



2.

1  
2 Undersigned counsel certify that Proposed Defendants conferred in good faith with Plaintiffs'  
3 and Defendant's counsel about the subject matter of this Motion. Plaintiffs have indicated they will  
4 wait until after the Motion is filed to decide whether they will oppose it. Current Defendant Josephine  
5 County indicated that it would not oppose the Motion.

6  
7 3.

8 Proposed Defendants' Motion is supported by the following memorandum of points and  
9 authorities, and the attached Declarations of Don Tipping and Mary Middleton. Proposed Defendants  
10 are also attaching a proposed Answer pursuant to ORCP 33D, to ensure there is no delay or prejudice  
11 to existing parties, along with a proposed order. Proposed Defendants respectfully request that any  
12 current party stipulations or Court conferences be deferred until after this Motion is decided.

13  
14 4.

15 Proposed Defendants seek permissive intervention pursuant to ORCP 33C and ORS 28.110 in  
16 this matter challenging the Josephine County Genetically Engineered Plant Ordinance ("the  
17 Ordinance"), which the citizens of Josephine County approved by a majority vote (Measure 17-58)  
18 during the primary election on May 20, 2014, and which has since been codified by Josephine County  
19 as Ordinance 2014-007.

20  
21 5.

22 As more fully set forth in the attached declaration of Don Tipping filed in support of this  
23 Motion, Proposed Defendant Siskiyou Seeds is one of the largest organic seed sellers in the Rogue  
24 Valley, and sells more than 300 species of organic vegetable, herb, and flower seeds at local farmers  
25 markets, direct sales to customers, through the Siskiyou Sustainable Cooperative and online sales,  
26 serving a local, national and international customer base. Siskiyou Seeds has suffered significant

1 direct negative impacts and economic losses due to genetic contamination of its seed supplies and  
2 those suppliers from whom it purchases seeds for its sales, and strongly supported the passage of  
3 Measure 17-58 to protect its business and the local food economy and security.

4 6.

5 As more fully set forth in the attached declaration of Mary Middleton filed in support of this  
6 Motion, Proposed Defendant OSFF is a nonprofit membership organization located in Grants Pass  
7 working to support the restriction of GMO crops in Josephine County in order to protect and promote  
8 safe farms and families. OSFF was formerly the main political action committee that organized the  
9 campaign and was instrumental at passing Measure 17-58, and continues to advocate on behalf of  
10 Josephine County farms and citizens to ensure enforcement of the Ordinance.  
11

12 7.

13 Both Proposed Defendants were key advocates throughout the ballot initiative campaign that  
14 resulted in the successful passage of the Ordinance at issue in this matter. Proposed Defendants  
15 continue to have strong interests that will be implicated by any decision rendered by the court in this  
16 case. Proposed Defendants invested a significant amount of time, expertise, reputation, and financial  
17 resources in the successful campaign that led to the approval of the Ordinance. The Ordinance  
18 provides direct protection to Siskiyou Seeds' right to farm without the risk of transgenic  
19 contamination of its organic seeds and heritage crops. Many of OSFF's members are also Josephine  
20 County farmers and gardeners who are growing traditional crops that will be protected from  
21 transgenic contamination by the implementation and enforcement of the Ordinance.  
22

23 ///

24 ///

26 8.

1 Proposed Defendants’ efforts to defend the Ordinance would complement those of the County  
2 by offering their unique and integral factual and legal expertise regarding this Ordinance. Plaintiffs  
3 would not be unduly prejudiced by Proposed Defendants’ participation because Proposed Defendants  
4 are represented jointly by counsel and would offer only joint submissions on behalf of both Proposed  
5 Defendants, and Proposed Defendants would seek to coordinate their filings with Defendant Josephine  
6 County. Further, rather than delaying these proceedings, the Proposed Defendants, unlike the County,  
7 will be directly and adversely impacted if enforcement of the Ordinance is delayed, and are thus  
8 motivated to resolve the matter as expeditiously as possible, and have the time and resources to do so.  
9 Ultimately, granting Proposed Defendants’ Motion is critical to preserving the voters’ confidence that  
10 the legality of the Measure they so strongly supported will be vigorously defended before this Court.  
11

## 12 POINTS AND AUTHORITIES

13 Proposed Defendants have significantly protectable interests relating to the claims presented in  
14 this action and must legally be joined as parties in the Plaintiffs’ declaratory judgment claim in order  
15 for the claim to properly be in front of the Court, as described in ORS 28.110. Plaintiffs seek a  
16 declaratory judgment pursuant to Oregon’s Declaratory Judgments Act, ORS 28.010 to 28.160 (see  
17 *Complaint* at ¶ 3).

