



OREGON LAW COMMISSION

MEMORANDUM

RE: Subsequent Treatment of *City of Eugene v. Lincoln*
Date: August 19, 2026

Question Presented

How have later courts treated *City of Eugene v. Lincoln*, 183 Or. App. 36, 50 P.3d 1253 (2002), particularly its interpretation of ORS 221.360.

Summary

The later cases reviewed in this memo do not overrule, question, or materially narrow *Lincoln*'s interpretation of ORS 221.360. The two decisions that directly address that statute, *City of Lowell v. Wilson*, 197 Or. App. 291, 105 P.3d 856 (2005), and *City of Eugene v. Silva*, 198 Or. App. 101, 108 P.3d 23 (2005), follow and clarify *Lincoln*.

Wilson is the most significant later treatment. It expressly rejected the argument that *Lincoln* was dicta or inconsistent with earlier Oregon Supreme Court decisions. *City of Lowell v. Wilson*, 197 Or. App. 291, 297 (2005). It also clarified that *Lincoln* involves two distinct questions: (1) Whether the Court of Appeals has jurisdiction over the appeal; and (2) Once jurisdiction exists, whether review is limited to the constitutional issue or may include preserved nonconstitutional issues. *Id.* at 300-01.

Silva addresses an earlier threshold question. ORS 221.360 applies only when the conviction is based on a municipal charter provision or ordinance. *City of Eugene v. Silva*, 198 Or. App. 101, 106 (2005). The statute does not apply merely because a city prosecuted the case or appears as the prosecuting entity in the caption. A municipal prosecution of a state offense remains a prosecution under state law. *Silva* at 107 n.3.

The remaining cases discussed in this memo primarily cite *Lincoln* for its distinction between facial and as-applied constitutional challenges or for its Article I, section 8 analysis of speech-neutral laws. Those cases generally reinforce *Lincoln* but do not address its interpretation of ORS 221.360.

I. *Lincoln*'s Interpretation of ORS 221.360

In *Lincoln*, the defendant was convicted in municipal court of violating Eugene's criminal trespass ordinance. The circuit court affirmed after a de novo trial, and the defendant appealed to the Court of Appeals. *Lincoln* at 38.

ORS 221.360 provided that, when the right of appeal depended on the presence of a constitutional issue, the appellate court could decide only that constitutional issue. *Id.* at 40. The city argued that the statute permitted review only of a facial challenge to the ordinance and prevented the court from considering Lincoln’s as-applied challenge and related nonconstitutional arguments. *Id.* at 40-41.

The Court of Appeals rejected that interpretation. *Id.* at 41.

First, the court concluded that both facial and as-applied challenges concern the constitutionality of the ordinance. *Id.* A facial challenge alleges that the legislature or city acted unconstitutionally when it enacted the law. An as-applied challenge alleges that executive officials acted unconstitutionally when they enforced it. *Id.*

Second, the court concluded that the restriction on the scope of review was conditional rather than absolute. *Id.* It applied only when the constitutional issue supplied the otherwise unavailable right to appeal. *Id.* Because another statute independently authorized Lincoln’s appeal, the court was not restricted to deciding only the constitutional issue. *Id.* at 43.

The purpose of the limitation was to prevent a party from raising a constitutional issue merely as a means of obtaining review of an otherwise unreviewable claim. *Id.* It was not intended to restrict the scope of review when an independent right to appeal already existed. *Id.*

II. Later Cases Addressing ORS 221.360

a. *City of Lowell v. Wilson*

Wilson followed, approved, and clarified *Lincoln*. *Wilson* at 300.

The City of Lowell asked the Court of Appeals to treat *Lincoln*’s discussion of ORS 221.360 as dicta or to disavow it as inconsistent with earlier Oregon Supreme Court decisions. *Wilson* at 297. The court rejected both requests and concluded that *Lincoln* was consistent with *City of Salem v. Polanski*, 202 Or. 504, 276 P.2d 407 (1954), and the Court of Appeals’ prior cases. *Id.* at 300.

The court explained that *Lincoln* rests on two separate propositions. *Wilson* at 300.

i. A constitutional challenge may be a jurisdictional prerequisite

When ORS 221.360 is the only possible source of appellate jurisdiction, the appellant must present a cognizable constitutional challenge to the municipal charter provision or ordinance. *Id.* at 300.

A facial challenge can satisfy that requirement. An as-applied challenge can also satisfy it. *Id.* at 299-300. The constitutional argument must, however, be properly raised and preserved. *Id.* at 301.

Wilson failed to satisfy that threshold requirement. *Id.* at 301. Her generalized due process argument had not been adequately raised and preserved below. *Id.* The court therefore lacked jurisdiction under ORS 221.360. *Id.*

The court also rejected Wilson’s argument that ORS 138.050 or ORS 138.057 independently authorized her appeal. *Id.* at 296-97. Because her conviction arose from a municipal code violation in a municipal court that was not a court of record, ORS 221.360 was the sole possible source of jurisdiction. *Id.* at 301 n.11.

ii. The court may sometimes review nonconstitutional issues after jurisdiction exists

Wilson separately recognized *Lincoln*’s conclusion that, once the constitutional prerequisite is satisfied, the court may consider preserved nonconstitutional issues in the circumstances described in *Lincoln*. *Wilson* at 300-01. That broader review is available when the appeal does not depend solely on the constitutional issue. *Id.* at 300. It does not eliminate the need to establish appellate jurisdiction in the first place. *Id.*

Accordingly, *Wilson* strengthens rather than limits *Lincoln*. It expressly approves *Lincoln*’s interpretation of ORS 221.360 while clarifying that the scope-of-review rule cannot be used to bypass the statute’s threshold jurisdictional requirement. *Id.* at 301.

