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

STATE ex rel THELMA HAGGENMILLER,
an individual Clackamas County elector,

Case No. CV-12080868

Relator,

DEFENDANTS CLACKAMAS COUNTY
BOARD OF COMMISSIONERS AND
CLACKAMAS COUNTY'S MOTION TO
DISMISS RELATOR'S ALTERNATIVE
WRIT OF MANDAMUS PURSUANT TO
ORS 34.170

v.

CLACKAMAS COUNTY BOARD OF
COMMISSIONERS, the governing body of
Clackamas County, Oregon, and
CLACKAMAS COUNTY, OREGON a
political subdivision of the State of Oregon,

Defendants.

MOTION TO DISMISS ALTERNATIVE WRIT OF MANDAMUS

ORAL ARGUMENT REQUESTED

Defendants, by and through counsel, hereby move for dismissal of the above titled writ of mandamus action pursuant to ORS 34.170, as relator's petition fails as a matter of law and defendant is able to show good cause as to why relator is not entitled to the relief

Page 1 - DEFENDANTS CLACKAMAS COUNTY BOARD OF COMMISSIONERS
AND CLACKAMAS COUNTY'S MOTION TO DISMISS RELATOR'S ALTERNATIVE WRIT
OF MANDAMUS

1 sought. Furthermore, defendant requests this court to designate them as the prevailing
2 party in this action and award them costs and disbursements and reasonable attorney fees
3 pursuant to ORS 34.210.

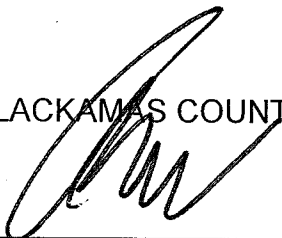
4 Defendants' Motion to Dismiss is submitted with a Memorandum in Support of
5 Defendants' Motion to Dismiss, the Declaration of Harvey Rogers, and Exhibit 101.

6 WHEREFORE, Defendants pray that this Court issue its ORDER:

- 7 1) DISMISSING the Plaintiff's Alternative Writ of Mandamus with Prejudice;
8 and
9 2) Awarding reasonable attorney fees pursuant to ORS 34.210.

10 Respectfully submitted this 4th day of September, 2012.

11
12
13 CLACKAMAS COUNTY COUNSEL


14
15 _____
16 Stephen L. Madkour, OSB No. 941091
17 County Counsel
18 Scot A. Sideras, OSB No. 793946
19 Assistant County Counsel
20 E-mail: scotsid@co.clackamas.or.us
21 Of Attorneys for Defendant
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

STATE ex rel THELMA HAGGENMILLER,
an individual Clackamas County elector,

Case No. CV-12080868

Relator,

DEFENDANTS' MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS
RELATOR'S ALTERNATIVE WRIT OF
MANDAMUS PURSUANT TO ORS 34.170

v.

CLACKAMAS COUNTY BOARD OF
COMMISSIONERS, the governing body of
Clackamas County, Oregon, and
CLACKAMAS COUNTY, OREGON a
political subdivision of the State of Oregon,

Defendants.

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS ALTERNATIVE WRIT OF
MANDAMUS**

1. Mandamus is not an appropriate vehicle for the relief Relator is seeking.

"Mandamus is an extraordinary remedy, and is available only to enforce a clear legal right." *State v. Burlison*, 342 Ore. 697, 701, 160 P3d 624 (2007). " A mandamus action is a

Page 1 - DEFENDANTS CLACKAMAS COUNTY BOARD OF COMMISSIONERS
AND CLACKAMAS COUNTY'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
RELATOR'S ALTERNATIVE WRIT OF MANDAMUS

1 special proceeding used to compel a government official to perform a legal duty." *State ex*
2 *rel. Dewberry v. Kulongoski*, 346 Ore. 260, 274 (2009).

3 Mandamus only lies to compel an official to perform a clear duty:

4 Mandamus has its origins in England, where the writ was "a command of the central
5 courts, in the name of the sovereign, requiring a local official to do his duty." *State ex*
6 *rel Kashmir Corp. v. Schmidt*, 291 Ore. 603, 608, 633 P.2d 791 (1981). Under
7 Oregon law, the writ may be issued to "any inferior court, corporation, board, officer
or person to compel the performance of an act which the law specially enjoins[.]"
ORS 34.110.

8 *State ex rel. Dewberry v. Kulongoski*, 346 Ore. 260, 267 (2009)

9 Mandamus lies only where there is a clear legal duty to perform an act. For example,
10 mandamus is available to compel the issuance of ministerial permit, like a building permit, or
11 to compel a decision on land use application.

12 Rather than seeking the performance of an act, Relator seeks to stop the issuance of
13 bonds. Relator here is seeking a negative injunction through the back door, without the
14 necessary showings, and without posting any security.

