oregon Constitution, is misplaced and without legal precedent.

The judges view of self-government comes both in opposition to Article I, Section 1 of the Oregon Constitution:

Natural rights inherent in people. We declare that all men, when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.

And the argument put forward by Lincoln County Community Rights:

It is widely recognized that, under the Ninth Amendment to the U.S. Constitution, states have the authority to recognize and secure “unenumerated” rights, and thereby to codify greater rights at the state level than the protections provided under federal law. Likewise, between state and local levels of government, Article I, Section 33 of the Oregon Constitution— which closely mirrors the Ninth Amendment – recognizes the same limitation on the state’s general powers to infringe upon the “unenumerated” rights of the sovereign people. Within this body of “unenumerated” rights, and together with Article I, Section 1 of the Oregon Constitution, lies the people’s natural, inherent and inalienable right of local community self-government. Exercising this fundamental right, the people may recognize and secure expanded local rights and prohibitions that surpass current state protections. By the same token, the State cannot pass preemptive laws that encumber or prohibit the exercise of the people’s right of local community self-government. Said another way, state preemptive laws – when applied to set a “ceiling” rather than a “floor” for local rights-based lawmaking – violate a fundamental right in both the U.S. and Oregon constitutions. As such, current state preemptive laws – like those cited by Plaintiffs – violate the right of local community self-government, and thus cannot operate to overturn the Ordinance at issue.

“Because of the community rights activism in Lincoln County and their efforts to ban aerial spray, an opening has come at the state level to move a constitutional amendment securing the right of local community self-government within the legislature,” said Nancy Ward, coordinator for the Oregon Community Rights Network. “Though this decision will be appealed on the grounds of denying the exercise of the right of local self-government, it also serves as positive energy to move the amendment forward so ultimately people, not corporations, decide the fate of their communities.”

Appeals will be filed by Lincoln County Community Rights in the motion for summary judgment as well as intervention denial of the Siletz River watershed. At the time of this press release it is not known if Lincoln County will appeal the decision.

ABOUT THE ORCRN - OREGON COMMUNITY RIGHTS NETWORK

The ORCRN is a 501(c)(3) made up of local chapters and community rights activists from various communities in Oregon. The mission of the ORCRN is to support and empower communities to secure local self-determination and self-governance rights, superior to corporate power, in order to protect fundamental rights, quality of life, the natural environment, public health, and safety.

###