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

ROBERT A. WHITE, JR. and
SHELLEY ANN WHITE,

Plaintiffs,

v.

JOSEPHINE COUNTY,

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND PERMANENT
INJUNCTION**

NOT SUBJECT TO MANDATORY
ARBITRATION

Plaintiffs allege:

PRELIMINARY STATEMENT

1.

This action challenges Josephine County Ordinance 2014-007 (“Ordinance”) which bans the growing of genetically engineered (“GE”) plants in Josephine County. The Ordinance qualified for ballot placement on February 19, 2014 and was approved as Ballot Measure 17-58 at the May 20, 2014 primary election. The Ordinance conflicts with Oregon State law, and, among other things, requires farmers to destroy valuable crops they have planted, cultivated, and plan to sell. The Ordinance also, among other things, prohibits the growing of GE plants in the future and thereby interferes with the livelihood of many farmers.

2.

Plaintiffs seek declaratory relief and to permanently enjoin enforcement of the Ordinance.

1 **JURISDICTION**

2 3.

3 This court has jurisdiction because this action is brought in accordance with:
4 ORS 203.060, seeking judicial review and invalidation of an Ordinance adopted by the voters of
5 a home rule county due to conflict with a paramount state law; and ORS 28.010 to 28.160,
6 Oregon’s Uniform Declaratory Judgments Act, seeking “to afford relief with respect to rights,
7 status and other legal relations” relevant to Plaintiffs and the Ordinance.

8 4.

9 Plaintiffs allege the Ordinance conflicts with paramount state law, and seek relief with
10 respect to their rights under the Ordinance.

11 **VENUE**

12 5.

13 Venue is appropriate in Josephine County because the Ordinance was adopted in
14 Josephine County, is intended to regulate conduct and to be enforced within Josephine County,
15 and at least part of the cause of the suit arose in Josephine County.

16 **BACKGROUND AND PARTIES**

17 6.

18 Plaintiffs are family farmers who reside in Josephine County, Oregon. Over the last five
19 years they have devoted their farm, in part, to growing GE crops including GE sugar beets for
20 seed and GE sugar beet stecklings. When it appeared that crop rotation would be required to
21 further their lawful pursuits, Plaintiffs leased adjacent land for the purpose of continuing to grow
22 these crops. Upon adoption of the Ordinance, they could not devote the land which they had
23 leased to this productive use, notwithstanding their continuing obligation for the rent attributable
24 to the leased property. Plaintiffs continue to seek to devote this land to the purpose of growing
25 GE crops, but are prevented from doing so by the Ordinance.

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7.

Defendant is a home rule county and a local government subject to the prohibition in ORS 633.738(2).

COUNTY ORDINANCE

8.

On May 20, 2014, the voters in Josephine County approved the Ordinance to ban the growing of GE plants in Josephine County. The Ordinance was enacted when the county clerk published the official results of the election in 2014. A true copy of the Ordinance is attached hereto and incorporated herein as Exhibit 1.

9.

The Ordinance was placed on the May 2014 ballot by initiative petition. The initiative was qualified for placement on the ballot on February 19, 2014. A copy of a letter from the County Clerk of that date so stating is attached as Exhibit 2.

10.

Section 5(A) of the Ordinance prohibits all persons, corporations, and entities, including the State of Oregon and the United States of American, from, with certain exceptions, “[p]ropagat[ing], cultivat[ing], rais[ing], or grow[ing] genetically modified organisms in Josephine County.” The remainder of the Ordinance inhibits and prohibits the production of GE seed and the products thereof in numerous ways.

11.

On April 29, 2015, Defendant assigned an Ordinance number, 2014-007, to the adopted measure. See Exhibit 2 attached.

12.

Defendant took no steps to enforce the Ordinance until July 31, 2015, when it issued a public notice directing all farmers, persons, corporations or entities propagating, raising or growing GE plants in Josephine County to cease that activity after September 4, 2015, or face

1 being in violation of the Ordinance. The notice also required “anyone growing GE plants/crops”
2 to report to the County Sheriff. *See* Exhibit 3 attached hereto.

