

IN THE COURT OF APPEALS OF THE STATE OF OREGON

For a Judicial Examination and Judgment of the Court as to the Regularity,
Legality, Validity, and Effect of the Columbia County Second Amendment
Sanctuary Ordinance

Board of County Commissioners of COLUMBIA COUNTY, a political
subdivision of the State of Oregon,
Petitioner-Respondent,

v.

ELLEN ROSENBLUM, Attorney General for the State of Oregon,
Interested Party-Appellant,

and

ROBERT PILE; SHANA CAVANAUGH; BRANDEE DUDZIC;
and JOE LEWIS,
Interested Parties-Respondents,

and

RAVEN CHRIS BRUMBLES; GUN OWNERS OF AMERICA, INC.; GUN
OWNERS FOUNDATION; OREGON FIREARMS FEDERATION; LARRY
ERICKSON; KEITH FORSYTHE; and RUTH NELSON,
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Columbia County Circuit Court
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BRIEF OF *AMICUS CURIAE*
GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE

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TABLE OF CONTENTS

I.	INTEREST OF <i>AMICUS CURIAE</i>	1
II.	STATEMENT OF FACTS	2
III.	QUESTIONS PRESENTED ON REVIEW	2
IV.	SUMMARY OF ARGUMENTS	2
V.	ARGUMENT	4
	A. It Is Appropriate for this Court to Reach the Merits of the Arguments Fully Briefed in the Circuit Court.	4
	B. In the Interest of Public Safety, this Court Should Reach the Merits.	6
	1. The Ordinance Frustrates Life-Saving Oregon Gun Laws....	7
	a. Oregon’s Safe Storage Law (Or Laws 2021, ch 146, § 3).....	7
	b. Oregon’s “Red Flag” Law (ORS 166.527)	11
	c. Oregon’s Background Check Law (ORS 166.435).....	15
	2. The Ordinance Chills Law Enforcement.	17
	3. The Ordinance Misleads Law-Abiding Residents.....	20
VI.	CONCLUSION	21

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ass’n of N.J. Rifle & Pistol Clubs v. Att’y Gen. N.J.</i> , 910 F3d 106 (3d Cir 2018)	2
<i>Cascadia Wildlands v. Or. Dep’t of State Lands</i> , 293 Or App 127, 427 P3d 1091 (2018), <i>aff’d</i> , 365 Or 750, 452 P3d 938 (2019)	4, 5
<i>District of Columbia v. Heller</i> , 554 US 570 (2008).....	1
<i>Hanneman v. Jones</i> , 45 Or App 1005, 609 P2d 912 (1980)	5, 6
<i>Herinckx v. Sanelle</i> , 281 Or App 869, 385 P3d 1190 (2016)	5
<i>Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives</i> , 417 F Supp 3d 747 (WD Va 2019).....	2
<i>Jackson v. City of Portland</i> , 33 Or App 133, 576 P2d 21 (1978)	5
<i>Linn v. Pitts</i> , 123 Or App 277, 858 P2d 1352 (1993)	4
<i>Little Whale Cove Homeowners Ass’n v. Harmon</i> , 162 Or App 332, 986 P2d 616 (1999)	4
<i>McDonald v. City of Chicago</i> , 561 US 742 (2010).....	2
<i>Md. Shall Issue v. Hogan</i> , 353 F Supp 3d 400 (D Md 2018).....	2
<i>Peruta v. Cnty. of San Diego</i> , 824 F3d 919 (9th Cir 2016)	2
<i>Stimmel v. Sessions</i> , 879 F3d 198 (6th Cir 2018).....	2

<i>United States v. Cox</i> , 906 F3d 1170 (10th Cir 2018)	20, 21
<i>Wilmington Sav. Fund Soc’y, FSB as Tr. for Pretium Mortg. Acquisition Tr. v. Carrigan</i> , 315 Or App 557, ___ P3d ___ (2021)	5
Statutes	
26 USC §§ 5801–5872.....	20, 21
Kan Stat Ann §§ 50-1201 to -1211	20
Mo Ann Stat §§ 1.410 to 1.485.....	18
Mo Ann Stat § 1.430.....	18
Or Laws 2015, ch 50.....	15
Or Laws 2021, ch 146.....	7, 8, 9
ORS 33.720(3)	6
ORS 153.018.....	17
ORS 166.435.....	15
ORS 166.527	11, 12, 14, 16
ORS 203.065.....	17
Legislative History	
2021 Missouri HB 85, 101st Gen Assemb	18
Other Authorities	
Aaron J. Kivisto & Peter L. Phalen, <i>Effects of Risk-Based Firearm Seizure Laws in Conn. & Ind. on Suicide Rates, 1981–2015</i> , 69 Psychiatric Servs 855 (2018).....	13
Am. Acad. of Pediatrics, <i>Firearm-Related Injuries Affecting the Pediatric Population</i> , 130(5) Pediatrics 1416 (Nov 2012)	10
Christine Hauser & Anahad O’Connor, <i>Va. Tech shooting leaves 30 dead</i> , NY Times (Apr 16, 2007).....	13

