

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

Matthew Gabbert, et al. v. Josephine County, et al.

Gabbert · No. 1:23-cv-01434-IM · Decided May 8, 2026

SUMMARY

The United States District Court for the District of Oregon denied defendants’ Rule 12(b)(6) motion to dismiss a third amended complaint brought by former tax-delinquent property owners. The court held that the counties could potentially face federal municipal liability because alternatives existed to retaining surplus foreclosure proceeds, and that the allegations sufficiently stated a takings claim under the Oregon Constitution.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                          |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the District of Oregon                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Karin J. Immergut                                                                                                                                                                                                                                        |
| JURISDICTION          | United States District Court for the District of Oregon                                                                                                                                                                                                  |
| DECIDED               | May 8, 2026                                                                                                                                                                                                                                              |
| DOCKET                | 1:23-cv-01434-IM                                                                                                                                                                                                                                         |
| DISPOSITION           | other                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the plaintiffs' Third Amended Complaint with prejudice.                                                                                                                       |
| STANDARD OF REVIEW    | On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, draws reasonable inferences in favor of the nonmoving party, and determines whether the complaint alleges sufficient facts to state a plausible claim for relief. |
| PRECEDENTIAL VALUE    | nonprecedential district court opinion                                                                                                                                                                                                                   |
| PARTIES               | Defendants, including Josephine County and other county defendants v. Matthew Gabbert, et al.                                                                                                                                                            |

TOPICS

- takings clause
- municipal liability
- motions to dismiss
- eminent domain
- civil procedure

PRACTICE AREAS

- constitutional law
- civil rights
- municipal law
- real property
- civil procedure

## QUESTIONS PRESENTED

1. Whether the Third Amended Complaint stated a federal Takings Clause claim against the counties despite allegations that the counties acted pursuant to Oregon's statutory scheme for distributing surplus foreclosure proceeds.
2. Whether the Third Amended Complaint stated a takings claim under Article I, section 18, of the Oregon Constitution despite defendants' argument that they lacked the intent required for an intentional taking.

## HOLDINGS

1. The plaintiffs plausibly stated a federal Takings Clause claim against the counties because, under their theory, the counties had alternatives available to compensate the plaintiffs and were not compelled by Oregon law to retain the surplus proceeds without compensation.
2. The plaintiffs plausibly stated a takings claim under Article I, section 18, of the Oregon Constitution because the alleged facts support an inference that the counties intentionally authorized the alleged takings.

## KEY QUOTATIONS

*“Therefore, this Court finds that, under Plaintiffs’ theory of the case, Defendants enacted a policy to violate Plaintiffs’ constitutional rights despite various alternatives.”*

*“Thus, Defendants “intentionally authorized” the alleged takings. Plaintiffs therefore state a claim under the Oregon Constitution.”*

## FACTUAL BACKGROUND

Plaintiffs were former owners of property that became tax delinquent and was foreclosed upon by Oregon counties. Plaintiffs allege that the counties sold the properties for substantially more than the tax debts and retained the surplus without providing just compensation. They asserted federal and Oregon constitutional takings claims, while defendants argued that the counties were merely complying with mandatory Oregon law and therefore could not be liable.

## PROCEDURAL HISTORY

The action is one of four related cases concerning former tax-delinquent property owners whose foreclosed properties allegedly sold for more than the tax debt, with counties retaining the surplus. The court had previously largely denied motions to dismiss, dismissed some claims as untimely, and granted leave to amend. Plaintiffs filed a Second Amended Complaint, defendants answered it, and plaintiffs then filed the Third Amended Complaint, which made minor changes and added a plaintiff without adding new claims. The court denied defendants' motion to dismiss the federal and Oregon takings claims.

## DISPOSITION

other

## CASES CITED

- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Dowers v. Nationstar Mortg., LLC, 852 F.3d 964, 969 (9th Cir. 2017)
- Khachatryan v. Blinken, 4 F.4th 841, 854 (9th Cir. 2021)
- Monell v. Department of Social Services of New York, 436 U.S. 658 (1978)
- Los Angeles County v. Humphries, 562 U.S. 29, 31 (2010)
- Benavidez v. County of San Diego, 993 F.3d 1134, 1153 (9th Cir. 2021)
- Castro v. County of Los Angeles, 833 F.3d 1060, 1075, 1170 (9th Cir. 2016) (en banc)
- City of Canton v. Harris, 489 U.S. 378, 385 (1989)
- Pembaur v. City of Cincinnati, 475 U.S. 469, 483 (1986) (plurality op.)
- Brewster v. City of Los Angeles, 672 F. Supp. 3d 872, 989 (C.D. Cal. 2023)
- Evers v. County of Custer, 745 F.2d 1196 (9th Cir. 1984)
- Miranda-Olivares v. Clackamas County, No. 3:12-cv-02317-ST, 2014 WL 1414305, at \*4 n.5 (D. Or. Apr. 11, 2014)
- Western States Land Reliance Trust v. Linn County, 343 Or. App. 280, 290 (2025), review allowed, 374 Or. 437 (2025)
- Tyler
- Wilkins v. Herron, No. 24-80, 2024 WL 5200177 (9th Cir. Dec. 23, 2024)
- Sinclair v. City of Seattle, 61 F.4th 674, 680 n.3 (9th Cir. 2023)
- Dunn v. City of Milwaukie, 355 Or. 339, 348, 359 (2014)
- Mossberg v. University of Oregon, 240 Or. App. 490, 498-502 (2011)