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House Consumer Protection and Government Efficiency Committee

Testimony of S. Ward Greene on House Bill 2822

March 6, 2013

Chairman Holvey and Members of the Committee:

My name is S. Ward Greene. I am a lawyer with Greene & Markley PC. I am a past member of the Board of Governors of the Oregon State Bar and a current member of the Bar's Task Force investigating "centralized" legal notice. I do not attempt to speak on behalf of the Oregon State Bar nor on behalf of the Bar's Task Force, although my testimony arises in part out of my investigation and fact-finding in conjunction with my participation in the Task Force. I can also tell you that a portion of my legal practice includes representing four community newspapers on the Oregon coast and in Columbia County.

I have reviewed the previous testimony of Pat Ehlers, also a member of the Bar's Task Force. I wish to make clear that Mr. Ehlers' testimony was neither on behalf of the state Bar nor the Bar's Task Force. The Task Force is investigating issues related to public notice but has reached no conclusions of *any* kind at this time.

I very respectfully disagree with Mr. Ehlers' implication about the superiority of "market choice" regarding public notice and his statement that "the market will determine what is the better notification ... and what is the most effective notification." First, that is not a conclusion that has been reached by the Task Force. Second, my own experience and analysis tells me that the market is unconcerned with the best or most effective notification. Given a choice, the market will always choose the lowest cost in attempting to meet the notice requirements imposed upon it.

My experience and investigation shows that notice placed in a community newspaper is superior to "notice" available somewhere on the Internet. Analogies to "craigslist" fundamentally misunderstand the difference between placing notice in front of a community and having information merely accessible *if* someone knows exactly what they want and searches for it, as in the craigslist model. The craigslist model will, for example, tell you if there are sofas for sale, if you go looking for them. It will *not* provide you any notice that a sofa-recycling center is

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being proposed for location on your street, when you have absolutely no reason to go searching for information about a sofa recycling center.

The superiority of notice placed in community newspapers is demonstrated by a special kind of notice well known to lawyers. In the rare case in a judicial proceeding in which all other efforts to make a party aware of that proceeding have failed, Oregon courts permit notification of that party by the publication of summons in the appropriate community newspaper or newspapers, using all information provided to the court about any former addresses of or information about the unreached party. This notice is permitted because it is simply the *best* notice that can be provided. Part of the due process thinking about this form of notice is that even if the individual in question does not see the notice, someone in the community may have access to or information about the individual and may assist with contact. In all events, courts judge that publication in a community newspaper or newspapers is the *best* form of notification possible. I know of no judge in Oregon who has or would allow publication on some website on the Internet to suffice as best notification to an otherwise unreached party. Newspapers provide superior notice.

Thank you for your consideration.

A handwritten signature in cursive script, appearing to read "Howard Greene". The signature is written in dark ink and is positioned below the text "Thank you for your consideration."