18  
19 When declaratory relief is sought, all persons shall be made parties who have or claim any  
20 interest which would be affected by the declaration, and no declaration shall prejudice the  
21 rights of persons not parties to the proceeding.  
22 ORS 28.110. The Oregon Supreme Court “has construed ORS 28.110 to require joinder of all affected  
23 interests in order to yield jurisdiction to enter a declaratory judgment. *Wright v. Hazen Investments,*  
24 *Inc.*, 648 P.2d 360, 362 (Or. 1982) (citing *Stanley, Adm. V. Mueller*, 315 P.2d 125 (1957). Moreover,  
25 “[t]he requirement that all interested parties be joined in a declaratory judgment action serves a  
26 broader purpose than the protection of an absent party's interests. It also protects the certainty of the  
27

1 judgment itself.” *Vance v. Ford*, 67 P.3d 412, 419 (Or. Ct. App. 2003). “[T]he courts have no  
2 authority to make a declaration unless all persons 'who have or claim any interest which would be  
3 affected by the declaration' are parties to the proceeding. Otherwise, there is no 'justiciable  
4 controversy' within the meaning of the statute.” *Stanley*, 315 P.2d at 127.

5 Here, Plaintiffs seek declaratory relief pursuant to ORS 28.020, “that the Ordinance is invalid  
6 and unenforceable because the ordinance, as a local measure the enactment and enforcement of which  
7 ORS 633.738(2) prohibits, is preempted by ORS 633.738(2).” (*Complaint* at ¶ 19). Proposed  
8 Defendants have interests that would be significantly and directly affected by such declaratory relief.  
9 Therefore, the Proposed Defendants seek to intervene as parties in this action.  
10

11 Participation by Proposed Defendants, as parties to this litigation, is timely as the Complaint  
12 was filed just a few weeks ago, and will aid this court, and not result in undue delay or prejudice to the  
13 adjudication of the rights of the original named parties. Siskiyou Seeds has a direct interest in the  
14 matter that is so “direct and immediate” that it will “either gain or lose by the direct legal operation”  
15 and effect of the judgment. *Brune v. McDonald*, 158 Or 364, 370, 75 P2d 10 (1938); *Lambert v.*  
16 *Multnomah County Civil Service Com.*, 227 Or 432, 434, 363 P2d 54 (1961). OSFF has organizational  
17 standing to intervene to assert the interests of its members. *Rendler v. Lincoln County*, 302 Or 177,  
18 181, 728 P2d 21 (1986).  
19

20 Moreover, given Defendant Josephine County’s stipulation to not enforce the Ordinance  
21 pending the outcome of this litigation, Proposed Defendants’ rights and interests in enforcement of the  
22 Ordinance would be prejudiced if they were not granted permission to intervene.  
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**CONCLUSION**

Therefore, allowing Proposed Defendants to intervene in this case would not cause undue delay or prejudice to any of the existing parties. Proposed Defendants are seeking intervention very early in the proceeding, and they are motivated to have Plaintiffs’ claims resolved by the Court as soon as possible.

For the reasons above, Proposed Defendants respectfully request that this Court grant their Motion to Intervene and order that Siskiyou Seeds, LLC and Oregonians for Safe Farms and Families be added as defendants for all of Plaintiffs’ claims for relief.

Dated: September 24, 2015

Respectfully submitted,

/s/ Melissa D. Wischerath  
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1 4. My farm raises over 400 varieties of seeds, vegetables, and fruits that are all certified organic  
2 consistent with United States Department of Agriculture (“USDA”) regulations, and I sell my farm  
3 products and seeds through a number of different avenues, including local farmers markets in  
4 Josephine and Jackson Counties, direct sales to customers from Josephine and Jackson Counties,  
5 through on-line sales, and through the Siskiyou Sustainable Cooperative.

6 5. While I have raised and collected seeds for my farm for 20 years, I have owned and operated  
7 seed company Siskiyou Seeds for the last seven years. Siskiyou Seeds sells more than 300 species of  
8 organic vegetable, herb, and flower seeds to local, national and international customers. We sell seeds  
9 direct to both farmers and gardeners, have an on-line catalogue and store, and sell through retail  
10 outlets in southern Oregon. We are one of the largest, if not the largest, organic seed sellers in the  
11 Rogue Valley.  
12

13 6. Over the last 20 years of selling produce and seeds, I have spoken with many thousands of  
14 local customers in Josephine and Jackson Counties about their interests in organic produce, seeds, and  
15 food.  
16

17 7. I therefore believe that I understand very well what local consumers are looking for when it  
18 comes to buying organic food and foods that may not be certified organic, but which are raised using  
19 organic practices and not genetically engineered.

20 8. I grow the seeds that I sell through Siskiyou Seeds and oversee all aspects of seed cultivation  
21 from seed source selection and varietal breeding to planting, fertilization, pest control, pollination,  
22 harvest, collection, and storage.  
23

24 9. I have personally bred at least eight distinct crop varieties and am actively engaged in varietal  
25 breeding to enhance desired crops characteristics and genetics. The seed bank I own and manage has  
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27



1 more than 500 varieties of seed, which likely makes it the largest organic seed bank in southern  
2 Oregon and likely one of the largest banks of organic or non-organic seeds in southern Oregon.

3 10. Because of the strong demand for organic seeds, in addition to selling the seeds I grow, I also  
4 purchase seeds from other seed growers in Josephine and Jackson County and work with other  
5 Josephine and Jackson County seed growers regularly on issues related to seed cultivation, planting,  
6 and sales.

