



# Oregon Judicial Department

TWENTY-FOURTH JUDICIAL DISTRICT

W.D. Cramer, Jr., Presiding Judge

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January 9, 2019

Mark Webb  
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Ron Yockim  
[ryockim@yockimlaw.com](mailto:ryockim@yockimlaw.com)

Re: Webb vs. Grant County Case No. 18CV36998

Dear Parties and Counsel:

Defendant Grant County has filed Rule 21 motions to dismiss the Amended Complaint/Petition (Complaint) in this case.

Petitioner's complaint seeks a Declaratory Judgment finding two Grant County measures and one ordinance invalid. These are briefly identified as:

- 1) Measure 12-37 (2002): Declares Grant County a UN free zone  
(Petitioner argues this constitutes federal pre-emption)
- 2) Measure 12-40 (2002): Directs Grant County to petition Congress for title to public lands  
(Petitioner argues this compels an administrative act.)
- 3) Ordinance 2013-01 (2013): Declares all roads open unless closed by Grant County.  
Federal Agencies cannot close roads on federal lands.  
(Petitioner argues federal pre-emption)

In respect to each of these claims, Grant County (Grant), has filed its Motion to Dismiss citing three general grounds:

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**Grant County Courthouse**, 201 S. Humbolt St., P.O. Box 159, Canyon City, OR 97820; PHONE (541)575-1438 FAX (541)575-2165

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Tammy Wheeler, Trial Court Administrator

January 9, 2019

Case No. 18CV36998

- (a) Failure to allege ultimate facts demonstrating this court has jurisdiction under ORS 28 to award a Declaratory Judgment in that Petitioner Webb has failed to establish a justiciable claim (ORCP 21(A)(2));
- (b) Failure to state ultimate facts sufficient to constitute a claim (ORCP 21(A)(8); and
- (c) That the petition was commenced within the time limited by statute for the claims based upon a challenge to the County Clerk's procedural determinations relative to the constitutionality of the two measures. (ORCP 21(A)(9).

## DISCUSSION

Having considered the arguments and authorities cited, I am granting Grant's motions to dismiss as to each.

The parties agree that to establish a legal basis to review these measures and ordinance under ORS 28, there must be justiciability. Despite his arguments, Petitioner has not been able to demonstrate an "...injury or other impact upon a legally recognized interest beyond an abstract interest in the correct application or validity of the law." League of Oregon Cities v Oregon, 334 Or 645, 658(2002); See also Morgan v Sisters School District #6, 353 OR 189(2013) ("...The injury must be real or probable not hypothetical or speculative." @195)

On the record before me I do not find any actual harm to Petitioner, nor that any purported harm is probable.

With respect to Measure 12-40, there is no evidence that Grant County, since passage in 2002, has petitioned Congress for title to public lands. Moreover, it appears the county would have a right to make such a request even without the existence of this measure. If a petition were filed, then the time would be ripe to determine if it is probable that Congress would cede title of the lands to Grant County and if so, if there is harm.

With respect to Measure 12-37 declaring a UN free zone, there is no identified UN activity that has ceased or alleged to have ceased in Grant County because of this measure. I find it improbable that the UN, if authorized to perform activity in Grant County, would curtail it because of this measure. If they did so, or if officials from Grant County actively intervened, then this would be justiciable.

As to Ordinance 2013-01 there is no evidence that roads have not been closed by federal or state agencies as a result of this ordinance. Further, as to Petitioner, he does not show how invalidating the ordinance would have a practical effect on his rights. (Morgan @197 the court's order "...must have a practical effect..." on Petitioner's rights.)

The legislature in passing ORS 28, and the courts in the cases interpreting those

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provisions here, for reasons they find sufficient, limited when challenges to laws and measures can be heard. Requiring actual or probable injury as opposed to whether the law is valid is required.

I will comment that under different facts, each of these two measures and ordinances could be justiciable and meet the standards for review.

The county's motion to dismiss on the timeliness of procedural challenges is well taken under ORS 250.168 as to whether the measures complied with the "full text" and "single subject" standards. The remaining arguments as to the validity of the measures do not appear time barred, but I do not reach those issues here as my decision on justiciability is dispositive.

County counsel shall prepare the judgment.

Respectfully,

GRANT COUNTY CIRCUIT COURT



W. D. Cramer, Jr.  
Presiding Circuit Court Judge

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