

IN THE SUPREME COURT OF THE STATE OF OREGON

BEN UNGER,	)	
	)	Supreme Court Case No.
Petitioner,	)	
	)	PETITION TO REVIEW BALLOT
v.	)	TITLE CERTIFIED BY THE
	)	ATTORNEY GENERAL
ELLEN F. ROSENBLUM, Attorney	)	
General, State of Oregon,	)	Initiative Petition 8 (2016)
	)	
Respondent.	)	

Initiative Petition 8 (2016)  
Ballot Title Certified November 10, 2014

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## PETITION

Pursuant to ORS 250.085(2) and ORAP 11.30, petitioner asks the Court to review the ballot title for Initiative Petition 8 (2016) (Ex. A), certified by the Attorney General on November 10, 2014 (Exs. D & E), and to certify the limited changes to the certified caption and result statements proposed by petitioners, or else refer the ballot title back to the Attorney General for modification.

## PETITIONER'S INTEREST

Petitioner Ben Unger is an Oregon elector who seeks review of the certified ballot title in his individual capacity. He is also Executive Director of Our Oregon, an organization dedicated to fighting for economic and social fairness for all Oregonians. Thus, petitioner has a keen interest in ensuring that this initiative has an accurate and informative ballot title. Petitioner submitted comments (Ex. C) on the draft ballot title (Ex. B), and therefore, also has standing under ORS 250.085(2) to seek review of the certified ballot title in this matter.

## ARGUMENTS AND AUTHORITIES

### I. Introduction.

Initiative Petition 8 (2016) (“IP 8”) is a statutory initiative that makes changes to ORS chapters 268, 195, and 197 to eliminate the authority of a metropolitan service district to adopt, coordinate, and enforce certain land use and air and water quality standards at the regional level. The ballot title certified by the Attorney General for the most part correctly captures the functions eliminated. However, as explained further below, the omission of the “coordination” function altogether from the caption and the “air and water quality”

function from the result statements renders the certified ballot title under-inclusive and legally deficient. Therefore, the certified caption and result statements should be referred back to the Attorney General for the addition of these functions. We summarize each of these functions and how they are impacted by IP 8 section by section below.

A. Land-Use Planning and Coordination Functions.

As the certified summary correctly explains, IP 8 eliminates certain land-use planning, coordination, and enforcement functions from the specific powers granted to metropolitan service districts. More specifically, IP 8, Section 3, amends ORS 268.380 to eliminate a district's ability to: (a) adopt regional planning goals and objectives (also prohibited by IP, Section 2); (b) review city and county comprehensive plans for consistency; and (c) coordinate the land use planning activities of cities and counties with the district. Section 4 of IP 8 repeals ORS 268.385, which similarly assigns to districts the authority to act as the regional coordinator for land use planning activities of cities and counties within the district under ORS 195.025(1)(the relevant portion of which is also repealed under Section 7 of IP 8). IP 8, Section 5, also eliminates the authority of a metropolitan service district to adopt a regional urban growth boundary (UGB), require cities and counties to make comprehensive policies which comply with the UGB and land use regulations, and take enforcement actions against such jurisdictions for failure to comply. Sections 8, 9, and 10 of IP 8 eliminate the authority of metropolitan service districts to designate urban and rural reserves, a process that requires agreement between metropolitan service districts and counties and thus entails significant coordinating. Section 8 also eliminates the authority of metropolitan service districts to enter into cooperative agreements with special districts regarding urban services with the district.

The purpose of these agreements is to coordinate land use activities between the metropolitan service districts and the special districts. Finally, Sections 11 and 12 of IP 8 amend ORS 197.296 and 197.299 to take responsibility for regional UGB review and expansion away from metropolitan service districts and apply them directly to all cities within the district. The current process requires metropolitan service districts to coordinate with the adopted local plans of the cities and counties within the district when making a UGB decision. Requiring 25 separate but adjacent cities to individually manage their own urban growth boundaries, on the other hand, would lead to a fragmented and highly uncoordinated process. IP 8 provides no additional funding for the functions now transferred to local jurisdictions, which could lead potentially to further lack of coordination as cities struggle individually to fund these functions.

B. Air and Water Quality Functions.

Again, as the certified summary correctly explains, IP 8 also eliminates a metropolitan service district's authority to adopt, coordinate, and enforce air and water quality standards. For example, IP 8, Section 5 eliminates a metropolitan service district's statutory authority under ORS 268.390 to enact binding and enforceable rules protecting air and water quality through the adoption of functional plans. Functional plans are the portions of a metropolitan service district's code that create binding regulatory requirements that cities and counties within the region must comply with. Section 5 of IP 8 replaces that authority with a provision that merely allows the district to "encourage" cities and counties to address impacts on air and water quality.

In addition to eliminating air quality protections associated with functional plans under ORS 268.390, IP 8, Section 2 (6), also prohibits a metropolitan service district from

serving as a metropolitan planning organization (MPO) for purposes of federal law.

Federal transportation law requires that every urban area with a population greater than 50,000 must designate a Metropolitan Planning Organization (MPO). 23 USC § 134(d).