7 11. I have had significant contacts with Josephine and Jackson County seed growers and  
8 commercial farmers for almost 20 years and am very familiar with farms operations in Josephine  
9 County.  
10

11 12. I am personally very familiar with the central risks and issues related to seed cultivation,  
12 including pollination and cross-pollination, ensuring genetic integrity, seed quality assurance, seed  
13 cultivation, seed collection, and seed storage, and I extensively teach, mentor and support other seed  
14 growers and farmers on these topics.

15 13. I am one of the founders of the Southern Oregon Seed Growers Association (“SOSGA”),  
16 which is an association of approximately 20 seed growers in the Rogue Valley. SOSGA was formed  
17 in large part to respond to the threat of contamination posed by the cultivation of genetically  
18 engineered crops in Josephine and Jackson Counties.  
19

20 14. I have personally observed that the commercial cultivation of organic seeds for sale is also a  
21 growing part of the Rogue Valley’s agricultural economy. I have experienced a fast growing demand  
22 for organic seed regionally and nationally and Josephine County has a unique agricultural opportunity  
23 to take advantage of this market. New farmers are expanding into seed production in Josephine and  
24 Jackson Counties each year.  
25

1 15. In fact, Siskiyou Seed's gross sales, for example, have roughly doubled each year for the last  
2 five years and I expect this trend to continue.

3 16. However, I believe that the potential for contamination from genetically engineered crops puts  
4 the future growth of Josephine and Jackson Counties' seed production at risk.

5 17. As a grower of commercial seed, seed seller, seed buyer and vegetable farmer, I am personally  
6 well aware and have direct personal experience with of the risks of contamination from genetically  
7 engineered crops, which represents one of the most significant threats to organic agriculture and  
8 particularly organic seed cultivation (as well as traditional crops that are not genetically engineered)  
9 today.  
10

11 18. I am aware and have personally witnessed (through genetic testing results) that if pollen from a  
12 genetically engineered crop pollinates a seed crop of the same or similar species, the resulting seed  
13 will contain genes from the genetically engineered crop and the traits of the genetically engineered  
14 plant, such as insecticide production in Bt corn or herbicide resistance in Round Up Ready alfalfa.  
15

16 19. Given the U.S. patent laws as I understand them, as a seed buyer, if I purchased a seed crop for  
17 re-sale and later learn it is contaminated with genetically engineered seed I would have no legal choice  
18 but to destroy it.

19 20. But even aside from patent laws, as a respectable buyer, I would never purchase a seed crop  
20 that I knew was contaminated with genetically engineered seed since it would leave me growing out a  
21 genetically engineered crop I would have no legal right to grow, for any traditional crop (not just  
22 certified organic). I believe the significant legal and economic risks of growing patented genetically  
23 engineered crops without a legal contract to grow such crops are well known to most farmers,  
24 including myself.  
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1 21. Additionally, based on my research and personal experience as an organic grower familiar  
2 with USDA regulations, USDA's organic regulations prevent certified organic farmers from planting  
3 seeds they know are genetically engineered.

#### 4 **Siskiyou Seeds' Interests in Intervention**

5 22. Based on personal conversations with consumers in Josephine County and the Rogue Valley  
6 more broadly, and with other farmers who like me interact with customers here every day, I believe  
7 that a large majority of consumers purchasing organic crops or organically produced foods will not  
8 purchase crops that are genetically engineered or contaminated with genetically engineered  
9 ingredients.  
10

11 23. I have been told by countless consumers and therefore believe that if it became known that a  
12 local organic farm was producing crops that had been contaminated by a genetically engineered crop,  
13 there would be no question that a large percentage of buyers, including both organic retailers and  
14 customers that buy direct, would stop purchasing products from that farm.  
15

16 24. Based on my experience, the knowledge that organic foods are produced without genetically  
17 engineered crops is an important driver of why many organic consumers are willing to pay a premium  
18 for certified organic food. The same is true for buyers of agricultural products that may not be  
19 certified organic, but marketed as "no spray," "biodynamic," or "GMO free."  
20

21 25. Siskiyou Seeds has suffered direct losses from genetic contamination. In 2010, I grew a crop  
22 of green dent corn seed that I grew out for the purpose of producing and selling seed. Prior to selling  
23 it, the company I grew it for under contract had genetic tests performed on the resulting seed crop and  
24 those tests were positive for the presence of genetically engineered corn. As a result, I had to destroy  
25 the crop I had spent six months planting, watering, fertilizing, and harvesting, sustaining considerable  
26 economic losses for that lost crop.  
27

1 26. It was fortunate, however, that I learned the seeds I was going to resell had been contaminated,  
2 as I believe that distributing these seeds to my customers would have no doubt caused serious damage  
3 to the reputation of our farm that depends on our ability to produce high quality seed that is not  
4 genetically engineered. It is my understanding that the seeds I used to plant the crop were  
5 contaminated with genetically engineered corn when I received them.

