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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE**

THE STATE OF OREGON,

Plaintiff,

vs.

DANIEL LYMAN DAVIS,

Defendant.

Case No. 20 05 17842

AMENDED DEMURRER

(Oral Argument Scheduled for January
3, 2006 at 11:00 a.m. before the
Honorable Karsten H. Rasmussen)

Defendant, by and through counsel, demurs as follows.

Points and Authorities

This demurrer is pursuant to ORS 135.630(1) which reads: “The defendant may demur to the accusatory instrument when it appears upon the face thereof: (1) If the accusatory instrument is an indictment, that the grand jury by which it was found had no legal authority to inquire into the crime charged because the same is not triable within the county.”

The reason the crime alleged cannot be tried within Lane County is, the crime alleged is a felony and Lane County does not have a Circuit Court¹.

From 1859 until 1910 Oregon had Circuits Courts. *See Oregon Constitution Art. VII (original) § 1.* From 1859 to 1910 the Circuit Courts had “[a]ll judicial power, authority, and jurisdiction not vested by [the Oregon Constitution], or by the laws consistent therewith,

¹ Neither a justice court nor a municipal court is empowered to try felonies. ORS 51.050(3); ORS 221.339(3). Defendant is not aware that Lane County currently has a County Court or County Court Judge or whether such a court would be empowered to try felonies.

1 exclusively in some other Court.” *See* Oregon Constitution Art. VII (original) § 9.

2 In 1910 the people of Oregon revised Article VII of the Oregon Constitution. In particular,
3 the 1910 measure eliminated “Circuits Courts” as constitutional courts.

4 Oregon Constitution Art. VII (amended) § 1 reads:

5 “The judicial power of the state shall be vested in one supreme court and in such other
6 courts as may from time to time be created by law. The judges of the supreme and other
7 courts shall be elected by the legal voters of the state or of their respective districts for a
term of six years, and shall receive such compensation as may be provided by law, which
compensation shall not be diminished during the term for which they are elected.”

8 From the effective date of the 1910 measure to the present, no provision of the Oregon
9 Constitution creates a circuit court. There is no statute that creates a circuit court². Therefore, no
10 circuit court exists in Oregon.

11 Defendant recognizes that if and when the legislature or the people (by referendum or
12 initiative) creates a circuit court or circuit courts, such court or courts will obtain the jurisdiction
13 granted them by Oregon Constitution Art. VII (original) §9. That creation has not yet occurred.

14 Defendant recognizes that men and women have been elected to be Circuit Judges. The
15 mere fact that such men and women have been elected Circuit Judges does not grant them the
16 authority to try cases absent a court to try the case in. ORS 1.230 “Powers of a judge out of court.
17 A judge may exercise, out of court, all the powers expressly conferred upon a judge as
18 distinguished from a court, and not otherwise.”

19 Because of the nature of this demurrer, which asserts that the court in which the demurrer is
20 filed is not a court that actually exists, defendant is also filing a petition for writ of mandamus in

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24 ² The legislature has created the court of appeals (ORS 2.510) and the tax court (ORS 305.405).
25 The legislature has also authorized municipalities to create municipal courts (ORS 221.336).
26 Municipalities have created municipal courts. *See, for example*, Springfield Charter Section 22(1).
It cannot be said that the legislature does not know how to create courts or that the legislature has
not created courts. It just has not created a circuit court as of now.

1 the Supreme Court to seek a writ of mandamus directing the Lane County District Attorney to
2 stop seeking indictments into a non existent court.

3 Dated this 20th day of December, 2005. JAMES E. LEUENBERGER PC
4
5

6 James E. Leuenberger OSB 89154
7 Attorney for defendant

8 **Certificate of Delivery**

9 I certify that I mailed a true copy of this document to the Lane County District Attorney's
10 Office, 125 E 8th Ave Rm 400, Eugene, OR 97401.

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12 James E. Leuenberger
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