Dana Goldstein, et al., <i>In the Mich. Shooting, What Is the School's Responsibility?</i> , NY Times (Dec 4, 2021).....	14, 15
David C. Grossman, et al., <i>Gun Storage Practices & Risk of Youth Suicide & Unintentional Firearm Injuries</i> , 293(6) JAMA 707 (Feb 2005).....	10
Deborah Azrael, et al., <i>Firearm Storage in Gun-Ownning Households with Children: Results of a 2015 Nat'l Survey</i> , 95(3) J Urban Health 295 (June 2018)	9
Garen J. Wintemute, et al., <i>Extreme Risk Protection Orders Intended to Prevent Mass Shootings: A Case Series</i> , 171 Annals Internal Med 655 (2019).....	14
James Silver, et al., <i>A Study of the Pre-Attack Behaviors of Active Shooters in the U.S. Between 2000 & 2013</i> , FBI, US Dep't of Just (June 2018)	14
Jeanne Kuang, <i>Mo. police ask Republican legislators to amend act blocking fed. gun laws</i> , Kansas City Star (Nov 22, 2021).....	19
Jennifer C. Karberg, et al., <i>Background Checks for Firearm Transfers, 2015 – Statistical Tables</i> , US Dep't of Just, Bureau of Just Stat (Nov 2017).....	16
Joseph Blocher & Jacob D. Charles, <i>Firearms, Extreme Risk, & Legal Design: “Red Flag” Laws & Due Process</i> , 106 Va L Rev 1285 (2020).....	11, 13
Katherine A. Vittes, et al., <i>Legal Status & Source of Offenders' Firearms in States with the Least Stringent Criteria for Gun Ownership</i> , 19 Injury Prevention 26 (June 2013)	16
News from Senator Ginny Burdick, Or State Legislature Bulletin (May 11, 2017)	12
Robert Golden, et al., <i>The truth about illness & disease</i> , Infobase Publishing (2009).....	13
Robert Patrick & Jack Suntrup, <i>Mo. Attorney General Schmitt's prosecutors pulled from fed. violent crime cases</i> , St Louis Post-Dispatch (June 17, 2021)	19

Timothy Williams, <i>What Are “Red Flag” Gun Laws, & How Do They Work?</i> , NY Times (Aug 6, 2019)	11
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I. INTEREST OF *AMICUS CURIAE*

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities.¹ The organization was founded more than a quarter-century ago following a gun massacre at a San Francisco law firm and was renamed Giffords Law Center in 2017 after joining forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords. Today, through partnerships with gun violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. Together with its partner organization Giffords, Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

Giffords Law Center has contributed technical expertise and informed analysis as an *amicus* in numerous cases involving firearm regulations and constitutional principles affecting gun policy. *See, e.g., District of Columbia v.*

¹ Giffords Law Center’s website, www.giffords.org/lawcenter, is the premier clearinghouse for comprehensive information about federal, state, and local firearms laws and Second Amendment litigation nation-wide.

Heller, 554 US 570 (2008), *McDonald v. City of Chicago*, 561 US 742 (2010). Several courts have cited research and information from Giffords Law Center’s *amicus* briefs in Second Amendment rulings. *See, e.g., Ass’n of N.J. Rifle & Pistol Clubs v. Att’y Gen. N.J.*, 910 F3d 106, 121–22 (3d Cir 2018); *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 417 F Supp 3d 747, 754, 759 (WD Va 2019); *Md. Shall Issue v. Hogan*, 353 F Supp 3d 400, 403–05 (D Md 2018); *Stimmel v. Sessions*, 879 F3d 198, 204, 208, 210 (6th Cir 2018); *Peruta v. Cnty. of San Diego*, 824 F3d 919, 943 (9th Cir 2016) (en banc) (Graber, J., concurring).²

II. STATEMENT OF FACTS

Giffords Law Center incorporates Interested Party-Respondent the Attorney General’s Summary of Facts.