6 27. Additionally, in 2012 I had an agreement to grow organic Swiss chard and table beet seeds at  
7 Fry Family Farm in Jackson County. Organic chard and beet seeds are excellent crops to grow in  
8 Josephine County because of our climate and because buyers will pay a good price for them. But after  
9 learning that Syngenta had planted genetically engineered sugar beets within less than 1 mile of our  
10 chard and beet seed crop, we decided the risks of contamination were too great and that we could not  
11 afford to grow out the seed crop. Beet and chard sees are typically a two-year crop.  
12

13 28. The time, energy, and money I would have had to spend raising, maintaining, harvesting and  
14 then genetically testing these seeds crops would have been completely unreasonable in light of the fact  
15 that our crop was well within the known pollination distances for sugar beets.  
16

17 29. This is an example of how the growth of genetically engineered crops anywhere in Josephine  
18 County can damage traditional crops regardless of whether genetic contamination of the traditional  
19 crops actually occurs. This is especially true for farmers raising seed since it takes significantly more  
20 time, energy, and work to let a seed crop grow to maturity and harvest than it does a typical vegetable  
21 crop, for example.

22 30. Small farmers like myself growing traditional crops simply cannot in many circumstances take  
23 the risk of growing out a seed crop only to find out later that it is contaminated.  
24

25 31. Based on my farming experience, I am aware that Josephine County is a nationally unique area  
26 for the cultivation of seeds for vegetables and herbs. The climate, soils, and growing conditions make  
27

1 it an ideal environment for growing a broad diversity of agricultural seeds. Good sun, a warm climate,  
2 good soils, and a generally dry fall season mean that Josephine County has the potential to become a  
3 premier commercial seed growing region both nationally and internationally.

4 32. I am aware that seed production in Josephine County has two important components. First,  
5 many if not most small farmers in the county grow, collect and save seeds annually to use as the  
6 foundation for their next year's crop. This allows farmers to collect seeds from plants that have traits  
7 they want to select for, whether that is size, color, vigor, or drought resistance, and gives farmers the  
8 ability to shape a seed stock that is best suited for the location, microclimate, soils, and other  
9 characteristics specific to their farm. This selection can help significantly improve a farm's  
10 productivity, profitability, and resilience.  
11

12 33. For organic growers like myself, seed collection allows a farmer the additional benefit of  
13 having first hand knowledge that a given seed crop was grown under organic standards.

14 34. It is my understanding that the practice of seed collection has been a central part of agriculture  
15 for over 10,000 years and continues to be important both economically and culturally to a significant  
16 percent of farmers in Josephine County.  
17

18 35. I believe that collecting seeds is also a significant economic benefit for farmers not only  
19 because it leads to improved crop performance and suitability, but also because it saves farmers the  
20 cost of purchasing seeds each year. These costs can be significant especially for the small farm typical  
21 in the Rogue Valley.

22 36. Based on my experience, testing for genetically engineered contamination itself can be  
23 prohibitively expensive especially for crops such as corn, where many different genetically engineered  
24 varieties exist and would need to be independently tested for.  
25  
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1 37. Based on my experience raising seeds and my understanding of pollination mechanisms I have  
2 no doubt that if genetically engineered crops continue to be grown in Josephine County it is not a  
3 question of whether genetic contamination of traditional crops will occur but only a question of when.

4 38. I believe this based on the well-understood realities of cross-pollination and gene flow that are  
5 essential components of the farming I have done for two decades.

6 39. Based on my research and experience, I believe there is no biologically plausible way to keep  
7 the genetically engineered genie in the bottle. If genetically engineered crops are grown in Josephine  
8 County then they will contaminate and cause damage to traditional crops and it is only a question of  
9 how quickly this contamination will occur and how significant the damage will be.

10 40. I was informed that when first approved by USDA trial plantings a buffer of four miles was  
11 required to separate sugar beets from existing crops of other Betas such as chard and table beets.  
12 Genetically engineered sugar beets are primarily a wind-pollinated crop and pollen from these sugar  
13 beets can travel 4 miles or more. This means that each sugar beet crop creates a zone for potential  
14 cross-pollination and contamination that is approximate 50 square miles.  
15

16 41. This has caused significant concerns for farmers growing table beets and chard (*Beta*  
17 *vulgaris*) since both species are well known to crossbreed with genetically engineered sugar beets.  
18 After learning that Syngenta was growing such seeds in close proximity to farmers growing table  
19 beets and chard, members of the Southern Oregon Seed Growers Association  
20 (“SOSGA”), including myself, met with Syngenta on a number of occasions.  
21

22 42. The goal was to better identify where Syngenta was growing and whether there were any ways  
23 to minimize damage to existing chard and table beet crops that were being grown both for sale and for  
24 individuals farmers’ use as seed stock. Syngenta’s representative, however, ended up walking out of a  
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1 final meeting with me and other SOSGA members and breaking off all communications with SOSGA,  
2 leaving myself and other SOSGA growers with no real chance of even communicating with Syngenta.

3 43. Because of the potential for contamination from genetically engineered sugar beets in  
4 Josephine County, I stopped purchasing and selling any chard or table beet seeds produced in  
5 Josephine County. Again, given how well suited Josephine County is for growing table beet and chard  
6 seeds and the solid consumer demand for such seeds, this self-imposed restriction is unfortunate.

7 44. In addition to the fact that I had to destroy the beet and chard seed crops I had planned to  
8 harvest on Fry Family Farm, incurring time, energy and financial losses, I am aware that most farmers  
9 I know that are raising table beets and Swiss chard in Josephine and Jackson Counties no longer raise  
10 seeds for such crops because of concerns about contamination from sugar beets.