3 13.

4 Plaintiffs propagated, cultivated, and grew GE crops and seeds, genetically modified
5 organisms, in Josephine County prior to the effective date of the Ordinance. Plaintiffs are
6 adversely affected by the enactment and enforcement of the Ordinance because the Ordinance
7 prohibits Plaintiffs from engaging in a livelihood which, but for the Ordinance, Plaintiffs have
8 the right to engage. Plaintiffs have changed their position, to their detriment, by leasing land for
9 this purpose, prior to the enactment of the Ordinance. The land plaintiffs leased with the
10 intention of growing GE crops had no crop for a time and is now planted with a much less
11 lucrative crop. Plaintiffs intend to grow GE plants but are dissuaded from doing so for fear of
12 violating the Ordinance. The Ordinance thereby limits pursuit of their livelihood.

13 14.

14 Effective October 8, 2013, the Legislative Assembly adopted ORS 633.738, subsection
15 (2) of which states in pertinent part:

16 [A] local government may not enact or enforce a local law or
17 measure, including but not limited to an ordinance, regulation,
18 control area or quarantine, to inhibit or prevent the production or
19 use of agricultural seed, flower seed, nursery seed or vegetable
20 seed or products of agricultural seed, flower seed, nursery seed or
21 vegetable seed. The prohibition imposed by this subsection
22 includes, but is not limited to, any local laws or measures for
regulating the display, distribution, growing, harvesting, labeling,
marketing, mixing, notification of use, planting, possession,
processing, registration, storage, transportation or use of
agricultural seed, flower seed, nursery seed or vegetable seed or
products of agricultural seed, flower seed, nursery seed or
vegetable seed.

23 Also effective October 8, 2013, the Legislative Assembly adopted ORS 633.733 as legislative
24 findings which state in part:

25 2) The Legislative Assembly finds and declares that:

26 (a) The production and use of agricultural seed, flower seed,

1 nursery seed and vegetable seed and products of agricultural seed,
2 flower seed, nursery seed and vegetable seed are of substantial
3 economic benefit to this state;

4 (b) The economic benefits resulting from agricultural seed,
5 flower seed, nursery seed and vegetable seed and seed product
6 industries in this state make the protection, preservation and
7 promotion of those industries a matter of statewide interest that
8 warrants reserving exclusive regulatory power over agricultural
9 seed, flower seed, nursery seed and vegetable seed and products of
10 agricultural seed, flower seed, nursery seed and vegetable seed to
11 the state; and

12 (c) The agricultural seed, flower seed, nursery seed and
13 vegetable seed and seed product industries in this state will be
14 adversely affected if those industries are subject to a patchwork of
15 local regulations.

16 15.

17 Section 4, Chapter 4, Oregon Laws 2013 exempts from the above prohibition any local
18 measure that was (1) proposed by initiative petition and qualified for placement on the ballot on
19 or before January 31, 2013, and (2) approved by the voters at an election held on May 20, 2014.

20 16.

21 The initiative petition which gave rise to the Ordinance was not qualified for placement
22 on the ballot on or before January 31, 2013.

23 **DECLARATORY RELIEF**

24 17.

25 Plaintiffs incorporate the allegations contained in paragraphs 1-16.

26 18.

Plaintiffs are persons whose “rights, status or other legal relations are affected by a[n]
*** Ordinance *** may have determined any question of construction or validity arising
under such *** Ordinance” pursuant to ORS 28.010 to 28.160.

19.

Plaintiffs are entitled to a declaration that the Ordinance is invalid and unenforceable
because the Ordinance, as a local measure the enactment and enforcement of which ORS

1 633.738(2) prohibits, is preempted by ORS 633.738(2).

2 **COUNT TWO: MANDATORY INJUNCTION**

3 20.