MPOs are responsible for protecting air quality in the area by being the entity in charge of compliance with federal Clean Air Act requirements regarding transportation plans and projects. 23 USC § 134(i). Metro (the metropolitan service district that serves the metropolitan area within the boundaries of Clackamas, Multnomah, and Washington counties) currently serves as the MPO for 25 cities and 3 counties in the Portland metropolitan region and has served in this role, distributing millions of federal transportation dollars annually, for over 30 years. Eliminating the ability of a metropolitan service district to serve as an MPO eliminates the function that ensures that regional transportation plans and projects comply with the Clean Air Act.

## II. Caption

ORS 250.035(2)(a) provides that a ballot title contain “a [c]aption of not more than 15 words that reasonably identifies the subject matter of the state measure.” The caption is the “cornerstone for the other portions of the ballot title” and in order to comply with the statute, it must identify the proposal’s subject matter in terms that will not “confuse or mislead potential petition signers and voters.” *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 988 (2001)(internal citations omitted). “In determining whether a caption reasonably identifies the subject matter of a proposed measure, this court examines the text of the proposed measure itself.” *Id.* at 638 *citing Earls v. Myers*, 330 Or 171, 175, 999 P2d 1134 (2000). It also considers “the changes, if any, the measure would enact in the context of existing law.” *Sizemore v. Myers*, 342 Or 578, 583, 157 P3d 188 (2007)(quoting *Phillips v.*

*Myers*, 325 Or 221, 225-26, 936 P2d 964 (1997)). The caption cannot overstate or understate the scope of the legal changes the initiative would enact. *Kain/Waller v. Myers*, 337 Or 36, 93 P3d 62 (2004).

Here, the Attorney General certified the following caption:

**Eliminates authority of metropolitan service district to adopt, enforce land use, air/water quality plans**

Petitioner Unger agrees with all the changes made by the Attorney General to the caption following comments except the removal of the “coordination” function altogether from the caption. As explained above, IP 8 makes changes to ORS chapters 268, 195, and 197 to eliminate the authority of metropolitan service districts to adopt, coordinate, and enforce certain land use and air and water quality standards. IP 8, Sections 2 and 4 eliminate a metropolitan service district’s authority to serve as regional planning *coordinator* for purposes of ORS 195.020 to 195.025, and Section 3 expressly eliminates their authority to *coordinate* land-use planning activities for cities and counties within the district. The statutes amended by these sections expressly provide, in relevant part, as follows:

**268.380 Land-use planning goals and activities; coordination; review of local plans.** (1) A district may: \*\*\*

(c) *Coordinate* the land-use planning activities of that portion of the cities and counties within the district; and

(d) *Coordinate* its activities and the related activities of the cities and counties within the district with the land-use planning development activities of the federal government, other local governmental bodies situated within this state or within any other state and any agency of this state or another state. \*\*\*

**268.385 District as regional planning coordinator.**

(1) For the purposes of ORS 195.025, the district formed under this chapter shall exercise within the district the review, advisory and *coordinative* functions assigned under ORS 195.025 (1) to each county and city that is within the district.

(Emphasis added). IP 8, Section 6, also eliminates the authority of a metropolitan service district to enter into cooperative agreements with special districts regarding the provision of urban services with the metropolitan district. As explained above, the purpose of such agreements is also to *coordinate* land use activities between the metropolitan service districts and special districts in order to encourage efficiencies and to ensure that urban services are not duplicative or overlapping. In short, the “coordination” function of a metropolitan service district eliminated by IP 8 is significant. It is at least equal to, if not of greater importance than, a metropolitan service district’s enforcement function. Therefore, to be legally compliant, the caption must address elimination of the “coordination” function.

To correct this deficiency within the word limitations for the caption, the word “enforce” could be replaced by the word “coordinate” or alternatively, the structure of the caption could be modified to follow that of the result statements as follows:

**Eliminates authority of metropolitan service district to adopt, coordinate land use, air/water quality plans**

**Eliminates metropolitan service district’s authority to adopt, coordinate, enforce land use, air/water quality plans**

Petitioner Unger respectfully requests that the court refer the certified caption back to the Attorney General for this limited modification.

### III. Result Statements.

ORS 250.035(2)(b)-(c) require that a ballot title contain a simple understandable statement of not more than 25 words that describes the result if the state measure is approved or rejected. Typically, the “yes” vote result statement builds on the caption.

The purpose of the “yes” vote result statement is to “notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon.” *Novick v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). In contrast, the “no” vote result statement must explain to voters “the state of affairs” that will exist if this initiative is rejected, that is, the *status quo*. It is also essential that the law described in the “no” vote result statement concern the subject matter of the proposal. Otherwise, the description could mislead voters about the effect of their vote. *Nesbitt v. Myers*, 335 Or 219, 223, 64 P3d 1133 (2003). *See also, Nesbitt v. Myers*, 335 Or 424, 431, 71 P3d 530 (2003)(review of modified ballot title). “[T]o comply with [\*\*\*] statutory requirements, the Attorney General may have to go beyond the words of a measure in order to give the voters accurate and neutral information about a proposed measure.” *Caruthers v. Myers*, 344 Or 596, 601, 189 P3d 1 (2008).

