



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

January 9, 2018

Representative Mitch Greenlick  
900 Court Street NE H493  
Salem OR 97301

Re: LC 46

Dear Representative Greenlick:

You asked for a legal opinion on whether the passage of the constitutional amendment proposed by LC 46 (2018) would create any financial liability for the state. LC 46 proposes an amendment to the Oregon Constitution that provides:

It is the obligation of the state to ensure that every resident of Oregon has access to effective, medically appropriate and affordable health care as a fundamental right.

The proposed amendment itself does not specify how the state must ensure that every resident of Oregon has access to health care. Therefore, it is impossible to say whether the amendment would create a financial liability for the state. It is worth noting that the proposed amendment does not require the state to provide health care to every resident, but only to provide access to health care that is effective, medically appropriate and affordable.

Within the range of options available to the Legislative Assembly to ensure access to health care, one could imagine mechanisms that would have a minimal financial impact on the state as well as mechanisms that would have enormous financial consequences for the state. Whatever mechanism the Legislative Assembly chooses would be subject to review by the courts. However, courts would be guided by the legal principle that a statute "is not invalid under the Constitution because it might have gone farther than it did[.]"<sup>1</sup> Therefore, whatever mechanism the Legislative Assembly put in place would likely withstand judicial scrutiny so long as it complied with the minimum constitutional requirements, namely, to ensure access to effective, medically appropriate and affordable health care.

We hope this is helpful. Please do not hesitate to contact us if you have additional questions or concerns.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this

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<sup>1</sup> Roschen v. Ward, 279 U.S. 337, 339 (1929).

opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON  
Legislative Counsel

A handwritten signature in cursive script, appearing to read "Lorey H. Freeman", with a long horizontal flourish extending to the right.

By  
Lorey H. Freeman  
Chief Deputy Legislative Counsel