4 Plaintiffs re-allege paragraphs 1-19.

5 21.

6 By passing the Ordinance, the County has made the Prohibitions applicable to Plaintiffs.
7 According to the Public Notice attached as Exhibit 3, the County has taken steps to enforce the
8 Ordinance and threatens to enforce the penalties under the Ordinance against Plaintiffs should
9 Plaintiffs act on their intentions to grow GE crops. Plaintiffs face a real and immediate threat
10 and irreparable injury by virtue of the chilling effect of the Ordinance. Because of the
11 Ordinance, Plaintiffs are barred from growing GE crops and must find some other useful purpose
12 for the land they leased specifically for the purpose.

13 22.

14 Plaintiffs have no adequate remedy at law. Plaintiffs are entitled to permanent injunctive
15 relief barring the County from taking any action to implement or enforce the Ordinance.

16 WHEREFORE, Plaintiff prays for judgment as follows:

- 17 1. Declaring Josephine County Ordinance 2014-007 (“Ordinance”) to be invalid and
18 unenforceable because it is preempted by ORS 633.738(2).
- 19 2. Granting a permanent injunction and enjoining the County from taking any action
20 to enforce the Ordinance.
- 21 3. Awarding Plaintiff its costs and disbursements.
- 22 4. Granting any other relief that is just and proper.

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1 DATED this 3rd day of September, 2015.

2 DAVIS WRIGHT TREMAINE LLP

3
4 By s/ John DiLorenzo, Jr.

5 John DiLorenzo, Jr., OSB #802040

6 Telephone: 503-241-2300

7 Facsimile: 503-778-5299

8 Email: johndilorenzo@dwt.com

9 DAVIS WRIGHT TREMAINE LLP

10 1300 SW Fifth Avenue, Suite 2400

11 Portland, Oregon 97201

12 Trial Attorney: John DiLorenzo, Jr., OSB #802040

13 Attorneys for Plaintiffs

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**JOSEPHINE
COUNTY CLERK**

Section 1. Title

This Ordinance shall be known as the Josephine County Genetically Engineered Plant Ordinance

Section 2. Purpose and Findings

- (A) The purpose of this Ordinance is to:
- a. Maintain and protect seed sovereignty and local control, free from outside corporate interests and unnecessary and overreaching preemption by the state and federal governments, of this County's agriculture, environment, public health, economy and private property rights as they pertain to genetic contamination from genetically engineered plants;
 - b. Prohibit any person, corporation or entity from propagating, raising, or growing genetically engineered plants in Josephine County; and
 - c. Enable Josephine County to enforce the genetically engineered plant ban and recover the costs of such enforcement.
- (B) This Ordinance supports the health, welfare and economic viability of the citizens of Josephine County, who desire to:
- a. Maintain and protect their inherent sovereign right to grow crops from natural seeds, in order to sustain their families and communities as they have already successfully done for generations;
 - b. Protect the County's agriculture, environment, public health, economy and private property from the physical, environmental and monetary damages linked to genetically modified organisms; and
 - c. Support the right to farm and garden in this County, as the citizens of Josephine County assert that the propagation, cultivation, growing and dispersal of genetically modified organisms are not reasonable or prudent farming practices and instead threaten the health, welfare and economic viability of that inherent right to farm and garden.

Section 3. Definitions.

- (A) "DNA" means "deoxyribonucleic acid," which is the genetic material that is present in every cell of an organism and is the "blueprint" for the organism's development.
- (B) "Genetic contamination" means the dispersal or spread of altered genetic information from genetically engineered organisms into the genomes of organisms in which such genes are not present in nature, such as by cross-pollination.

