

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF UNION

3 Union County

Case No. 25CV22067

4 Plaintiff,

5 vs.

**OPINION AND ORDER
RE: MOTION FOR RELIEF
FROM JUDGMENT**

6 In Rem

7 Defendant
8

9 Movant Levi Bakke asks this court to set aside the uncontested General Judgment
10 entered on August 25, 2025. That Judgment declared Union County Ordinance 2017-01 to be
11 unconstitutional. For reasons detailed below, the Motion is DENIED.

12 **SUMMARY OF FACTS**

- 13 1. Union County voters on May 17, 2016 passed Initiative Measure 31-89 imposing term
14 limits for Union County Commissioners.
- 15 2. The Union County Board of Commissioners implemented the ballot measure by
16 adopting Ordinance 2017-01 on March 15, 2017.
- 17 3. The Oregon Court of Appeals ruled on May 16, 2018 that Article VI, §8 of the Oregon
18 Constitution provides the exclusive set of qualifications for county commissioners,
19 term limits represent an impermissible qualification beyond that provided under Art.
20 VI, §8, and that local ordinances imposing term limits are therefore unconstitutional.
21 *State ex rel Smith v. Hitt*, 291 Or App 750.
- 22 4. The Union County Board of Commissioners on January 22, 2025 designated the *East*
23 *Oregonian* as the official newspaper for the publication of all Union County public
24 notices for the calendar year 2025. The order designating the newspaper of record for
25 notices was signed by all three commissioners, as is typical practice for the commission
26 at the beginning of each calendar year.
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5. The Board on April 4, 2025 filed its Petition for Validation of Local Government Action asking the Union County Circuit Court to determine the constitutionality of Ordinance 2017-01. The petition was filed pursuant to ORS 33.710 – 33.720.
6. Three days later, on April 7, 2025, the County directed notice of its filing of the Petition to the *East Oregonian* for publication on three consecutive weeks (April 16, 23, and 30, 2025) as required by statute.
7. The principal clerk of the publisher on April 30, 2025 certified in an affidavit that the notice was actually published on those dates and that the *East Oregonian* is a newspaper of general circulation as defined by ORS 193.010 and 193.020. That affidavit was filed with the Union County Circuit Court on May 6, 2025.
8. Counsel for the County, Wyatt Baum, on May 16, 2025 sent a letter to the court representing that the notice of the Petition was published once per week for three consecutive weeks in the *East Oregonian*, that nobody appeared to contest the validity of the proceeding on the Petition within the time provided by ORS 33.720(3), and requesting that the court review the Petition and issue a Judgment.
9. The Circuit Court issued an uncontested General Judgment on August 25, 2025 finding Ordinance 2017—01 to be unconstitutional because the local term limits measure is preempted by Art. 3, §8 of the Oregon Constitution, as directly ruled on by the Oregon Court of Appeals in the *Hitt* matter in 2018.
10. Movant filed his Motion to Set Aside on April 16, 2026, more than seven months after entry of the Judgment.

ANALYSIS

The gist of movant’s argument is that the August 2025 Judgment is “void” because the *East Oregonian* was not the proper newspaper for publication of the County’s notice of its filing of the “Petition for Validation” back in April 2025; that the notice should instead have been published in the *La Grande Observer*; that because it wasn’t published in the *Observer*

1 the Circuit Court had no jurisdiction to hear the County’s “Petition for Validation;” and that
2 the resulting Judgment is void and should be set aside.

3 Movant’s argument is without merit and is therefore denied, for the following reasons.

4 **A. ORS 33.720(6) Prohibits this Collateral Challenge to the Judgment**

5 The plain language of the “validation” statute indicates the legislature’s intent that
6 judgments in these proceedings are binding and not subject to post-judgment challenges.

7 Specifically, ORS 33.720(6) provides that:

8 “Upon conclusion of a proceeding authorized by [the validation statute]
9 including any appeal of the judgment,¹ the judgment entered in the proceeding
is binding upon the parties and all other persons. Claim preclusion and issue
preclusion apply to all matters adjudicated in the proceeding.”

10 The statute is crystal clear—the judgment itself is not subject to a collateral attack such as this.

11 Moreover, any issues resolved by the judgment cannot be relitigated. In this case, movant
12 seeks to challenge an issue resolved by the judgment—that is, whether publication of the
13 County’s Notice in the *East Oregonian* in April 2025 satisfied the publication requirements of
14 ORS 193.010(3)(f)(a) and ORS 33.720(3). This court’s August 2025 Judgment specifically
15 addressed that question, holding that “the county published a notice and summons for three
16 consecutive weeks in local media, providing an opportunity for any interested party to appear
17 and contest the petition, pursuant to ORS 33.720(3).”

