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TESTIMONY OF JOHN DILORENZO, JR. BEFORE THE SENATE COMMITTEE ON FINANCE AND REVENUE IN OPPOSITION TO S.B. 64

February 12, 2015

Good morning Mr. Chairman and members of the committee. For the record, my name is John DiLorenzo. I am a partner of the law firm of Davis Wright Tremaine and am here this morning on behalf of my client, Aspen Investment Group, to oppose S.B. 64. Aspen is among a group of downtown Portland hotel owners and managers who have for several years opposed Metro's plan to devote in excess of $78 million of taxpayer subsidies as a grant to Hyatt Hotels to build a 600 room hotel adjacent to the Oregon Convention Center. Paige Richardson and Michele Rossolo, who are also associated with the group, have maintained litigation against Metro in an effort to further public votes for key components of the plan. I represent them in those cases.

The first case (Rossolo v. Multnomah County) seeks to require Multnomah County to accept more than 20,000 signatures they collected from Multnomah County voters who insist on a referendum over the plan to finance bonds with lodging taxes collected from all hotels in the Metro area. The other two cases (In re: Validation and Richardson v. Metro) seek to require Metro to honor the requirements of ORS 268.310(4) which provides, among other things, that "unless

the electors of the district first approve the financing of the facilities, the district shall not: (a) Construct new facilities . . ."

Among the issues in those cases is whether the fact that Metro now has a charter, trumps this directive. My clients believe that the voters would never have knowingly given up their right to approve risk taking of these proportions and would demand a vote prior to Metro issuing in excess of $60 million of bonds as an outright grant to Hyatt to build a hotel. These cases are now in the Court of Appeals.

S.B. 64 is an effort to subvert the judicial process and command a result. The result that S.B. 64 mandates is that these voter protections will only be available to metropolitan service districts that do not have a charter. However that may sound, it is important to recognize that there is only one metropolitan service district in this state, and that is Metro. So, let's not fool ourselves. This bill would deprive the voters of any opportunity to vote on financing for any new construction projects built by Metro.

The taxpayer subsidies for this hotel project are very unpopular in the tri-county area. In June of 2013, Paige Richardson released polling data that demonstrated that 79% of Multnomah County voters polled were opposed to transient lodging tax funds being paid to Hyatt. http://www.oregonlive.com/front-porch/index.ssf/2013/09/convention_center_hotel_poll_f.html.

The poll also showed that almost three-quarters of all voters want to "require a public vote before Metro can give tax money to build a convention center hotel" (73% favor / 23% oppose).

The poll, conducted by Lisa Grove, interviewed 400 voters and had a margin of error of plus or minus 4.9 percent.

We believe that the courts will ultimately hold that the voters of the district have the right to vote on financial issues of this magnitude. Your approval of S.B. 64 would take away that right.

Here are some of the reasons why voters might likely reject Metro's financing plan if allowed to vote:

In 1998 Metro asked voters for authorization to expand the convention center, saying that an expanded convention center would allow it to "compete for larger conventions." Voters overwhelmingly rejected the measure. Metro was later able to expand the convention center on its own using a car rental tax and transient lodging tax revenue bonds.
http://www.bizjournals.com/portland/stories/1999/04/05/story1.html?page=all

Despite Metro's expansion of the Convention Center, an increase in the number of visitors did not materialize, and by 2004 attendance at the convention

center had dropped, declining below pre-expansion numbers. http://www.forbes.com/forbes/2005/0228/082.html

In 2007, Metro designated the Oregon Convention Center ("OCC") Headquarters Hotel project as a Council project. Metro took the lead role to develop a 600 room, publically-owned headquarters hotel with a room block of 500 rooms.

Then Multnomah County Commission Chair Ted Wheeler analyzed the project on behalf of the county and determined that the project was not economically feasible.

In February of 2011, the Oregonian reported that Mayor Adams and Metro Council President Tom Hughes were interested in reviving the idea http://www.oregonlive.com/portland/index.ssf/2011/02/portlands_plan_for_convention.html.