III. QUESTIONS PRESENTED ON REVIEW

Giffords Law Center accepts as presented Interested Party-Respondent the Attorney General’s Questions Presented.

IV. SUMMARY OF ARGUMENTS

The parties below extensively briefed whether Oregon and federal laws preempt Columbia County’s Ordinance 2021-1, the “Columbia County Second Amendment Sanctuary Ordinance” (the Ordinance). Because the issue of

² Giffords Law Center filed the last two briefs under its former name, the Law Center to Prevent Gun Violence.

preemption is purely a question of law, because the parties had ample opportunity to brief their arguments, and because this Court would review the circuit court's ruling on these arguments for legal error, this Court has discretion to reach the merits of the arguments raised below, and to rule on the question of preemption in the first instance.

Not only may this Court reach the merits, but public safety should compel it to do so. First, the Ordinance purports to nullify a range of Oregon's gun safety laws. Although it is Giffords Law Center's position that the Ordinance is invalid and therefore does not nullify these laws, the Ordinance nevertheless casts doubt on the laws' validity and enforceability, thereby frustrating their efficacy. Second, the Ordinance chills law enforcement efforts more broadly because it creates a private right of action, incentivizes private suits, and imposes individual liability on Columbia County officials who enforce a wide range of laws ancillary to gun safety laws. Finally, the Ordinance threatens to mislead law-abiding citizens into believing that Oregon and federal gun laws no longer apply in Columbia County, when Columbia County residents are in fact still criminally liable for violations of those laws. For these reasons—in the interest of public safety—not only may this Court reach the merits of the arguments raised below, but it should.

V. ARGUMENT

It is both appropriate and imperative that once this Court resolves the questions presented on appeal, it reaches the merits of the parties' arguments below. No procedural bar prevents this Court from doing so, and the decision to remand this case without resolving the underlying dispute would unnecessarily prolong the dangerous state of uncertainty the Ordinance has created around the validity and enforceability of gun safety laws in Columbia County. The longer Oregon courts permit this uncertainty to persist, the greater the threat to public safety.

A. **It Is Appropriate for this Court to Reach the Merits of the Arguments Fully Briefed in the Circuit Court.**

This Court has discretion to reach the merits of arguments raised before the circuit court when doing so would not intrude on the role of the fact-finder, and would not abrogate the parties' opportunity to fully litigate their case. *See, e.g., Cascadia Wildlands v. Or. Dep't of State Lands*, 293 Or App 127, 129, 427 P3d 1091 (2018) ("We conclude that petitioners have standing to bring their challenge and that we should reach the merits of petitioners' challenge[.]"), *aff'd*, 365 Or 750, 452 P3d 938 (2019); *Little Whale Cove Homeowners Ass'n v. Harmon*, 162 Or App 332, 341, 986 P2d 616 (1999) (reaching merits); *Linn v. Pitts*, 123 Or App 277, 278, 858 P2d 1352 (1993) (same). Accordingly, this Court may proceed to the merits where it would have enjoyed *de novo* review over the circuit court's application of law to a fully developed record, and

where the parties have fully briefed their arguments to the circuit court below. *See Cascadia Wildlands*, 293 Or App at 129 (reaching merits where “[t]he record [was] fully developed” in that “the merits of the parties’ dispute were briefed and argued,” and the appellate court would have reviewed the circuit court’s decision for legal error); *Hanneman v. Jones*, 45 Or App 1005, 1010, 609 P2d 912 (1980) (reaching merits where “the evidence in the record [was] all the evidence [the parties] intend[ed] to adduce,” “[t]he case [was] in equity” and would have been tried to the court, and appellate review would have been *de novo*). *Cf. Wilmington Sav. Fund Soc’y, FSB as Tr. for Pretium Mortg. Acquisition Tr. v. Carrigan*, 315 Or App 557, 558, ___ P3d ___ (2021) (declining to reach merits where “the trial court failed to make sufficient findings of fact and conclusions of law”); *Jackson v. City of Portland*, 33 Or App 133, 137, 576 P2d 21 (1978) (declining to reach merits where “[t]he record below d[id] not allow [the appellate court] to do so because the parties never litigated the issue” presented).

Here, the parties’ arguments below regarding preemption and the scope of county lawmaking authority are dispositive and purely legal. Ruling on them will require no fact-finding on the part of this Court. Furthermore, this Court would have reviewed the circuit court’s decision regarding the parties’ arguments *de novo*. *See Herinckx v. Sanelle*, 281 Or App 869, 873, 385 P3d 1190 (2016) (*de novo* review of preemption issue).