11 45. I know this in part because I sell Swiss chard and beets to some these farmers.

12 46. It is not just actual contamination that I am concerned about. If my seed or vegetable  
13 customers believe that there is a risk that the organic seeds or vegetables I sell them are contaminated  
14 this will decrease consumer demand and risk damaging the reputation of my businesses.  
15

16 47. This is true for local buyers but it's also true for regional and national customers. The inverse  
17 of this is also true since if customers believe that organic seeds or other crops from Josephine  
18 County are protected from genetically engineered contamination in light of the passage of the  
19 restriction on such crops this will likely increase market demand for these products. If the Ordinance  
20 is upheld I will likely be able to purchase Swiss chard and beet seeds raised in Josephine County.  
21

22 48. I am aware that in Josephine County, the threat of contamination is even greater than in most  
23 growing regions in light of the fact that most farms in the county are small and close together.  
24

1 49. Also, I am aware that the Rogue Valley is a narrow valley and we have strong year-round  
2 winds that drive pollen drift and the contamination risks from genetically engineered plants even  
3 further than in places that lack our winds.

4 50. I seek leave to intervene in this case on behalf of Siskiyou Seeds because my company has a  
5 direct financial interest in the matter of this litigation.

6 51. Siskiyou Seeds' participation will not unduly delay or prejudice the adjudication of the rights  
7 of the original parties.

8 52. I recently learned that Defendant Josephine County is not planning to enforce the Ordinance  
9 pending the outcome of this litigation, so Siskiyou Seeds' interests, and the interests of my neighbor  
10 farmers whose livelihoods are dependent on crops free from genetic contamination, are not currently  
11 being represented in the litigation.

12 53. Upholding the Ordinance and ensuring its successful implementation is crucial to Siskiyou  
13 Seeds' business and seed sovereignty interests.

14  
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16  
17 Dated: September 24, 2015

18  
19 *I hereby declare that the above statement is true to the best of my knowledge and belief, and that I*  
20 *understand it is made for use as evidence in court and is subject to penalty for perjury.*

21  
22 /s/ Don Tipping  
23 Don Tipping  
24 Owner, Siskiyou Seeds and Seven Seeds Farm  
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**IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
**COUNTY OF JOSEPHINE**

ROBERT A. WHITE, JR. and  
SHELLEY ANN WHITE,  
  
Plaintiffs,  
  
v.  
  
JOSEPHINE COUNTY,  
  
Defendant.

Case No.: 15-CV-23592

**DECLARATION OF MARY MIDDLETON  
IN SUPPORT OF OSFF’S MOTION TO  
INTERVENE**

I, Mary Middleton, hereby declare as follows:

1. I make this declaration in support of Proposed Defendant Oregonians for Safe Farms and Families’ (OSFF’s) Motion to Intervene pursuant to ORCP 33C and ORS 28.110.
2. I have personal knowledge of the facts set forth in this declaration.

**Background**

3. I am a founder and the current Chair of the OSFF Board of Directors.
4. My interest in the local food system is considerable; I have spent the last 20 years working with, advocating for and researching food, farming, gardening and cooking. I have worked as an amateur chef, as a restaurant manager, and as the director of catering in a resort. In each of these

1 positions it was imperative to inspect and source locally grown/raised quality ingredients and local  
2 products.

3 5. In 2011, I spent almost a full year traveling throughout Oregon and Northern California  
4 volunteering with World Wide Organization of Organic Farmers, where I witnessed and participated  
5 in the struggles small family farms and farmers encountered due to neighboring farming practices  
6 associated with growing genetically engineered crops, such as the threat of genetic contamination  
7 from pollen drift, and the contamination of their water supply and soil with associated pesticides.  
8

9 6. I am a teacher and professional community college educator. I believe knowledge is power.  
10 This motivates me to continue to do extensive research into food growing techniques and farming,  
11 including protecting the integrity of a food supply.

12 7. I am a founding member and organizer for the Food Integrity Project based in Josephine  
13 County, a program developed by GMO Free Josephine County. Additionally, I serve as co-chair on  
14 the board of GMO Free Josephine County, and coordinate educational programs and speaking events.  
15 This includes outreach to the community at large, recruiting experts in the field to present at public  
16 forums, and organizing public events to discuss and learn about genetically engineered crops and their  
17 effects on local food systems.  
18

19 8. I depend on our local food system for locally grown food, raised and produced in a sustainable  
20 manner. Knowing the farmer, rancher and source of the food that I purchase and consume is integral  
21 to my efforts at OSFF.

22 9. Being from the Midwest, I have witnessed in my lifetime the destruction of small family farms  
23 and the loss in diversity of crops giving way to large industrial agricultural practices requiring  
24 increasing amounts of chemicals contaminating the soil and water of my homeland. On a recent visit  
25 to the Midwest, this lack of bio-diversity was ever present; corn and soy were the only crops I saw.  
26  
27

1 10. I believe that we have lost up to 90% of our Heritage Seed supply.