Wilson expressly limited its holding to an appeal from a municipal court that was not a court of record. *Id.* at 301 n.11. The court noted that ORS 221.359(3) instead directs appeals from municipal courts of record through ORS chapter 138. *Id.* at 299 n.8. Because Lowell Municipal Court was not a court of record, *Wilson* did not decide how the chapter 138 framework applies to appeals from municipal courts of record.

b. *City of Eugene v. Silva*

Silva followed *Lincoln* and clarified when ORS 221.360 applies. *Silva* at 106.

Silva was prosecuted by the City of Eugene for DUII. The city argued that ORS 221.360 prevented the Court of Appeals from reviewing his challenge to the denial of a suppression motion because the prosecution allegedly arose under the Eugene City Code. *Id.* at 105.

The court rejected that argument. The citation identified ORS 813.010, the state DUII statute, and nothing in the record established that *Silva* was charged with or convicted of violating a municipal ordinance. *Id.* at 106-07. The court explained that ORS 221.360 limits appeals from circuit court convictions based on violations of municipal charter provisions or ordinances. *Id.* at 106. It does not apply merely because a city prosecuted the case, the city appeared in the case caption, or the case originated in municipal court. *Id.* at 107 n.3.

Cities may prosecute state offenses on behalf of the state. That does not transform a state offense into a municipal offense. *Id.* Because *Silva*’s conviction was based on a state statute, ORS

221.360 had no bearing on the appeal. *Id.* at 107. The court therefore reached his nonconstitutional suppression arguments. *Id.*

Silva establishes that the source of the offense must be identified before applying *Lincoln* or ORS 221.360. *Id.* at 106. The relevant question is the legal provision under which the defendant was charged and convicted, not the identity of the prosecuting entity. *Id.*

III. Other Later Treatment of *Lincoln*

The remaining cases do not address *Lincoln*'s interpretation of ORS 221.360. They primarily cite *Lincoln* for two related constitutional principles.

a. Facial and As-applied Constitutional Challenges

Several cases use *Lincoln* to distinguish a facial challenge from an as-applied challenge. *Lincoln* at 41.

- *State ex rel. City of Powers v. Coos Cnty. Airport Dist.*, 201 Or. App. 222, 119 P.3d 225 (2005), used *Lincoln* to characterize a challenge to the formation of a particular airport district as an as-applied rather than facial challenge.
- *State v. Borowski*, 231 Or. App. 511, 220 P.3d 100 (2009), cited *Lincoln* to explain that a facial challenge concerns whether the legislature acted unconstitutionally when it enacted the statute.
- *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or. App. 457, 228 P.3d 650 (2010), used *Lincoln* to classify a substantive due process claim as facial because no executive enforcement action had occurred.
- *City of Corvallis v. State*, 304 Or. App. 171, 464 P.3d 1127 (2020), applied *Lincoln* in holding that actual enforcement is a prerequisite to an as-applied challenge.
- *State v. Sanchez-Cacatzun*, 304 Or. App. 650, 468 P.3d 964 (2020), cited *Lincoln* in explaining why it understood the defendant to be presenting a statutory-interpretation argument rather than a facial or as-applied constitutional challenge.

These cases consistently use *Lincoln*'s distinction between facial and as-applied challenges. *City of Corvallis* further clarifies that an as-applied challenge generally requires actual application or enforcement of the law against the complainant.

b. Enforcement of Speech-neutral Laws

Other cases cite *Lincoln* as an example of a law that is facially neutral but may be unconstitutionally enforced against protected expression. *Lincoln* at 43.

- *State v. Porter*, 198 Or. App. 274, 108 P.3d 107 (2005), cited *Lincoln* as the standard example of a harm-focused law whose constitutionality may depend on its application.

- *State v. Carr*, 215 Or. App. 306, 170 P.3d 563 (2007), followed *Lincoln*'s enforcement framework but distinguished it because the school property at issue was not a public thoroughfare or gathering place.
- *State v. Johnson*, 213 Or. App. 83, 159 P.3d 1213 (2007), *rev'd*, 345 Or. 190, 191 P.3d 665 (2008), distinguished *Lincoln* on the ground that the harassment statute required an intent to provoke violence. The Oregon Supreme Court reversed, holding that the statute was facially overbroad because it criminalized protected expression and did not require any possible violence to be imminent. The Supreme Court did not cite *Lincoln*, but its reversal means that the Court of Appeals' attempted distinction should not be treated as precedential support for limiting *Lincoln*.
- *State v. Rich*, 218 Or. App. 642, 180 P.3d 744 (2008), applied *Lincoln*'s distinction between enforcement directed at regulable harm and enforcement directed at protected expression.
- *State v. Babson*, 249 Or. App. 278, 279 P.3d 222 (2012), *aff'd*, 355 Or. 383, 326 P.3d 559 (2014), treated *Lincoln*'s enforcement-motive analysis as governing an as-applied challenge to a speech-neutral rule.
- *Wilson v. Dep't of Corr.*, 259 Or. App. 554, 314 P.3d 994 (2013), cited *Lincoln* indirectly through *Rich* as an example of a third-category, speech-neutral law.

The unpublished Idaho decision in *State v. Warriorwoman*, No. CR 2007 6006, 2008 WL 4202272 (Idaho Dist. Aug. 15, 2008), distinguished *Lincoln* because the exclusion there was based on threats and safety concerns rather than disagreement with the defendant's political message. As an unpublished out-of-state trial-level decision, it has limited significance.

Apart from the reversed Court of Appeals decision in *Johnson*, these decisions preserve, apply, or distinguish *Lincoln*'s constitutional analysis without questioning it. None addresses or undermines *Lincoln*'s interpretation of ORS 221.360.