Accordingly, this Court may properly reach the merits of the parties' arguments below. The Ordinance's threat to public safety makes it imperative that the Court do so.

B. In the Interest of Public Safety, this Court Should Reach the Merits.

This Court should reach and resolve the merits of the parties' underlying dispute not only because doing so would promote judicial economy, *see Hanneman*, 45 Or App at 1010 (reaching merits in interest of judicial economy); *see also* ORS 33.720(3) (validation proceedings "shall be tried forthwith and judgment rendered *as expeditiously as possible*") (emphasis added), but because expedient resolution of the dispute below will materially advance public safety. Furthermore, this Court's guidance here could clarify the validity and enforceability of gun safety laws across the state as numerous counties pass nullification laws akin to the Ordinance. *See, e.g.*, Curry County Ordinance 16-05 (adopted Aug 3, 2016); Harney County Ordinance 2021-01 (adopted June 2, 2021); Josephine County Ordinance 2018-002 (adopted July 25, 2018); Klamath County Measure 18-110 (passed Nov 6, 2018); Lane County Resolution 15-06-02-05 (adopted June 2, 2015); Linn County Resolution 2015-218 (adopted June 17, 2015); Malheur County Resolution R15-23 (adopted July 22, 2015); Umatilla County Measure 30-145 (passed Nov 4, 2020); Union County Measure 31-86 (passed Nov 6, 2018); Wallowa County Ordinance 2013-002 (adopted Dec 16, 2013); Wheeler County Ordinance 2015-

01 (adopted Jan 21, 2015); Yamhill County Ordinance 913 (adopted Apr 1, 2021).

In Columbia County, though, each day the Ordinance remains in effect, it frustrates life-saving Oregon gun laws, chills the enforcement of valid Oregon and federal laws, and threatens to mislead Columbia County residents into unlawful conduct.

1. The Ordinance Frustrates Life-Saving Oregon Gun Laws.

The Ordinance purports to nullify dozens of Oregon’s valid gun safety laws, each enacted by the democratically elected Legislative Assembly. *See* Petition for Validation of Local Government Action (“Pet’n”) 10–11 (enumerating 30 Oregon gun safety laws). By casting doubt on the validity and enforceability of these Oregon statutes, the Ordinance frustrates their efficacy. Although the frustration of any gun safety law increases the risk of gun-related injury and death, this Brief will highlight three Oregon statutes to illustrate the particularly severe threat the Ordinance poses in Columbia County.

a. Oregon’s Safe Storage Law (Or Laws 2021, ch 146, § 3)

In 2021, the Legislative Assembly responded to the mass shooting at Clackamas Town Center and the deaths of children from unsecured firearms by adopting Senate Bill (SB) 554 (2021) (now Oregon Laws 2021, chapter 146, *see* ORS § ch 146, § 3)), which requires that gun owners safely store their

firearms. This “safe storage” law specifically mandates that gun owners “secure the[ir] firearm[s] with an engaged trigger or cable lock; in a locked container; or in a gun room” when they are not being carried by or in the control of the owner or an authorized person. ORS § ch 146, § 3(1)(a)(A)–(C). The law treats the failure to do so as a civil infraction, but imposes higher penalties if a minor obtains the firearm as a result of the violation. *Id.* § 3(2)(a)–(b). In addition, the new law provides that, in civil actions for damages resulting from a gun injury, some shooting victims are entitled to a finding that a gun owner was negligent *per se* if that owner violated the safe storage law. *Id.* § 3(3).

The Ordinance ostensibly nullifies Oregon’s safe storage law in Columbia County because it purports to invalidate “[a]ny * * * regulations, and/or use restrictions related to ownership of non-fully automatic firearms.” Ord, § 4(A)(7) (emphasis added). Each day the Ordinance undermines the efficacy or perceived applicability of Oregon’s safe storage law, it endangers Columbia County residents—particularly children—exposed to unsecured firearms. In addition, because the Ordinance could also be read as nullifying the “negligence *per se*” standard for gun injuries resulting from violations of the safe storage law, *see* ORS § ch 146, § 3(3), the Ordinance risks depriving Columbia County shooting victims of a procedural right to which they are entitled under state law.