2 11. I am concerned about the safety of transgenic food and farming practices associated with  
3 genetically engineered crops. I am informed and believe that the US Food and Drug Administration  
4 does not require premarket safety testing for genetically engineered products, nor does it undertake  
5 any independent testing of those products. Rather the review is a voluntary consultation process with  
6 industry seeking deregulation of a product.

7 12. Since I have lived in the Rogue Valley, I have spent a considerable amount of time speaking  
8 with local small family farmers whose livelihoods are jeopardized by the threat of pollen drift causing  
9 genetic contamination, along with the required use of pesticides and herbicides on genetically  
10 engineered crops.

11 13. Based on information from several OSFF farmer members, I am aware that multinational  
12 corporations refuse to cooperate in a meaningful way to avoid transgenic contamination of seeds here  
13 in the Rogue Valley, a known premier seed growing region for the US and abroad. For the small  
14 farmer, these seeds crops once contaminated cannot be sold, as they are no longer the property of the  
15 grower due to patent infringement laws.

16 14. Based on my research and talking with local experienced farmers, I am aware that pollen from  
17 genetically engineered crops can be carried on the wind, or by pollinating insects, and can cross  
18 pollinate traditional crops at distances of several miles. I know that transgenic contamination has  
19 occurred repeatedly in various crops and in various places across the US including the state of  
20 Oregon, despite the claims of the industry that it would not. I know that transgenic contamination  
21 cannot be undone once it has occurred.  
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1 15. It is common knowledge that genetically engineered seeds are patented and controlled by the  
2 bio-tech industry, making farmers sign contracts to buy that seed annually rather than retaining their  
3 age-old right to save seeds.

4 16. I understand that genetically engineered crops and farming techniques require and promote the  
5 use of toxic pesticides. Based on my extensive research, I believe these pesticides have been shown to  
6 harm humans, especially children, and the environment. Genetically engineered crops, both  
7 experimental and approved, are engineered in order to be resistant to pesticides which has increased  
8 pesticide usage overall in American agriculture. This can lead to harm to the environment and crops  
9 through pesticide drift and harm the water supply  
10

11 17. Finally, I have a strong interest in the proper administration of the citizen initiative process. I  
12 believe that counties have a traditional home rule right to local control of our agricultural decisions..

13 18. Prior to and during the campaign, citizens came together from all walks of life, across  
14 political affiliations, diverse in age, culture and beliefs as concerns grew for the need to protect our  
15 food, farms and families in Josephine County. Sovereignty is worth fighting for and protecting; the  
16 members of OSFF and the citizens of Josephine County agree.  
17

### 18 **Campaign to Pass Measure 17-58**

19  
20 19. I was a Chief Petitioner of the Genetically Engineered Plant Ordinance (the “Ordinance”)  
21 enacted by Josephine County voters through the initiative process on May 20, 2014 (“Measure 17-  
22 58”) and chaired the drive to collect signatures and circulate throughout Josephine County in order to  
23 qualify for the ballot.  
24

25 20. I worked as the Campaign Manager for the effort to pass Measure 17-58, served as a Co-Chair  
26 and Board Member of GMO Free Josephine County, and a co-founder of the former political action  
27

1 committee OSFF, which is now an Oregon nonprofit organization, currently seeking 501(c)(4) status  
2 from the Internal Revenue Service.

3 21. In my capacity as Campaign Manager for Measure 17-58, I coordinated aspects of the  
4 campaign including helping to mobilize the community, organizing community education and  
5 outreach efforts, developed campaign strategies, coordinated numerous speaking engagements, served  
6 as the spokesperson for the campaign, helped to register voters and get out the vote, conducted several  
7 interviews, drafted press releases, met with the local press and otherwise coordinated news outreach  
8 and social media, and worked with farmers, gardeners, educators, health practitioners, restaurant  
9 owners and local business owners throughout the county to ensure our citizens were educated about  
10 the issues at stake with Measure 17-58.  
11

12 22. OSFF's mission and focus has always been and continues to be to support the restriction of  
13 genetically engineered crops in Josephine County, Oregon in order to protect and promote safe farms  
14 and families, and to secure a GMO-Free Rogue Valley along with Jackson County for future seed  
15 security and refugia.  
16

17 23. OSFF volunteers and members spent countless hours working to educate the public about the  
18 risks of genetically engineered crops to family farmers through tireless campaign efforts.

19 24. OSFF and I supported passage of the Measure through public outreach, organization, and  
20 education, fundraising, and messaging related to promoting the Measure.

21 25. I personally spent significantly more than 200 hours campaigning to pass Measure 17-58.

22 26. The Measure passed with a landslide of bi-partisan support, with 58.25 percent of voters  
23 approving the Measure, despite opposition spending of nearly \$1 million in a PAC registered against  
24 both Josephine and Jackson Counties' Measures.  
25  
26  
27

1 27. OSFF worked to build coalitions throughout Josephine County and beyond in support of the  
2 Measure. Supporters come from throughout the county with more than 1200 members that include at  
3 least 50 farms, 120 businesses, and 15 health professionals.