COPY

- (C) "Genetically engineered" or "genetically modified" means modification of living plants and other organisms by genetic engineering, and "genetically modified organisms" or "GMOs" means any living organism that possesses a novel combination of genetic material produced through the use of modern biotechnology techniques. Examples of genetic engineering and modification include, but are not limited to: altering or amending DNA using recombinant DNA technology such as gene deletion, gene doubling, introducing a foreign gene, or changing the position of genes, and includes cell fusion (including protoplast fusion), microencapsulation, macroencapsulation, gene splicing,) or hybridization techniques that overcome natural physiological, reproductive or recombination barriers, where the donor cells/protoplasts do not fall within the same taxonomic species and in a way that does not occur by natural multiplication or natural recombination. "In vitro nucleic acid techniques" include but are not limited to recombinant DNA or RNA techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organism such as microinjection, macro-injection, chemoporation, electroporation, microencapsulation and liposome fusion, and any other technology or technique that results in an organism that contains genes from more than one species, or genes that are not naturally occurring. For purposes of this Ordinance, genetically engineered or modified organisms do not include organisms created by traditional selective breeding, fermenting, conjugation, normal in vitro fertilization or hybridization, or to microorganisms created by moving genes or gene segments between unrelated bacteria.
- (D) "Natural seeds" or "natural organisms" means seeds or organisms that do not possess a novel combination of genetic material obtained through the use of modern biotechnology and have not been genetically modified or engineered. Natural seeds or organisms include those seeds or organisms created by traditional selective breeding or hybridization methods.
- (E) "Organism" means any living thing.

Section 4. Reservation of Authority to Regulate Genetically Modified Organisms.

Josephine County hereby reserves the authority to regulate genetically modified organisms. This authority is construed to allow regulations and amendments, or delayed provisions, implementation, or enforcement of this law without limitation in time. Future laws that may preempt local regulations of genetically modified organisms, or any future regulation or amendments occurring under the authority provided by this Ordinance, shall not be construed to retroactively apply to affect the authority in this ordinance.

Section 5. Prohibition.

It shall be unlawful for any person, corporation or other entity to:

- (A) Propagate, cultivate, raise, or grow genetically modified organisms in Josephine County, or to knowingly or negligently allow such activities to occur on one's land, except as provided in Section 6 below.

COPY

- (B) Intentionally or negligently cause or allow any genetically modified organisms or materials from within or outside of the jurisdiction of Josephine County to substantially enter, drift or be dispersed into and within Josephine County, in such a way as to risk genetic contamination of natural organisms within the jurisdiction of Josephine County. Josephine County may enforce such violations to the extent possible pursuant to applicable laws.

Section 6. Exceptions to Prohibition.

- (A) State or federally licensed medical research institutions, medical laboratories, or medical manufacturing facilities engaged in licensed medical production, or medical research involving genetically modified organisms are exempt from this Ordinance provided that such activities are conducted under secure, enclosed indoor laboratory conditions with the utmost precautions to prevent release of any part of genetically engineered organisms, especially but not limited to pollen, to the outside environment.
- (B) Educational or scientific institutes, including but not limited to Oregon State University Extension, working with genetically engineered organisms are exempt from this Ordinance provided that such activities are conducted under secure, enclosed indoor laboratory conditions with the utmost precautions to prevent release of any part of genetically engineered organisms, especially but not limited to pollen, to the outside environment.
- (C) Any institution listed in (A) or (B) above that intentionally or negligently allows release of any part of genetically engineered organisms into the outside environment is in violation of this Ordinance and subject to enforcement as set forth herein.

Section 7. Code Enforcement Officer, Disclosure, Phase-In and Transition.

- (A) Code Enforcement Officer. The Josephine County Board of Commissioners may designate one or more persons to administer and enforce the provisions of this Ordinance, herein referred to as the Code Enforcement Officer.
- (B) Upon enactment, the Code Enforcement Officer shall make reasonable efforts to provide initial notification of this ordinance to farming operations within Josephine County.
- (C) Every person, corporation or entity cultivating, raising and growing genetically modified organisms, including those institutions set forth in Section 6 above, must disclose to the Code Enforcement Officer within thirty (30) days of enactment of this Ordinance the location and description of existing or planned genetically engineered crop(s) or materials involved, in order to develop a transition plan to phase out such organisms.
- (D) The Code Enforcement Officer shall make reasonable efforts to notify farming operations of technical assistance and resources that may be available to assist with the transition from genetically engineered to natural organisms.