In the preamble to SB 554, the Legislative Assembly highlighted the risk that unsafe gun storage poses to children, observing that “two-thirds of all

school shootings in the United States from 1974 through 2000 involved weapons taken by the attackers from their home or from the home of a relative, and [that] many of these shootings would have been prevented if the firearms used had been secured and safely stored.” SB 554 (2021). In addition to school shootings, the Legislative Assembly drew attention to SB 554’s impact on youth suicide, observing that “on average 10 children under the age of 18 commit suicide in Oregon each year with firearms that were not safely stored and secured to prevent child access.” *Id.* By requiring gun owners to take “simple common-sense actions including safely storing and transferring firearms * * * and supervising children when they use firearms,” the Legislative Assembly hoped to “prevent many deaths and injuries in Oregon.” *Id.*

Research supports the efficacy of Oregon’s safe storage law. First, unsafe gun storage is prevalent. Nation-wide data indicates that approximately 70% of households with children and at least one gun store a gun unsafely: 50% store a gun that is either loaded or unlocked, and 20% store a gun that is both loaded and unlocked. Deborah Azrael, et al., *Firearm Storage in Gun-Ownning Households with Children: Results of a 2015 Nat’l Survey*, 95(3) *J Urban Health* 295, 298 (June 2018). This means an estimated 4.6 million children nation-wide live in homes with loaded, unlocked guns. *Id.*

Oregon’s new law addresses this problem by requiring that gun owners store their guns with a trigger or cable lock, in a locked container, or in a gun

room. These simple steps reduce the risk that children will kill or injure themselves or others with the guns in their household. See David C. Grossman, et al., *Gun Storage Practices & Risk of Youth Suicide & Unintentional Firearm Injuries*, 293(6) JAMA 707 (Feb 2005) (conducting analysis of youth shootings largely in Pacific Northwest, including Oregon). The American Academy of Pediatrics (“AAP”) reports that “[a] multisite study found that keeping a gun locked and keeping a gun unloaded have protective effects of 73% and 70%, respectively, with regard to risk of both unintentional injury and suicide for children and teenagers.” Am. Acad. of Pediatrics, *Firearm-Related Injuries Affecting the Pediatric Population*, 130(5) Pediatrics 1416, 1420 (Nov 2012). Findings such as these have led the AAP to state plainly that “[s]afe gun storage (guns unloaded and locked, ammunition locked separately) reduces children’s risk of injury,” even where “firearm safety education programs directed at children are ineffective.” *Id.* at 1416.

Accordingly, the Oregon legislature acted reasonably and thoughtfully when it enacted Oregon’s safe storage law in an effort to prevent school shootings and youth suicide by gun. This Court should therefore act expediently to resolve whether the Ordinance nullifies Oregon Laws 2021, chapter 146, section 3.

b. Oregon’s “Red Flag” Law (ORS 166.527)

ORS 166.527, Oregon’s “red flag” or “extreme risk” law, allows a concerned family member or law enforcement officer to petition a court for a civil order, known as an extreme risk protection order (“ERPO”), temporarily enjoining a person who is at significant risk of harming themselves or others from accessing firearms. *See* Timothy Williams, *What Are “Red Flag” Gun Laws, & How Do They Work?*, NY Times (Aug 6, 2019), <https://www.nytimes.com/2019/08/06/us/red-flag-laws.html> (accessed Dec 19, 2021) (“[Red flag laws] authorize courts to issue a special type of protection order, allowing the police to temporarily confiscate firearms from people who are deemed by a judge to be a danger to themselves or to others.”).³ But the Ordinance frustrates ORS 166.527 because it purports to nullify any act “forbidding the possession, ownership, [or] use * * * of any type of firearm, firearm accessory, or ammunition by citizens of the legal age of eighteen and over,” as well as any act “ordering the confiscation of firearms, firearm accessories, or ammunition from citizens.” Ord, §§ 4(A)(5), (6). Each day the Ordinance reduces the likelihood that Columbia County residents or law

³ Extreme risk laws like ORS 166.527 are modeled after domestic violence restraining order laws that prohibit gun possession, and which have been upheld against due process and Second Amendment challenges. *See generally* Joseph Blocher & Jacob D. Charles, *Firearms, Extreme Risk, & Legal Design: “Red Flag” Laws & Due Process*, 106 Va L Rev 1285 (2020).

enforcement will turn to Oregon’s extreme risk law to prevent gun violence or suicide, it endangers Columbia County residents.⁴

In enacting ORS 166.527 in 2017, the Legislative Assembly emphasized its efforts to prevent foreseeable suicides. In a press release for Senate Bill (SB) 719 (2017), *see* 2017 Or SB 719, which enacted ORS 166.527, the bill’s cosponsor, Senator Ginny Burdick, explained that the Legislative Assembly intended to “save lives by keeping guns away from people at risk of harming themselves or others.” News from Senator Ginny Burdick, Or State Legislature Bulletin (May 11, 2017), <https://content.govdelivery.com/accounts/ORLEG/bulletins/19898f8> (accessed Dec 23, 2021). Upon SB 719’s passage in the Oregon House of Representatives, House Majority Leader Representative Jennifer Williamson reiterated the Legislative Assembly’s concern that “[t]oo many Oregonians die as the result of suicide by a firearm.” Press release from Or House Democrats (July 6, 2017), <https://www.oregonlegislature.gov/housedemocrats/Documents/ERPO.pdf> (accessed Dec 23, 2021).