17 **2. Relator Has A Plain, Adequate and Speedy Remedy at Law.**

18 Under the mandamus statute, a writ of mandamus "shall not be issued in any case
19 where there is a plain, speedy and adequate remedy in the ordinary course of law." ORS
20 34.110. Here, an adequate remedy is clearly available.

21 In order to pursue her arguments, Relator should have filed an action for a
22 declaratory judgment under ORS 28.010. Under the declaratory judgment statute, courts
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26 Page 2 - DEFENDANTS CLACKAMAS COUNTY BOARD OF COMMISSIONERS
AND CLACKAMAS COUNTY'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
RELATOR'S ALTERNATIVE WRIT OF MANDAMUS

1 "shall have power to declare rights, status, and other legal relations, whether or not further
2 relief is or could be claimed." ORS 28.010.

3 The question raised by Relator clearly fits within the bounds of a declaratory
4 judgment action. Issues around the ability of local governments to issues bonds are
5 regularly adjudicated in the context of declaratory judgment actions. *Fullerton v. Central*
6 *Lincoln People's Utility Dist.*, 185 Ore. 28, 33 (1948), *Conley v. Union County Peoples' Utility*
7 *Dist.*, 182 Ore. 568, 570 (Or. 1947). Other municipal finance issues are adjudicated in the
8 context of declaratory judgments as well. See, e.g. *City of Medford v. Bear Creek Valley*
9 *Sanitary Auth.*, 155 Ore. App. 465, 471 (1998).

11 **3. Relator Misstates the Reach of ORS 287A.150, and Neglects the Provisions**
12 **of ORS 271.390.**

13 Relator's arguments under ORS 287A.150 do not address the borrowings at issue, which
14 are made under ORS 271.390. ORS 271.390 is an express grant of authority to counties
15 and other local governments to issue revenue bonds. The distinction between the two
16 statutes, and the application of ORS 271.390, to the borrowing in question, is explained in
17 Defendants' Exhibit 101.
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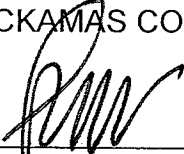
26 Page 3 - DEFENDANTS CLACKAMAS COUNTY BOARD OF COMMISSIONERS
AND CLACKAMAS COUNTY'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
RELATOR'S ALTERNATIVE WRIT OF MANDAMUS

1 WHEREFORE, Defendants pray that this Court issue its ORDER:

2 1) DISMISSING the Plaintiff's Alternative Writ of Madamus with Prejudice.

3 Respectfully submitted this 4th day of September, 2012.
4
5

6 CLACKAMAS COUNTY COUNSEL

7 
8 _____
9 Stephen L. Madkour, OSB No. 941091
10 County Counsel
11 Scot A. Sideras, OSB No. 793946
12 Assistant County Counsel
13 E-mail: scotsid@co.clackamas.or.us
14 Of Attorneys for Defendant
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26 Page 4 - DEFENDANTS CLACKAMAS COUNTY BOARD OF COMMISSIONERS
AND CLACKAMAS COUNTY'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
RELATOR'S ALTERNATIVE WRIT OF MANDAMUS

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
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CLACKAMAS COUNTY BOARD OF
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CLACKAMAS COUNTY, OREGON a
political subdivision of the State of Oregon,

Defendants.

Case No. CV-12080868

DECLARATION OF HARVEY ROGERS IN
SUPPORT OF DEFFENDANT
CLACKAMAS COUNTY BOARD OF
COMMISSIONERS AND CLACKAMAS
COUNTY'S MOTION TO DISMISS
RELATOR'S ALTERNATIVE WRIT OF
MANDAMUS PURSUANT TO ORS 34.170

1. I declare that I am Harvey Rogers of the law firm of Hawkins Delafield & Wood.
2. I have more than 35 years of experience in public finance, and routinely deal with municipal borrowings of the character presented in Relator's Alternative Writ of Mandamus.

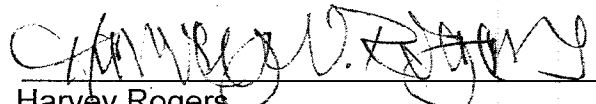
Page 1 – DECLARATION OF HARVEY ROGERS IN SUPPORT OF DEFENDANTS
CLACKAMAS COUNTY BOARD OF COMMISSIONERS AND CLACKAMAS COUNTY'S
MOTION TO DISMISS RELATOR'S ALTERNATIVE WRIT OF MANDAMUS

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3. I authored Defendants' Exhibit 101.
 4. Defendants' Exhibit 101 sets forth my best professional understanding of the application of the statutes presented in Relator's Writ of Mandamus, and the authority supporting Defendants' borrowing.

