

Testimony of Rohan Grey, Assistant Professor of Law, Willamette University, before the Oregon Legislative Assembly Committee on Rules, Hearing on H.J.R. 205, Salem, Oregon, February 22, 2022.

Chair Smith Warner and Members of the Committee. Thank you for this opportunity to testify in support of H.J.R. 205, which would allow the public to vote on whether to amend the Oregon Constitution to explicitly authorize the legislature to establish public banks.

My name is Rohan Grey, I am an assistant professor of law at the University of Willamette College of Law, where I work and write on issues relating to the law and regulation of money, banking, and public finance. Among other roles, I served as lead drafter of the Public Banking Act, which was introduced into Congress last October by Representatives Alexandria Ocasio-Cortez (D-NY) and Rashida Tlaib (D-MI), in consultation with public banking advocates across the country, and remains to this day the single most comprehensive piece of federal legislation pertaining to the establishment of state and local public banks.

Shortly after moving to Oregon in 2020, I joined the Oregon Public Banking Alliance, a consortium advocating for the adoption of public banking in Oregon. Subsequently I founded the Oregon Public Banking Legal Working Group, which consists of over thirty law students at Willamette University College of Law working on related legal issues under my direction.

Presently, the Legal Working Group is in the process of completing an exhaustive historical and constitutional review of Article XI, Section 1 of the Oregon Constitution, which pertains to the legality of establishing a state-chartered public bank. Without pre-empting the ultimate findings of that review, which will be published in a forthcoming memorandum, I can confidently say that the Oregon Constitution does not currently prohibit the establishment of public banks. Consequently, H.J.R. 205 is not, strictly speaking, a necessary prerequisite to the advancement of public banking in Oregon.

Nevertheless, I am testifying today in support of H.J.R. 205 for two reasons.

First, the language of Article XI, Section 1 of the Oregon Constitution is sufficiently ambiguous as to raise concerns among those who either are, should be, or otherwise would be sympathetic to public banking. Absent a constitutional amendment, these concerns will continue to sap the movement for public banking in Oregon of enthusiasm and support. This is, on its own, good reason to support H.J.R. 205.

Second, if the movement for public banking in Oregon is to succeed, it must earn and retain the trust and interest of the general public. This, in turn, will require a large-scale, coordinated education campaign of exactly the kind that typically accompanies a state-wide referendum. To that end, although H.J.R. 205 is not so much a vote *for* a public bank as it is a vote to *allow the public to consider* a public bank, the infrastructure, networks, and awareness its passage will bring into existence will be a boon to future public banking advocacy efforts.

Finally, I want to express a note of caution. Although the motivation behind H.J.R. 205 is to support the introduction of public banking in Oregon, it also carries a small (but not trivial) risk of achieving the opposite effect. In particular, if H.J.R. 205 were not to pass, or alternatively, were to pass but result in a failed referendum, opponents of public banking could conceivably point to its failure as evidence that

any subsequent legislative attempt to introduce public banking was unconstitutional. As noted above, my working group's legal research indicates this is almost assuredly an inaccurate reading of Article XI, Section 1 of the Oregon Constitution. Nevertheless, it could conceivably be argued that the very act of attempting to amend the Constitution constitutes tacit recognition that the existing language is unfavorable. Consequently, I strongly urge Members of this Committee to clarify that this bill, while important, should not be understood or treated as a tacit admission that public banks are unconstitutional under existing law.

Thank you.