⁴ Although the Ordinance purports to exempt “[a]ctions in compliance with a judgment or order of a District or Circuit court,” Ord, § 4(B)(5), the legal effect of this provision is uncertain and untested, and the Ordinance’s sweeping prohibitions and threat of individual liability will nevertheless create sufficient uncertainty to frustrate the efficacy of ORS 166.527.

Research shows that people at a high risk of suicide frequently reveal their suicidal ideation, either expressly or by exhibiting concerning behaviors. *See* Robert Golden, et al., *The truth about illness & disease*, Infobase Publishing (2009) (finding that up to 80% of people considering suicide give some sign of their intentions). Red flag laws provide an effective tool for family members or law enforcement to act on these warning signs. For instance, a red flag law in Indiana “was associated with a 7.5% reduction in firearm suicides in the ten years following its enactment,” and a similar law in Connecticut “was associated with a 1.6% reduction in firearm suicides immediately after its passage and a 13.7% reduction in firearm suicides in the post-Virginia Tech period,^[5] when enforcement of the law substantially increased.” Aaron J. Kivisto & Peter L. Phalen, *Effects of Risk-Based Firearm Seizure Laws in Conn. & Ind. on Suicide Rates, 1981–2015*, 69 *Psychiatric Servs* 855, 855 (2018); *see* Joseph Blocher & Jacob D. Charles, *Firearms, Extreme Risk, & Legal Design: “Red Flag” Laws & Due Process*, 106 *Va L Rev* 1285, 1299 (2020) (citing Kivisto & Phalen, *supra*, and surveying literature).

⁵ On April 16, 2007, a student at the Virginia Polytechnic Institute and State University in Blacksburg, Virginia, shot and killed over 30 people and wounded 17 others. *See* Christine Hauser & Anahad O’Connor, *Va. Tech shooting leaves 30 dead*, *NY Times* (Apr 16, 2007), <https://www.nytimes.com/2007/04/16/us/16cnd-shooting.html> (accessed Dec 19, 2021).

Red flag laws are also effective at reducing the risk of mass shootings. While the Oregon legislature largely framed ORS 166.527 as a tool to curb suicides in the state, the statute also addresses itself toward people who exhibit an extreme risk of harming others. ORS 166.527(6)(a). A study conducted by the Federal Bureau of Investigation (“FBI”) found that active shooters typically demonstrate a range of concerning behaviors before conducting an attack. James Silver, et al., *A Study of the Pre-Attack Behaviors of Active Shooters in the U.S. Between 2000 & 2013*, FBI, US Dep’t of Just (June 2018) at 17–19. Furthermore, the FBI found that someone in close proximity to the shooter—such as a classmate, romantic partner, or family member—observed these red flags *in every case studied*. *Id.* at 20. Other academic literature supports the FBI’s findings: approximately 80% of perpetrators of mass violence in public places were known to be at a high risk for violence, including in the 2018 mass shooting at Marjory Stoneman Douglass High School, in Parkland, Florida; the 2012 mass shooting at a movie theater in Aurora, Colorado; the 2011 mass shooting at a constituent meeting held by United States Congresswoman Gabrielle Giffords at a Safeway in Tucson, Arizona; and most recently in the mass shooting at Oxford High School in Oxford Township, Michigan. Garen J. Wintemute, et al., *Extreme Risk Protection Orders Intended to Prevent Mass Shootings: A Case Series*, 171 *Annals Internal Med* 655, 655–56 (2019) (reviewing literature); see Dana Goldstein, et al., *In the Mich. Shooting, What Is*

the School's Responsibility?, NY Times (Dec 4, 2021),

<https://www.nytimes.com/2021/12/04/us/oxford-high-school-responsibility-legal.html> (accessed Dec 19, 2021).