4 28. OSFF raised and spent just over \$20,000 in support of the Measure, and continues to work to  
5 protect and promote safe farms and families from the impacts of genetically engineered crops in  
6 Josephine County. We are an all-volunteer, truly grass-roots organization powered and managed by  
7 volunteers who care deeply about the issues of protecting our food, farms, families and community.  
8

9 **OSFF's Interests as Intervenor**

10 29. OSFF has publically contended and based its political credibility on the assertion that the  
11 Measure, and now the Ordinance, is lawful given the problems with the state law at issue, which we  
12 will challenge in this litigation.

13 30. Our PAC filed and obtained a ballot title on September 30, 2013 for our county initiative, now  
14 the Genetically Engineered Plant Ordinance.

15 31. OSFF fully intends to continue its mission and goals of promoting safe farms and families by  
16 using the political process, and particularly the ability to bring initiatives as allowed by the Oregon  
17 Constitution to protect farmers who would be directly harmed by the growing of genetically  
18 engineered crops.  
19

20 32. If a court were to find that the Ordinance violated Oregon State Law, OSFF's credibility and  
21 the public's trust in OSFF would definitely be harmed along with its ability to promote safe farms and  
22 families from the impacts of genetically engineered crops in Josephine County.  
23

24 33. Additionally, if the Ordinance was overturned, OSFF's ability to raise the funding critical to  
25 support its campaign work and continued operations would be harmed.  
26  
27  
28

1 34. Specifically, OSFF has an interest in the Ordinance being enforced and upheld, because the  
2 organization and its members work on a local level to ensure food integrity and security in Josephine  
3 County through education, farming, and ongoing advocacy work. OSFF and its members would be  
4 directly negatively impacted if the Ordinance we worked so hard to pass were overturned.

5 35. Based on my experience, observations and discussions with many local small-scale farmers  
6 and OSFF members, I believe that in the event our local agricultural system is not protected so that  
7 our farmers and residents maintain the right to collect and share seeds that are free from genetic  
8 contamination, OSFF's mission and our local agricultural system and economy will be greatly  
9 undermined by the perpetuation of genetically engineered organisms and patented seeds.  
10

11 36. OSFF represents and advocates for thousands of Josephine County citizens who voted in favor  
12 of Measure 17-58, as well as the hundreds of small farms and local businesses who are our members  
13 and support OSFF's past and ongoing work.

14 37. Therefore, any outcome in this proceeding directly, immediately and significantly affects the  
15 interests of OSFF and its members because it will impact our organizational efforts to protect our  
16 local agricultural and food system from genetically engineered organisms and patents, as well as our  
17 reputation and capacity to raise financial resources.  
18

19 38. OSFF's participation will not unduly delay or prejudice the adjudication of the rights of the  
20 original parties.

21 39. OSFF and its members recently learned that Defendant Josephine County is not planning to  
22 enforce the Ordinance pending the outcome of this litigation; therefore it is essential that OSFF's  
23 organizational interests, and the interests of our members be granted intervention in this litigation.  
24

25 ///

26 ///







1 intent. Defendant-Intervenors deny any allegations in paragraph 1 that are inconsistent with the  
2 language of the Ordinance. Defendant-Intervenors deny the remaining allegations in paragraph 1.

3 2.

4 Defendant-Intervenors admit that Plaintiffs seek “declaratory relief and to permanently enjoin the  
5 enforcement of the Ordinance.”

6 **JURISDICTION**

7 3.

8 Defendant-Intervenors admit that the Circuit Court has jurisdiction, except for Plaintiffs’ failure to  
9 comply with ORS 28.110.  
10

11 4.

12 Defendant-Intervenors deny the allegations in paragraph 4.

13 **VENUE**

14 5.

15 Defendant-Intervenors admit the allegations in paragraph 5, unless this matter is ultimately  
16 removed to federal court for Constitutional questions.  
17

18 **BACKGROUND AND PARTIES**

19 6.

20 Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of  
21 the allegations in paragraph 6 and thus deny them.  
22

23 7.

24 Defendant-Intervenors admit that Josephine County a home rule county. Paragraph 7 contains  
25 Plaintiffs’ characterizations of ORS 633.738(2). Defendant-Intervenors admit that the Oregon  
26 legislature passed ORS 633.738(2), which speaks for itself and is the best evidence of its content.  
27

1 Defendant-Intervenors deny any allegations in paragraph 7 that are inconsistent with the text of ORS  
2 633.738(2).

3 **COUNTY ORDINANCE**

4 8.

5 Defendant-Intervenors admit that voters approved the Ordinance on May 20, 2014, that the  
6 Ordinance became law on June 5, 2014, and went into effect on September 4, 2014 due to the 90-day  
7 period in the Josephine County Charter, and that a true copy of the Ordinance as enacted is attached to  
8 the Complaint. Defendant-Intervenors deny any remaining allegations in paragraph 8.

9  
10 9.

11 Defendant-Intervenors admit the allegations in paragraph 9, with the addition that the Josephine  
12 County Clerk and Recorder approved the Ballot Title for the Ordinance on September 30, 2013.

13 10.

14 Paragraph 10 contains Plaintiffs' characterizations of the Ordinance; those provisions speak for  
15 themselves and are the best evidence of their intent. Defendant-Intervenors deny any allegations in  
16 paragraph 10 that are inconsistent with the text of the Ordinance.