18 Because the publication issue was adjudicated in the August 2025 Judgment, the
19 validation statute at ORS 33.720(6) clearly and unambiguously precludes movant’s attempt to
20 relitigate it now.

21 **B. Movant Does Not Have Standing Under ORCP 71B(1)(d) to Set Aside the**
22 **Judgment**

23 By its plain terms ORCP 71B applies to “parties” to an action. Movant is simply not a
24 “party” in this case. The validation statute uses an *in rem* party designation to direct notices to
25 Union County electors generally without identifying any individual, whether described as a
26 resident, elector, freeholder, or any other designation. No individuals were joined as parties,
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28 ¹ No appeal of the August 2025 Judgment was filed.

1 and movant was not joined as a party. Movant did not appear, object, or answer during the
2 period provided by statute to contest the County action.

3 Furthermore, movant's reliance on *State ex rel. Costello v. Cottrell*, 318 Or 338 (1994)
4 is misplaced. To the extent that a non-party might have a right to collateral attack on a void
5 judgment, that right must be asserted either through a separate, independent action, or upon a
6 specific motion under ORCP 71C. Assuming that movant alternatively seeks relief as a non-
7 party under ORCP 71C, there is nothing in movant's memoranda that persuades the court to
8 exercise its equitable authority to grant relief under ORCP 71C. First, movant claims that he
9 only became aware of this proceeding in October 2025 and then waited approximately six
10 months to file this motion. In addition, movant apparently concedes that granting his motion
11 will not change the outcome of the proceeding, that is, a new Judgment will not be
12 substantively different from the original Judgment. Under well-established controlling Oregon
13 law, Ordinance 2017-01 was unconstitutional in August 2025 and remains unconstitutional
14 today. There is no equitable basis for granting relief under ORCP 71C.

15 **C. The Judgment is not "Void"**

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17 The August 2025 Judgment could only be void if the Union County Circuit Court had
18 no jurisdiction to issue a judgment in the first place. In this case, the court had subject matter
19 jurisdiction over the county's validation petition as provided by ORS 33.710 – 33.720. The
20 legislature explicitly conferred jurisdiction of the court over this type of proceeding by creating
21 the statute. The county was the party to the Petition and consented to jurisdiction by filing the
22 Petition pursuant to the statute. Publication of the notice was directed to the entire class of
23 Union County electors (which is a defining characteristic of an *in rem* proceeding) in a
24 newspaper serving Union County and available to Union County electors.

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26 Even if movant is correct in arguing that the county's publication of notice in the *East*
27 *Oregonian* was not compliant with ORS 193.020 (as will be detailed below the county's notice
28 publication *did* comply with the statute), that defect is at best procedural and is not "an error

1 of jurisdictional magnitude.” *State v. McDonnell*, 343 OR 557, 570 (2007) (discussing possible
2 procedural errors as affecting due process and jurisdiction). Movant was not deprived of any
3 due process rights by not reading the *East Oregonian* during the three consecutive weeks
4 when the notice was published. The ten day “contest window” was open equally to movant and
5 all other Union County electors, movant took no action during that time, and his inaction
6 implicates no violation of his due process rights.

7 In short, the jurisdiction of the Circuit Court to issue its August 2025 Judgment did not
8 depend on movant’s choice of newspaper, and his failure to read the published notice in April
9 2025 does not deprive the court of jurisdiction expressly granted by the legislature. The
10 judgment is therefore not void.

11 **D. The *La Grande Observer* did not Qualify as a Newspaper for Publication of**
12 **the County’s Notice in April 2025.**

13 The validation statute controlling this *in rem* proceeding requires that:

14 “[J]urisdiction of the electors be obtained by publication of notice to all electors,
15 freeholders, taxpayers, and other interested persons . . . by publication for at least
16 once a week for three consecutive weeks in a newspaper of general circulation
17 published in the county where the proceeding is pending, or if no such newspaper
is published therein, then in a contiguous county.” ORS 33.720(2).

18 Oregon law further details the requirements for “newspaper publication” in a separate statute,
19 ORS 193.010 – 193.100. Relevant here, first, is ORS 193.010(3)(e)(A) requiring a publication
20 have “bona-fide subscribers representing more than half of the total distribution of printed
21 newspapers and paid-for digital newspapers.” In addition, a qualifying newspaper must have
22 been “regularly and uninterruptedly published at least once a week during a period of at least
23 12 consecutive months immediately preceding the first publication of the public notice.” ORS
24 193.010(f)(A).