Accordingly, the scholarship and previous legislative efforts support Oregon's adoption of a red flag law to prevent suicides and mass shootings. Expedient resolution of the arguments raised below will restore clarity to the status of this important gun safety law in Columbia County.

c. Oregon's Background Check Law (ORS 166.435)

ORS 166.435 requires basic background checks on the sale of firearms. Added to the Oregon Revised Statutes as part of the 2015 Oregon Firearms Safety Act, Or Laws 2015, ch 50 (SB 941), ORS 166.435 generally requires firearm sales and transfers to be conducted by or processed through a federally licensed firearms dealer pursuant to a background check. It thereby closed the private sale loophole in federal law that permitted certain private gun sales without background checks. But the Ordinance purports to nullify "[a]ny registration and background check requirement on firearms, firearm accessories, or ammunition for citizens, beyond those customarily required at time of purchase prior to December, 2012." Ord, § 4(A)(4); *see* Pet'n 16–17 (noting that the Ordinance "likely conflict[s] with and [is] incompatible with Oregon criminal firearms laws, including * * * ORS 166.435"). The Ordinance therefore increases the likelihood that Columbia County gun sellers will not

conduct background checks, and individuals legally prohibited from possessing a firearm will be able to purchase one nonetheless.

Literature supports the efficacy of background checks like those required by ORS 166.527. Individuals ineligible to own firearms frequently attempt to purchase one. According to the United States Department of Justice, from 1994 to 2015, background checks prevented over three million unlawful gun transfers to would-be purchasers with felony or domestic violence convictions, or serious mental illness. Jennifer C. Karberg, et al., *Background Checks for Firearm Transfers, 2015 – Statistical Tables*, US Dep't of Just, Bureau of Just Stat (Nov 2017). This amounts to over a hundred thousand attempted prohibited transfers per year.

And background checks are effective at impeding ineligible individuals from accessing firearms. A nation-wide study found that 96% of criminal offenders who were prohibited from obtaining a firearm, but were nevertheless convicted of a crime involving a firearm, acquired that firearm in a transfer not subject to a background check. Katherine A. Vittes, et al., *Legal Status & Source of Offenders' Firearms in States with the Least Stringent Criteria for Gun Ownership*, 19 Injury Prevention 26, 26 (June 2013).

Accordingly, expedient resolution of the arguments raised below will advance public safety by clarifying the requirement for background checks in Columbia County.

2. The Ordinance Chills Law Enforcement.

In addition to undermining the efficacy of Oregon's various gun safety laws, including the three laws highlighted above, *see* Section V.B.1.a–c, *supra*, the Ordinance threatens to chill lawful police conduct that is critical for ensuring public safety. First, the Ordinance does so by creating a private right of action. Ord, § 6(A) (entitled “Private Cause of Action” and providing that “[a]ny entity, person, official, agent[], or employee of Columbia County who knowingly violates this Ordinance * * * shall be liable to the injured party”). Furthermore, the Ordinance incentivizes private litigation by including a one-sided attorneys’ fees provision. Ord, § 6(B). Finally, the threat of litigation carries weight: violation of the Ordinance is a Class A violation, *see* ORS 203.065, which carries a \$2,000 penalty against individuals or a \$4,000 penalty against corporations, *see* ORS 153.018. Ord, § 5. Columbia County officials who violate the Ordinance by “participat[ing] in the enforcement” of a gun safety law the Ordinance purports to nullify therefore face a palpable threat of personal liability. *See* Ord, § 2(A).

True to intention, this threat of personal liability will chill the enforcement of Oregon and federal gun laws. But the combined effect of the Ordinance’s breadth, indefinite scope, and its punitive enforcement scheme threatens to chill enforcement even of laws ancillary to the enforcement of gun

laws. These laws play a critical role in public safety, and their non-enforcement threatens Columbia County's residents.

The state of Missouri serves as an example. On June 12, 2021, Missouri passed its own "Second Amendment Protection Act," Missouri House Bill (HB) 85 (2021). *See* 2021 Mo HB 85 (codified at Mo Ann Stat §§ 1.410 to 1.485). HB 85, like other nullification laws around the country, including the Ordinance, purports to nullify "[a]ll federal acts, laws, executive orders, administrative orders, rules, and regulations * * * that infringe on the people's right to keep and bear arms," Mo Ann Stat § 1.430, such as federal laws requiring background checks or permitting confiscation of firearms in certain situations. *See id.* § 1.420(1)–(5). Also like the Ordinance, Missouri's HB 85 provides a private right of action, *id.* §§ 1.460.1, 1.470.2, incentivizes private enforcement with a one-sided right to attorneys' fees, *id.* §§ 1.460.2, 1.470.3, and imposes monetary penalties for violations. *Id.* § 1.460.1. In some respects, HB 85 is *less* punitive than the Ordinance because it only provides for monetary penalties against political subdivisions and law enforcement agencies, not individuals, *id.* § 1.460.1, although it does prohibit the hiring or continued employment of an individual who has violated the act. *Id.* § 1.470.1.