On May 11, 2012, Metro staff issued a request for proposals for the development of the Oregon Convention Center Hotel (Resolution 12-4365). The Request For Proposals made clear that it was Metro's goal to minimize public subsidies associated with the Hotel project. At the time, total public subsidies for the project were to be $8 million. It was not until after Metro selected its development team lead by Hyatt Hotels Corporation, that Metro agreed to contribute a $60 million from sale of revenue bonds. Had Metro included a $60

million taxpayer subsidy in its original request for proposals, there doubtless would have been many others willing to respond with competitive proposals. The additional subsidy was demanded by Hyatt due to Metro's insistence on a room block agreement and a labor peace agreement. Metro should have rebid the proposal based on this huge change. It never did.

Metro stated that its necessary policy outcome was to "secure a minimum room block(s) commitment of 500 or more quality rooms and associated amenities directly adjacent [to the OCC] that support the convention business." (Metro Resolution No. 12-4327). Ultimately, Hyatt only agreed to a 500 room block commitment if an event was scheduled more than 36 months in advance. If an event was scheduled between 24-36 months in advance the room block would be 300 rooms. Events Scheduled less than 24 months were not entitled to a room block. In addition, Metro can only reserve 15 nights each month. Hyatt can charge 115% of its average group rates to Metro customers. And the room block agreement can be terminated altogether if Metro does not operate the Convention Center at a standard set by Denver, Vancouver, B.C., Boston and Seattle. The Room Block Agreement which Metro originally envisioned is now a shadow of its former self. Even though Metro gave up much of what it wanted in the room block agreement, the $60 million grant to Hyatt still remained.

And, although never disclosed to the public until our litigation brought it to light, Metro's watered down room block agreement could well disappear altogether if the hotel is not successful. Metro knew that for the Room Block Agreement to be meaningful, it had to be superior to the mortgages on the hotel to protect it from a foreclosure. On May 26, 2014, Scott Cruickshank, Executive Director of Metro's Oregon Convention Center, e-mailed Kimo Bertram of Hyatt Corporation. Cruickshank said:

> "of great importance to them [the Metro councilors] are the terms of the room block agreement. Do we have your agreement on a non-subordinate RBA [Room Block Agreement], or do you have other solutions on how we can insure that this agreement will survive without risk through any foreclosure issues or ownership transitions?"

Hyatt replied:

> "We are not there, and to be frank can't find a path to your ask. We will agree to have the RBA run with the land but the RBA would be subordinate to a property mortgage."

After much negotiation on the topic, Hillary Wilton, the Senior Development Project Manager for Metro finally informed Hyatt Corporation that:

> "[t]here are not 4 votes (from our 7 member Council) to proceed if the RBA is subordinate to hotel financing (for at least the first 30 years). There were 4 shaky votes on proceeding if the RBA is subordinate during construction (this means we are ok today – but there is vulnerability before a vote, e.g. during the public comment period leading to vote). Because the schedule we have is a bit of a house of cards with respect to items that need to be

> lined up for the public hearing on the 12th (including finalizing agreements) and Council hearing on the 26th: I need a decision from Hyatt that they are prepared to accept the non-subordinate position by noon tomorrow 6-4 Pacific Time or we will cancel hearings and declare an impasse."

Several days later, Metro's position softened. On June 11th, Metro told Hyatt:

> "We are still working with one of our councilors who does not support the subordination issue and meeting with her again today. In the meantime, can you provide me some data on Hyatt's history of foreclosures. Three have been brought to my attention, you may know of more. Jacksonville, Chesapeake and Cleveland."

On June 16, 2014, Metro gave in altogether to Hyatt's insistence that the Room Block Agreement be subordinate to its mortgage financing.

So, not only is the room block agreement (for which Metro proposes to pay almost $120 million over time) ineffective, it is also going to be subordinate to the first mortgage. That means that if there is a foreclosure, because the hotel is unsuccessful, the room block agreement will disappear.

Metro went from being willing to pay approximately $8 million for an air-tight room block agreement to paying $64 million for a completely watered down promise that can also be lost to a foreclosure. Metro should renegotiate this arrangement that was made in the worst of all markets three years ago. There are

hotel owners willing to build and operate this project for well below the level of subsidies offered by Metro.

Mr. Chairman and members, these are among the many reasons why our coalition has filed its lawsuits to require a vote by the public. We believe that the courts will ultimately agree with our legal position which is in the public interest. Please do not deprive the voters of their last chance to avoid what could be another government subsidized albatross. Please do not proceed with S.B. 64. Let the judicial process run its course and work the way it is designed to function.

Thank you for your time. I am available to answer any questions you may have.