Follow up Remarks to Respond to the Proponents' Legal Position on HB 4031

Signs are property interests entitling the sign owner to protection if they are being taken.

A billboard is a private property interest entitling the sign owner to protection under the Fifth Amendment, which protects private property from being taken without just compensation. For example, the Oregon Department of Revenue assesses billboards as real property and taxes it accordingly.

Oregon hasn't ruled on the issue directly, but cases from around the country provide that when a billboard is taken, just compensation must be paid for the loss. *Regional Transportation District v. Outdoor Systems*, 13 P3d 806, rev'd on other grounds, 34 P3d 408 (2001); *United States v. 40.00 Acres of Land*, 427 F Supp 434 (WD Mo 1976); *Whitman v. State Highway Commission*, 400 F Supp 1050 (WD Mo 1975); *Barnhart v. Brinegar*, 362 F Supp 464 (WD Mo 1973); *City of Scottsdale v. Eller Outdoor Advertising Co.*, 119 Ariz 86, 579 P2d 590 (Ariz Ct App 1978); *Department of Transportation v. Heathrow Land & Development Corp.*, 579 So 2d 183 (Fla Dist Ct App 1991); Lamar *Corp. v. State Highway Commission*, 684 So 2d 601 (Miss 1996); *Rollins Outdoor Advertising, Inc. v. State Roads Commission*, 60 Md App 195, 481 A2d 1149 (Md App 1984); *State ex rel. State Highway Commission v. Volk*, 611 SW2d 255 (Mo App 1980); *State v. 3M National Advertising Co.*, 139 NH 360, 653 A2d 1092 (1995); *Lamar Corp. v. City of Richmond*, 241 Va 346, 402 SE2d 31 (1991); *National Advertising Company v. Nevada*, 993 P2d 62, 67 (Nev 2000) (holding that the income generated from the billboards should have been considered in determining the value of the owner's interest in the billboards.)

Even if it is determined that the billboard is a fixture, that is a subset of real property entitling the property owner to just compensation. *State Highway Commission v. Empire Building Materials Co.*, 17 Or App 16 (1974) held that compensation must be paid for the taking of a fixture on real property.

The parties contractual rights will be impaired exposing the state of Oregon to liability.

Mr. Rich's testimony was that Section 5 of HB 4031 solved any "impairment of contract" risk for the State of Oregon. Section 5(2) does state that the amendment would not affect a lease made before the effective date of the Amendment but that it would apply to renewals or extensions of leases after the effective date. *This does not cure the constitutional flaw*. This is because Section 5(1) specifically provides that the law applies to *currently existing signs*. When the sign owner entered into the original lease and made the very significant capital expenditure to construct the sign it was with the reasonable expectation (as provided in the lease) that it would have the right to take the sign down, and would not be required to "forcibly" sell it to the landowner. HB 4031 impairs that right.

HB 4031 violates the intent of Measure 39.

Mr. Rich argued in his testimony that Measure 39 would not be violated by HB 4031 claiming that the signs in question were not private real property "used as a residence, business establishment, farm or forest operation."

Because there has been no construction by a court, there is simply no interpretation to determine what would be within the language of Measure 39. Regardless of that fact, when Measure 39 passed, the intent of the voters (67% of them) was to prohibit the kind of private property transfer from one property owner to another which is exactly what is occurring by HB 4031.

The intent of Section 4(b) needs to be clarified.

There is some dispute as to whether the bill would require the issuance of new sign permits over and above the cap already mandated by the OMIA.

One reading of the bill suggests that the number of permits which ODOT would be required to issue would be expanded based upon the proposed addition of Section 4 to ORS 377.723(2)(b). This provision allows ODOT to issue a permit to an existing sign if the sign, when constructed, complied with applicable ordinances, but is now non-conforming. Currently, the OMIA requires ODOT to issue a relocation credit upon the owner's request if the sign is *removed*, the lease is lost, and the sign and permit conform to the requirements in the OMIA. The bill would require ODOT to issue a relocation credit if the sign is *sold*, the lease is lost, and the sign and permit are conforming to the OMIA (ORS 377.700-840). Alternatively, proponents have testified that a relocation credit would need to be provided before a permit would be issued. Obviously, this issue needs to be clarified.

Either way however, the proposed legislation does not constitute good public policy nor would it be lawful:

If the intent of the drafters is that both the property owner and the sign owner are entitled to a permit (or a credit) this would extend the number of signs beyond the cap and would not be considered "effective control" as required by the OMIA. If the intent of the drafters is that these existing signs no longer will have state permits because the relocation credit has been assigned to the sign owner, this bill will result in hundreds of additional unpermitted signs. Sadly, there are a number of rogue sign operators which continue to maintain unpermitted signs in the state. After ODOT's recent effort at managing and removing signs constructed before the recent OMIA amendments were passed, ODOT would not likely meet the prospect of hundreds of new unpermitted signs with much enthusiasm.

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