

Submitter:

Brent Smith

On Behalf Of:

Committee:

Senate Committee On Judiciary

Measure, Appointment or Topic:

SB1545

I am attorney in Eastern Oregon that often represents landowners in connection with property disputes. I support this measure. We do not have as many corner crossing situations in Oregon as compared to the states in the interior of the West. I have never encountered this issue while representing a landowner. It's important to note that the 10th Circuit resolved the issue with respect to federal land in Wyoming by referencing the Unlawful Inclosures Act. It opined that the Wyoming Supreme Court would probably find that traversing a landowner's airspace that close to the ground is trespass. If a property owner in Oregon has a right to exclude a corner crosser, then where the ballot measure eliminates a private landowner's ability to bring a civil trespass claim, it takes private property (the right to exclude) for public use. You have a takings issue here. The legislature cannot eliminate a landowner's right to exclude.

I tend to think a property owner in Oregon has never had a right to exclude a corner crosser that does not cause harm and does not unreasonably interfere with quiet enjoyment. The legislature would be wise to review the history and explain why the statute is consistent with the rights a landowner in Oregon had in 1859 as part of its process. I think crossing at a corner is conditionally privileged (not trespass), even in 1859.