The uncertainty caused by Missouri's nullification law quickly chilled law enforcement efforts in that state. According to a November 22, 2021 *Kansas City Star* report, the Missouri Police Chiefs Association expressed

concern that HB 85 had “caused confusion and potentially unintended legal implications.” Jeanne Kuang, *Mo. police ask Republican legislators to amend act blocking fed. gun laws*, Kan City Star (Nov 22, 2021), <https://www.kansascity.com/news/politics-government/article255973367.html> (accessed Dec 15, 2021). The Police Chiefs Association further expressed concerns about “protecting officers from frivolous civil litigation related to the continued joint endeavors with [their] federal partners.” *Id.* And according to the *Star*, Missouri’s nullification law “prompted several Missouri agencies to halt common practices that involve working with the federal government.” *Id.* “Some police ha[d] complained the law’s open-ended wording le[ft] them vulnerable to lawsuits for a wide variety of actions that may only tangentially involve federal personnel, or firearms.” *Id.*

Missouri’s nullification law also chilled prosecutorial efforts. On June 17, 2021—five days after HB 85 passed—the *St. Louis Post-Dispatch* reported that “[p]rosecutors working for Missouri Attorney General Eric Schmitt ha[d] withdrawn * * * from nearly two dozen federal drug, gun and carjacking cases in St. Louis.” Robert Patrick & Jack Suntrup, *Mo. Attorney General Schmitt’s prosecutors pulled from fed. violent crime cases*, *St. Louis Post-Dispatch* (June 17, 2021), https://www.stltoday.com/news/local/crime-and-courts/missouri-attorney-general-schmitts-prosecutors-pulled-from-federal-violent-crime-cases/article_c48b7fa3-cf53-59b9-8db4-

b227918db557.html?utm_medium=social&utm_source=twitter&utm_campaign=user-share (accessed Dec 17, 2021).

Accordingly, legislative efforts similar to the Ordinance teach that the Ordinance will chill not just enforcement of Oregon and federal gun safety laws, but also enforcement of a wide range of criminal laws ancillary to firearms, to the detriment of public safety.

3. The Ordinance Misleads Law-Abiding Residents.

Nullification laws, like the Ordinance, mislead law-abiding residents because they purport to permit conduct that in actuality remains unlawful. More specifically, the Ordinance threatens to mislead Columbia County residents and visitors into believing they are exempt from state and federal gun laws when in fact they remain criminally liable under those laws.

The Ordinance would not be the first nullification law to mislead law-abiding citizens. In 2013, Kansas adopted a nullification law that purported to exempt the state from various federal gun safety laws. *See* 2013 Kan SB 102 (codified at Kan Stat Ann §§ 50-1201 to -1211). In reliance on this law, a Kansas resident, Shane Cox, manufactured and sold unregistered firearms and firearm accessories, including to co-defendant Jeremy Kettler, in violation of the National Firearms Act (“NFA”), 26 USC §§ 5801–5872. *United States v. Cox*, 906 F3d 1170, 1174–75 (10th Cir 2018). Both the district court and the Tenth Circuit rejected Cox’s and Kettler’s arguments that Kansas’ nullification

law insulated them from liability under the NFA, and their convictions stood.

Id. at 1176, 1196.

Residents and visitors cannot follow the law if they misunderstand it. The Ordinance convolutes what should be clear: Columbia County residents are bound by state and federal laws just as before its passage. Each day the Ordinance is permitted to cast doubt on the applicability of valid gun laws exacerbates this confusion.

VI. CONCLUSION

This Court can and should reach and resolve the merits of the parties' arguments below. The decision to remand without doing so would dangerously and unnecessarily prolong the Ordinance's threat to public safety, as well as the confusion it creates for law-abiding residents, in Columbia County.

Dated this 28th day of December, 2021.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH AND TYPE
SIZE REQUIREMENTS UNDER ORAP 5.05(2)(d)**

I certify that (1) this brief complies with the word count limitation in ORAP 5.05(2)(b), and (2) the word count of this brief as described in ORAP 5.05(2)(a) is 4,681.

I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that, on December 28, 2021, I filed the foregoing **BRIEF OF AMICUS CURIAE GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE** with the State Court Administrator by using the Court's electronic filing system. I served the same on the following parties by using the Court's electronic filing system:

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