7 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY
8 KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE
9 IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

10 DATED this 4th day of September, 2012.

11

12 
13 Harvey Rogers

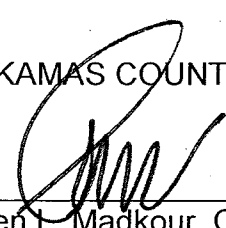
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15

16 Respectfully submitted this 4th day of September, 2012.

17

18 CLACKAMAS COUNTY COUNSEL

19 
20 _____
21 Stephen L. Madkour, OSB No. 941091
22 County Counsel
23 Scot A. Sideras, OSB No. 793946
24 Assistant County Counsel
25 E-mail: scotsid@co.clackamas.or.us
26 Of Attorneys for Defendant

Page 2 – DECLARATION OF HARVEY ROGERS IN SUPPORT OF DEFENDANTS
CLACKAMAS COUNTY BOARD OF COMMISSIONERS AND CLACKAMAS COUNTY'S
MOTION TO DISMISS RELATOR'S ALTERNATIVE WRIT OF MANDAMUS

DEFENDANTS' EXHIBIT 101 TO ITS MOTION TO DISMISS

MEMORANDUM OF HARVEY ROGERS OF HAWKINS DELAFIELD & WOOD

TO: Clackamas County, Oregon
FROM: Harvey W. Rogers of Hawkins Delafield & Wood LLP
DATE: September 4, 2012
RE: Alternative Writ of Mandamus

This memorandum briefly outlines our understanding of the laws that are discussed in the Alternative Writ of Mandamus for Case No. CV12080868.

We are nationally recognized bond counsel and our practice routinely requires us to interpret these laws. We are acutely aware that the court is able to interpret these laws without our assistance; this memorandum is intended only to give the court an understanding of how practitioners have viewed these laws in the past.

Relator makes the following arguments:

1. All revenue bonds passed by resolution require 60 days notice and an opportunity for the people to refer the resolution for a vote. Writ, page 2, lines 11 and 12. Also at page 7, line 24.

Response: This misstates the law. Only revenue bonds that are authorized *under the authority of ORS 287A.150* by resolution require the 60 day notice and an opportunity for referral that is described in ORS 287A.150.

Several Oregon statutes grant counties the authority to issue revenue bonds. ORS 287A.150 is one of those statutes, and it does require a 60 day notice and an opportunity for referral if the revenue bonds are authorized by resolution. Other statutes also grant the County the authority to issue obligations that are "revenue bonds" as defined in ORS 287A.001(17). For example, ORS 287A.180 authorizes short term borrowings and does not require an opportunity for referral. Short term borrowings authorized by that statute ordinarily would also be "revenue bonds" as defined in ORS 287A.001(17).

ORS 271.390 is another express grant of authority to counties and other local governments to issue revenue bonds. In the case of ORS 271.390 as in the case of ORS 287A.180, no referral right is granted to voters.

As it currently exists, ORS 271.390 grants local governments much the same powers as ORS 287A.150. Two statutes exist that grant similar powers for historical reasons.

2. The "Projects" being financed are not real or personal property. Writ, page 5, lines 11-13.

Response: Relator misreads the documents. The "Projects" are the real and personal property components of the Portland Milwaukie Light Rail Project. ORS 271.390 does not require that property financed under that statute be owned by the County, only that the Board of County Commissioners determine that the property is "needed."

3. The County's proposed financing is a "revenue bond" as defined in ORS 287A.001(17).

Response: Relator is correct. ORS Chapter 287A uses the term "revenue bond" to define any borrowing except a general obligation bond.

ORS Chapter 287A was created by the Oregon Law Commission and adopted by the Oregon Legislature in 2007 to replace portions of ORS Chapter 287 and Chapter 288. In general, ORS Chapter 287A was intended to clarify the borrowing authority of local governments, and to give them broad authority to respond to changing conditions in the public finance markets. The drafters needed a term that referred to most local government borrowings (all borrowings that are not secured by the power to levy additional property taxes), and chose "revenue bond."

Relator errs when Relator concludes that, because the County's proposed borrowing is a "revenue bond" under ORS 287A.001(17), the County's borrowing is subject to the specific referral requirements of ORS 287A.150.

End of Memorandum

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the foregoing DEFENDANTS CLACKAMAS COUNTY
3 BOARD OF COMMISSIONERS AND CLACKAMAS COUNTY'S MOTION TO DISMISS
4 RELATOR'S ALTERNATIVE WRIT OF MANDAMUS, MEMORANDUM IN SUPPORT, AND
5 DECLARATION OF HARVEY ROGERS on:

6 Kristian Roggendorf
7 O'Donnell Clark & Crew, LLP
8 1650 NW Naito Parkway, Suite 302
9 Portland, OR 97209

10 [X] by **Hand Delivery** of a full, true and correct copy thereof at Oregon City,
11 Oregon, on the date set forth below;

12 This 4TH day of September, 2012.

13 
14 CLACKAMAS COUNTY COUNSEL

15 _____
16 Stephen L. Madkour, OSB No. 941091
17 County Counsel
18 Scot A. Sideras, OSB No. 793946
19 Assistant County Counsel
20 E-mail: scotsid@co.clackamas.or.us
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