

IN THE SUPREME COURT OF THE STATE OF OREGON

THE STATE OF OREGON,

Adverse Party-Plaintiff,

vs.

DANIEL LYMAN DAVIS,

Relator-Defendant.

Supreme Court No. S53089

Lane **County** No. 20 05 17842

State of Oregon ex rel

DANIEL LYMAN DAVIS,

Plaintiff,

vs.

MARY ANN BEARDEN, JACK A.
BILLINGS, CHARLES CARLSON,
CYNTHIA CARLSON, TED CARP,
GREGORY G. FOOTE, EVELEEN
HENRY, BRYAN T. HODGES,
LAUREN S. HODGES, DARRYL
LARSON, KIP LEONARD, MAURICE
K. MERREN, DOUGLAS S.
MITCHELL, KARSTEN H.
RASMUSSEN, and LYLE G. VELURE,

Defendants.

PETITION FOR PEREMPTORY WRIT
OF MANDAMUS AND FOR WRIT OF
QUO WARRANTO

Attorney for Daniel Lyman
Davis, Mandamus Relator
and Quo Warranto Plaintiff:

James E. Leuenberger, OSB
89154
JAMES E. LEUENBERGER PC
4800 SW Meadows Rd Ste
300
PO Box 1684
Lake Oswego, OR 97035
(503) 542 7433 voice
(503) 419 6415 fax
jim@fights4rights.com

Attorney for Adverse Party in
Mandamus:

Thomas A. Hermens, OSB
80260
Lane County District
Attorney's Office
125 E 8th Ave Rm 400
Eugene, OR 97401
(541) 682 4261 voice
(541) 682 3890 fax
tom.hermens@co.lane.or.us

Attorney for Quo Warranto
Defendants:

Mary H. Williams, OSB
91124
Solicitor General
Oregon Department of
Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 378-4400 voice
(503) 378 6306 fax
mary.williams@doj.state.or.us

Facts Material to a Determination of Question Presented and Relief Sought

From the effective date that Oregon Constitution Article VII was amended in 1910, circuit courts have not been constitutional courts. While, pursuant to Or. Const. Art VII (amended) §1, the legislature and the people have the power to create circuit courts neither the legislature nor the people have done so¹.

Relator requests a peremptory writ of mandamus directing F. Douglas Harclerod, Lane County District Attorney, and his deputies to cease seeking indictments for a non existent court.

Relator requests a peremptory writ of mandamus directing the Circuit Judges in Lane County to cease conducting trials, to cease hearing motions, and to cease conducting any other court business until the legislature or the people create circuit courts.

Plaintiff seeks a declaration in quo warranto that the men and women elected Circuit Judges in Lane County no longer exceed their authority by exercising powers of judges in court as opposed to the powers granted judges out of court. This declaration is sought because no circuit courts exist in Oregon unless and until either the people or the legislature create circuit courts pursuant to the power to create courts found in Or. Const. Art. VII (amended), § 1.

¹ To be more precise, it is possible that the legislature or the people may have, at some time since 1910, created circuit courts. If such courts were created since 1910, the post 1910 legislation creating circuit courts has been repealed as no such statute is now a part of the Oregon Revised Statutes.

**Petitions for Peremptory Writs of Mandamus and for
Writ of Quo Warranto are Timely**

Daniel Lyman Davis, relator and plaintiff, has been indicted in Lane County (Appendix page 1), has demurred to the charge on the basis that no court has jurisdiction to try a felony in Lane County (Appendix pages 2 – 4), and no further action has been taken in his case. These petitions will still be timely even if a Circuit Judge acts on Mr. Davis’ demurrer as no circuit court exists in Oregon and only a circuit court in and for Lane County could have jurisdiction to try a felony committed in Lane County.

**Application to the Circuit Court is Impossible as no Circuit Court
Exists**

Relator / plaintiff is barred from seeking relief from a court that does not exist. Since no circuit court exists in Oregon, plaintiff cannot apply for relief from a circuit court.

No Other Remedy is Available

Relator / plaintiff has no other remedy available to him other than the remedies sought in these joint petitions. A court which does not exist has no jurisdiction². Since neither the people nor the legislature have created any circuit courts since Oregon Constitution Article VII was amended in 1910³

² Mr. Davis readily admits that once circuit courts are created, they will have the jurisdiction conferred on them by Or. Const. Art. VII (original), § 9. Until circuit courts are created, however, they do not have and cannot have any jurisdiction.

³ If Or. Const. Art. VII was not amended in 1910, as argued by the plaintiff in *Lincoln Loan Company v. City of Portland*, S. Ct. No. S51666, these joint petitions have no merit and this court has no jurisdiction to even consider them since this court’s power to entertain original petitions for writs of mandamus and quo warranto were conferred on this court by Or. Const. Art. VII (amended), § 2.

and since a court must exist in order to have jurisdiction, any proceedings in any tribunal calling itself a circuit court would be a sham and a fraud.

Mr. Davis is not and should not be required to participate in a fraudulent proceeding before he is allowed to petition this Supreme Court for a determination that the court the State of Oregon has indicted him into does not exist.

Memorandum of Law

From 1859 until 1910 Oregon had Circuits Courts. *See* Or. Const. 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, exclusively in some other Court.” *See* Oregon Constitution Art. VII (original) § 9.

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

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

“The judicial power of the state shall be vested in one supreme court and in such other courts as may from time to time be created by law. The judges of the supreme and other 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.”

From the effective date of the 1910 measure to the present, no provision of the Oregon Constitution creates a circuit court. There is no statute that creates a circuit court⁴. Therefore, no circuit court exists in Oregon.

⁴ The legislature has created the court of appeals (ORS 2.510) and the tax court (ORS 305.405). The legislature has also authorized municipalities to create municipal courts (ORS 221.336). 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

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

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

Prayer

Relator, Daniel Lyman Davis, prays for a peremptory writ of mandamus directing F. Douglas Harclerod and his deputies to cease and desist from seeking or obtaining indictments to initiate felony prosecutions in any circuit court until a circuit court is created in and for Lane County.

Relator, Daniel Lyman Davis, prays for a peremptory writ of mandamus directing the men and women who have been elected or appointed Circuit Judges in Lane County, Oregon to cease and desist from hearing and deciding motions, trying cases, or in any other way acting as if they are presiding in a court of law until a circuit court is created in and for Lane County.

Plaintiff, Daniel Lyman Davis, prays for quo warranto declaring that the men and women who have been elected or appointed Circuit Judges in Lane County, Oregon have no authority to exercise any powers conferred upon a

the legislature has not created courts. It just has not created a circuit court as of now.

court as distinguished from the powers conferred upon a judge until such time as a circuit court is created in and for Lane County.

Dated this 3rd day of January, 2006. JAMES E. LEUENBERGER PC

James E. Leuenberger
OSB 89154
Attorney for Relator / Plaintiff,
Daniel Lyman Davis

Certificate of Delivery

I certify that I have delivered or will deliver a true copy of this document to counsel listed on the title page by hand delivery on January 3, 2006.

James E. Leuenberger

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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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