COPY

- (E) Farming operations with genetically engineered crops shall have up to twelve (12) months from the date of enactment to phase out planting and harvesting of genetically modified organisms.
- (F) Actions required of the Code Enforcement Officer in this section are intended to assist farming operations with compliance and assistance. Failure to receive notification does not waive or otherwise affect requirements for compliance with the provisions of this Ordinance.

Section 8. Enforcement and Remedies.

- (A) Notification. The Code Enforcement Officer shall notify any person, corporation or entity that may be in violation of this Ordinance that any organisms in violation of this Ordinance are subject to confiscation and destruction, in accordance with due process.
- (B) Response. Any person, corporation or entity that receives notification under subsection (B) shall have fifteen (15) days to respond to such notification with evidence that such organisms are not in violation of this Ordinance. Time for response may be shortened upon a showing of current, ongoing and/or imminent harm or risk of genetic contamination.
- (C) If the notified party does not provide such evidence, or if there is probable cause to believe genetically engineered plants are present, the Code Enforcement Officer may take necessary actions required by law (such as obtaining a search warrant) to obtain access to the property and obtain samples of materials, in accordance with due process.
- (D) Determination. Upon receipt of any evidence under subsection (D), the Code Enforcement Officer shall consider such evidence and any other evidence that is presented or which is relevant to a determination of such violation. The Code Enforcement Officer shall act in good faith to make such determination as soon as possible, and before any genetic contamination may occur. If genetic contamination has already occurred or cannot be prevented before the determination is completed, Code Enforcement Officer shall make efforts to abate and prevent further contamination.
- (E) Remedies. In addition to any remedies and penalties provided that may be available by law, the following remedies and penalties may be imposed:
 - a. Any organisms that are the subject of violation of this Ordinance may be confiscated, quarantined, and destroyed before any genetic contamination may occur. If genetic contamination has already occurred, the contaminated organisms may be confiscated, quarantined, and destroyed, in accordance with due process.
 - b. Administrative and abatement costs associated with the confiscation and destruction of organisms may be imposed on responsible parties (namely the person(s), corporation(s) or other entities responsible for the violation). If

contamination has already occurred, costs for remediation of contamination may be imposed on responsible parties.

- c. In imposing administrative and abatement costs on the responsible parties, the Code Enforcement Officer shall take into account the amount of actual and reasonably foreseeable damage, and the degree of willfulness, reckless disregard or negligence of the person, corporation or entity involved.

(F) Any individual citizen of Josephine County shall have standing to assert any rights secured by this ordinance that have been violated or are threatened with violation, and may seek injunctive and/or compensatory relief from a court of competent jurisdiction.

Section 9, Severability.

To the extent any provision of this Ordinance is deemed invalid by a court of competent jurisdiction, such provision will be removed from the Ordinance, and the balance of the Ordinance shall remain valid.

=====**End of Ordinance**=====

COPY



**OFFICE OF
JOSEPHINE COUNTY
Clerk & Recorder**

Art Harvey
County Clerk & Recorder

Courthouse, 500 NW 6th St., Dept. 1
P.O. Box 69
Grants Pass, Oregon 97528

Elections: (541) 474-5243
Recording: (541) 474-5240
Fax: (541) 474-5246
E-mail: clerk@co.josephine.or.us

February 19, 2014

Stephanie Dolan
2551 Granite Hill Rd
Grants Pass, OR 97526

Mary Middleton
1342 SE Priscilla Ln
Grants Pass, OR 97526

Daniel Bowden
945 Azalea Dr
Grants Pass, OR 97526

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Re: Initiative Petition P-2013-07 / Genetically Engineered Plant Ordinance (GMO)

Dear Chief Petitioners,

Signature verification for the above named petition has been completed.