17  
18 11.

19 Defendant-Intervenors admit the allegations in paragraph 11.

20 12.

21 Paragraph 12 contains Plaintiffs' characterizations of the Ordinance and Notice; those provisions  
22 speak for themselves and are the best evidence of their intent. Defendant-Intervenors deny any  
23 allegations in paragraph 12 that are inconsistent with the text of the Ordinance and Notice.

24  
25 13.

26 Paragraph 13 characterizes Plaintiff's farm and farming practices. Defendant-

1 Intervenor lack knowledge or information sufficient to form a belief as to the truth of the  
2 allegations in paragraph 13 and thus deny the allegations.

3 14.

4 Defendant-Intervenors admit the allegations in paragraph 14.

5 15.

6 Defendant-Intervenors deny the allegations in paragraph 15.

7 16.

8 Defendant-Intervenors admit the allegations in paragraph 16.

9  
10 **DECLARATORY RELIEF**

11  
12 17.

13 Defendant-Intervenors incorporate by reference their answers to all preceding paragraphs as  
14 though fully set forth herein.

15 18.

16 Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of  
17 the allegations in paragraph 18 and thus deny the allegations.

18 19.

19 Defendant-Intervenors deny the allegations in paragraph 19.

20  
21 **COUNT TWO: MANDATORY INJUNCTION**

22 20.

23 Defendant-Intervenors incorporate by reference their answers to all preceding paragraphs as  
24 though fully set forth herein.

25 21.

26 Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of  
27

1 the allegations in paragraph 21 and thus deny the allegations.

2 22.

3 Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of  
4 the allegations in paragraph 22 and thus deny the allegations.

5 **AFFIRMATIVE DEFENSES**

6 **FIRST AFFIRMATIVE DEFENSE**  
7 **(Failure to State a Claim)**

8 23.

9 Plaintiffs' Complaint fails to allege facts sufficient to constitute a claim for relief.

10 **SECOND AFFIRMATIVE DEFENSE**  
11 **(Standing)**

12 24.

13 Plaintiffs lack standing to raise some or all of the claims in the Complaint.

14 **THIRD AFFIRMATIVE DEFENSE**  
15 **(Laches)**

16 25.

17 Without waiver of any defense, Plaintiffs delayed in asserting the claims for an  
18 unreasonable length of time with full knowledge of all relevant facts resulting in substantial prejudice  
19 to the Defendant-Intervenors such that it would be inequitable for a court to grant any relief under  
20 Plaintiffs' Complaint.

21 **FOURTH AFFIRMATIVE DEFENSE**  
22 **(Assumption of Risk)**

23 26.

24 Plaintiffs assumed the risk by planting or maintaining their crops after the Ordinance was  
25 proposed and ultimately approved by the voters.  
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**FIFTH AFFIRMATIVE DEFENSE  
(Estoppel)**

27.

Some or all of Plaintiffs’ claims for equitable relief are barred by estoppel.

**EIGHTH AFFIRMATIVE DEFENSE  
(Failure to Mitigate)**

28.

Plaintiffs are not entitled to some or all of the damages or compensation they seek because they have not, and show no intention to, take actions to mitigate the harm they allegedly have or will suffer.

**NINTH AFFIRMATIVE DEFENSE  
(Unconstitutionality)**

29.

The state legislation at issue (ORS 633.738) violates the federal and state constitutions.

**TENTH AFFIRMATIVE DEFENSE  
(Home Rule)**

30.

The state legislation at issue (ORS 633.738) violates Josephine County’s constitutional and statutory home rule rights.

**INCORPORATION OF ALL APPLICABLE DEFENSES**

31.

Defendant-Intervenors assert any and all applicable defenses pled by all other Defendants to the action, and hereby incorporate the same herein by reference.

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**RESERVATION**

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32.

Upon further particularization of Plaintiffs’ claims, or upon discovery of further information concerning Plaintiffs’ claims, Defendant-Intervenors reserve the right to add further defenses as may be developed during litigation.

33.

Except as expressly admitted in this Answer, Defendant-Intervenors deny each and every remaining allegation of the Complaint.

WHEREFORE, Defendant-Intervenors respectfully pray as follows:

For judgment in Defendants-Intervenors favor declaring the Ordinance valid and lawful, dismissing Plaintiffs’ Complaint and the whole thereof, for costs and disbursements incurred herein and for such other and further relief as the Court deems just, equitable and proper.

Respectfully submitted and dated this Proposed date,

\_\_\_\_\_  
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\_\_\_\_\_  
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Attorneys for Proposed Defendants

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CERTIFICATE OF SERVICE

I certify that I electronically filed served the foregoing Motion to Intervene by depositing a true, full and exact copy with the Clerk of Court using the OJD eFiling system, which will automatically deliver a notification of such filing to the following:

John DiLorenzo, Jr., OSB #802040  
Email: johndilorenzo@dwt.com  
Attorney for Plaintiffs

Mathew Walter (“Wally”) Hicks, OSB #080809  
Email: whicks@co.josephine.or.us  
Attorney for Defendant Josephine County

Dated this 24<sup>th</sup> Day of September, 2015

/s/ Melissa D. Wischerath  
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