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Oregon Senate Committee on Health Care  
Via e-mail to: [shc.exhibits@oregonlegislature.gov](mailto:shc.exhibits@oregonlegislature.gov)

February 19, 2018

Chair Monnes-Anderson, Vice Chair DeBoer, and Distinguished Members of the Senate Committee on Health Care:

I write today on behalf of the Lane County Medical Society in support of House Joint Resolution 203. Perhaps it will come as no surprise that a group of physicians believes that health care is a human right, but their reasoning is compelling. They acknowledge that merely stating that it is a right will not automatically provide care, and that their economic interests may be at stake with the possible expansion of government-funded health care. Nevertheless, they believe that our common humanity compels an acknowledgement of health care as a human right as an essential foundation for building health care for all in the future.

Opposition to HJR 203 focuses on uncertainty as to how it might be interpreted by courts in the future. As a general principal, while consideration of the probable consequences of the proposal certainly merits your attention, anticipation of all the *possible* consequences has never been the standard for a constitutional amendment. Certainly, the Founders did not anticipate our modern discussion of digital privacy when they crafted the Fourth Amendment. Constitutional amendments stand as statements of principle, not precise roadmaps. Turning to the most probable possible outcomes, it is instructive to see how similar mandates have been interpreted internationally, in other states, and in Oregon.

The International Covenant on Economic, Social, and Cultural Rights (UNSCR) provides “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The right to health care under UNSCR is not absolute, but rather subject to “progressive realization.” While the jaded may scoff at this caveat, those words matter, having been successfully used to require governments to plan for and make progress towards the rights guaranteed under UNSCR. If adopted by the Oregon courts, this reasoning would simply require that the Oregon Legislature propose a plan to eventual realization of the full right over time.

The implementation of constitutional mandates to adequately provide for public education provides both in-state and out of state examples. Here in Oregon, the courts interpreted this as merely requiring the Legislature to explain the failure to adequately fund schools according to the bipartisan Quality Education Model. The analogy in Oregon would simply be that the Legislature would have to explain why it failed to provide access to healthcare, if it failed to do so.

Courts in Washington State took the opposite approach, holding the Legislature in contempt until it finally passed adequate funding. While a messy and inconvenient process, the Legislature was merely required to return repeatedly to find a solution. Oregon’s courts take a more modest view of their powers, so even this consequence seems remote.

Providers have some understandable concern that the courts may require the expansion of the Oregon Health Plan on an “at cost” model to cover the remaining 6% of Oregonians lacking healthcare, with the attendant underfunding (82% of Medicare rates, according to the Kaiser Family Foundation). While this is also a remote possibility, even providing this option would not require providers to accept a greater number of OHP recipients without additional compensation. Indeed, given the provider shortage in our county, it is unlikely that existing providers could take more OHP, even if provider compensation improved substantially.

Perhaps the greatest fear of some is that HJR 203 would somehow require the state to become a larger direct provider of healthcare. By its own language HJR 203 does not require this. It refers only to access, not provision. A more likely, but still improbable, outcome would be for the courts to require greater funding for existing safety net providers like Community Health Clinics.

While we cannot see the end of the road, we should not be afraid to take the first steps on the path. HJR 203 provides an important legal and moral foundation for the future. I urge you to support it and to allow the people of Oregon to take another step towards a more caring tomorrow.

Sincerely,

A handwritten signature in cursive script, reading "Marshall L. Wilde", enclosed in a thin black rectangular border.

Marshall L. Wilde, JD, LLM  
Executive Director