I have determined that no less than 1,997 signatures on this petition are those of active registered voters in Josephine County, Oregon. You have therefore met the requirements to place this measure on the **May 20, 2014 Primary Election ballot**.

The measure number will be 17-58.

If you have any questions please feel free to contact me at your convenience.

Sincerely,

Art Harvey, c.c.c.
County Clerk & Recorder
Josephine County

**BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY
STATE OF OREGON**

In the Matter of Assigning an Ordinance)
Number to the Josephine County) ORDER NO. 2015-013
Genetically Engineered Plant Ordinance)

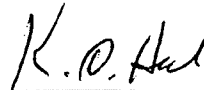
WHEREAS, the voters of Josephine County, Oregon, approved at the election of May 20, 2014, the Josephine County Genetically Engineered Plant Ordinance; and

WHEREAS, a Josephine County Ordinance number needs to be assigned to the Josephine County Genetically Engineered Plant Ordinance; now, therefore

IT IS HEREBY ORDERED that the Josephine County Genetically Engineered Plant Ordinance as approved by the voters of Josephine County on May 20, 2014, attached as Exhibit A, shall be assigned Ordinance No. 2014-007.

DONE and DATED this 29 day of April, 2015.

JOSEPHINE COUNTY
BOARD OF COMMISSIONERS



K. O. Heck, Chair



Cherryl Walker, Vice-Chair

Absent at Signing

Simon G. Hare, Commissioner

Order No. 2015-013

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JOSEPHINE
COUNTY CLERK

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- (F) Any individual citizen of Josephine County shall have standing to assert any rights secured by this ordinance that have been violated or are threatened with violation, and may seek injunctive and/or compensatory relief from a court of competent jurisdiction.

Section 9, Severability.

To the extent any provision of this Ordinance is deemed invalid by a court of competent jurisdiction, such provision will be removed from the Ordinance, and the balance of the Ordinance shall remain valid.

=====**End of Ordinance**=====

COPY

**JOSEPHINE COUNTY
BOARD OF COMMISSIONERS
PUBLIC NOTICE
REGARDING
JOSEPHINE COUNTY GENETICALLY ENGINEERED PLANT ORDINANCE
No. 2014-007**

**TO: ALL FARMERS, PERSONS, CORPORATIONS OR ENTITIES
PROPAGATING, RAISING, OR GROWING GENETICALLY ENGINEERED
PLANTS IN JOSEPHINE COUNTY**

You are hereby notified that the voters of Josephine County, Oregon, pursuant to a citizen initiative measure, approved at the election of May 20, 2014, the Josephine County Genetically Engineered Plant Ordinance, which was assigned Ordinance Number 2014-007, by the Board of Commissioners.

Ordinance No. 2014-007 prohibits the propagation, raising or growing of genetically engineered plants (also known as "GMO" crops) in Josephine County after the phase-out period consisting of the 12-months following enactment, which will end on September 4, 2015.

**ANY GROWING OF GENETICALLY ENGINEERED PLANTS/CROPS IN
JOSEPHINE COUNTY AFTER SEPTEMBER 4, 2015, WILL BE IN VIOLATION OF
ORDINANCE 2014-007.**

Anyone currently growing genetically engineered plants/crops is required to contact Josephine County Sheriff Dave Daniel at (541) 474-5123 to notify the county and provide the following information: name, contact information, description of genetically engineered crop type, crop location, proposed phase-out plan to be completed before the September 4, 2015, deadline, and whether any technical assistance for the transition is requested.

A copy of the ordinance may be obtained by contacting the County Board of Commissioners at (541) 474-5221.

Failure to receive notice does not waive compliance with the law.

**JOSEPHINE COUNTY
BOARD OF COMMISSIONERS**
K.O. Heck, Chair
Cherryl Walker, Vice Chair
Simon G. Hare, Commissioner