25 The *La Grande Observer* did not meet those requirements in April 2025 when the
26 county sent its Notice out for publication. There is no dispute that the Observer stopped its
27 standalone print edition on July 1, 2024. The online subscription version of the *Observer* was
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1 absorbed by the *East Oregonian* at approximately the same time, and anyone attempting to
2 subscribe to the *Observer* electronically (through a link at lagrandeobserver.com) was
3 automatically directed to subscribe.easternoregonian.com. It is therefore clear that the *La*
4 *Grande Observer* ceased its print and standalone online publications on or about July 2024
5 and thus failed to meet the requirements of either ORS 193.010(3)(e)(A) or ORS
6 193.010(3)(f)(A). Because that cessation of publication occurred during the 12-month “look-
7 back” period immediately preceding the county’s Notice in April 2025, the *Observer* did not
8 qualify as a publication for purposes of the county’s *in rem* jurisdictional publication of notice.

9 **E. Publishing the Notice in the *East Oregonian* Complied with ORS 193.020.**

10 The newspaper publication statutes anticipate that a county might not have a
11 qualifying newspaper, as defined above, within its boundaries. In instances such as this, the
12 legislature provides that “public notice be published in the newspaper nearest to such county.”
13 ORS 193.020(3). This is precisely what Union County did in selecting the *East Oregonian* for
14 publication of required notices. The county decision to use the *East Oregonian* for publication
15 of notices was not confined to the April 2025 notice at issue here. Perhaps recognizing that the
16 *Observer* might no longer be a qualifying newspaper for the publication of public notices
17 under ORS 193.010, Union County in January 2025 designated the *East Oregonian* as the
18 qualifying newspaper for publication of *all* public notices for the 2025 calendar year. All three
19 county commissioners voted for that designation, in Court Order 2015-01, on January 22,
20 2025.

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22 The designation is not surprising as a practical matter. As described above, the *La*
23 *Grande Observer* no longer qualified as a newspaper for purposes of publishing public notices.
24 The *East Oregonian* is headquartered in an adjoining county, it is published by the same
25 publisher as the *Observer*, it has regular Union County news coverage, Union County
26 subscribers, an online platform for distribution of published notices, and it was the newspaper
27 that Union County’s former *Observer* subscribers received in the place of the *Observer*.
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1 In addition to the January 2025 Order generally designating the *East Oregonian* as the
2 paper of publication for the county, the publication itself affirmed that the *East Oregonian*
3 qualified as a newspaper of general circulation as defined by ORS 193.010 and 193.020. The
4 publisher's principal clerk Audra Worman submitted a sworn affidavit to the court on May 6,
5 2025 confirming that the *East Oregonian* was qualifying publication for purposes of public
6 notices.

7 Given those facts, the county's selection of the *East Oregonian* to publish notice of the
8 *in rem* proceeding in April 2025 (and for all the county's 2025 notices) effectively provided
9 "actual notice" of the proceeding as required ORS 193.020(4). Movant's argument that the
10 selection was not the "most effective" choice is irrelevant.

11 **F. New Proceedings Would Not Change the Outcome in this Case**

12 This court's August 2025 Judgment declaring Ordinance 2017-01 unconstitutional was
13 based directly on the Oregon Court of Appeals decision in *State ex rel. Smith v. Hitt*, 291 Or
14 App 750 (2018). That decision held that Art. VI, §8 provides the exclusive qualifications for
15 county commissioners and that a local ordinance imposing terms limits creates an additional
16 qualification not permitted by the Oregon Constitution. *Hitt* is directly on point, it remains the
17 law, and it is binding on this Circuit Court. Setting the August 2025 Judgment aside and
18 starting the process anew would do nothing other than impose needless expense on the
19 county.
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21 **CONCLUSION**

22 Movant's collateral attack of the Judgment is barred by ORS 33.720(6), movant does
23 not have standing to get the relief he seeks under ORCP 71B, and the court declines to exercise
24 its equitable discretion under ORCP 71C to grant relief. The alleged publication deficiencies
25 (even if they existed, which they do not) would not deprive this court of jurisdiction to issue a
26 judgment under ORS 33.710 and 33.720. The Judgment is therefore not void. The *La Grande*
27 *Observer* was not a qualifying newspaper for publication of public notices for the 12 months
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1 preceding the county's notice of this *in rem* proceeding in April 2025. The *East Oregonian* was
2 a qualifying publication, and the county's decision to use that newspaper was sufficient to
3 establish jurisdiction over the parties (including all Union County electors, freeholders,
4 residents, and other interested persons) pursuant to the validation statute. The Circuit Court
5 had jurisdiction to issue a Judgment in response to Union County's Petition, and there is no
6 basis in law or fact to set aside the Judgment of August 25, 2025.

7 For all of these reasons, the Motion to Set Aside Judgment is DENIED. The motion to
8 intervene is also DENIED.

5/4/2026 10:38:19 AM

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11 Circuit Court Judge Thomas B Powers

12 Thomas B. Powers,
13 Circuit Court Presiding Judge
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