Here, the Attorney General certified the following “yes” and “no” vote result statements:

**Result of “Yes” Vote:** “Yes” vote eliminates metropolitan service district's authority to adopt regional plan for managing urban growth; coordinate land use; establish urban growth boundary, urban/rural reserves.

**Result of “No” Vote:** “No” vote retains metropolitan service district's authority to adopt regional plan for managing urban growth; coordinate land use; establish urban growth boundary, urban/rural reserves.

Again, the certified result statements are a significant improvement over the draft ballot title. However, the omission of the air and water quality function eliminated by IP 8 Sections 2 and 5 renders the certified result statements underinclusive and legally deficient. As discussed above at greater length, Section 2 of IP 8 eliminates the ability of



metropolitan service districts (including Metro) to serve as a federal MPO. MPOs are responsible for protecting air quality in the area by being the entity in charge of compliance with federal Clean Air Act requirements regarding transportation plans and projects. In addition, IP 8, Section 5, separately eliminates a metropolitan service district's statutory authority under ORS 268.390 to enact binding and enforceable rules protecting air and water quality through the adoption of functional plans. Section 5 of IP 8 replaces that authority with a provision that merely allows the district to "encourage" cities and counties to address impacts on air and water quality. Therefore, the air and water quality function of metropolitan service districts eliminated by IP 8 are also "significant" and must be addressed in the certified result statements and the failure to do so renders them deficient.

This deficiency in the certified "yes" and "no" vote result statements can be addressed within the word limitations as follows:

**Result of "Yes" Vote:** "Yes" vote eliminates metropolitan service district's authority to: manage urban growth; coordinate land use; establish urban growth boundary, urban/rural reserves; protect air/water quality.

**Result of "No" Vote:** "No" vote retains metropolitan service district's authority to: manage urban growth; coordinate land use; establish urban growth boundary, urban/rural reserves; protect air/water quality.

Therefore, Petitioner Unger respectfully requests that the certified result statements be referred back to the Attorney General for these limited modifications

### CONCLUSION

For the reasons stated above, the certified ballot title fails to substantially comply with the statute. Therefore, the court should certify the alternative caption and result

statements proposed by Petitioner, or else it should refer the ballot title back to the Attorney General for limited modification along the lines requested.

DATED this 25<sup>th</sup> day of November, 2014.

Respectfully Submitted,

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

*s/Aruna A. Masih*

Aruna A. Masih, OSB #973241  
of Attorneys for Petitioner

# An Act to return land use authority to the counties and cities in Oregon

Be it enacted, the People of the State of Oregon propose amending State Statutes as follows:

**SECTION 1.** Section 2 of this 2014 Act is added to and made a part of ORS 268.300 to 268.393.

**SECTION 2.** Notwithstanding any other provision of law, a metropolitan service district may not:

- (1) Adopt land-use planning goals and objectives;
- (2) Enact land use regulations;
- (3) Adopt a regional framework plan;
- (4) Designate urban or rural reserves pursuant to ORS 195.137 to 195.145, or enter into an intergovernmental agreement with a county for purposes of making such a designation;
- (5) Exercise coordinative functions pursuant to ORS 195.020 to 195.025;
- (6) Serve as a metropolitan planning organization for purposes of federal law.

**SECTION 3.** ORS 268.380 is amended as follows:

(1) A district may:

*[(a) Adopt land-use planning goals and objectives for the district consistent with goals adopted under ORS chapters 195, 196 and 197;]*

*[(b) Review the comprehensive plans in effect on January 1, 1979, or subsequently adopted by the cities and counties within the district and recommend that cities and counties, as the district considers necessary, make changes in any plan to ensure that the plan conforms to the district's metropolitan area goals and objectives and the statewide goals;]*

*[(c) Coordinate the land-use planning activities of that portion of the cities and counties within the district; and]*

*[(d)] (a) Coordinate its activities [and the related activities of the cities and counties within the district] with the land-use planning development activities of the federal government, other local governmental bodies situated within this state or within any other state and any agency of this state or another state.*

*[(2) When a district is required by a district charter to adopt a regional framework plan, the regional framework plan shall include and be consistent with land use planning goals and objectives adopted by the district.]*

**SECTION 4.** ORS 268.385 is hereby repealed.

**SECTION 5.** ORS 268.390 is amended as follows:

(1) A district may define and apply a planning procedure that identifies and designates areas and activities having significant impact upon the orderly and responsible development of the metropolitan area, including, but not limited to, impact on:

- (a) Air quality;
- (b) Water quality; and
- (c) Transportation.

(2) A district may *[prepare and adopt functional plans]* encourage, but not require, cities and counties within the district to provide a coordinated response for those areas designated under subsection (1) of this section to control metropolitan area impact on air and water quality, transportation and other aspects of metropolitan area development the district may identify.

*[(3) (a) A district shall adopt an urban growth boundary for the district in compliance with applicable goals adopted under ORS chapters 195, 196 and 197. When a district includes land designated as urban reserve under ORS 195.145 (1)(b) within an urban growth boundary pursuant to ORS 197.298 (1), the district is not required to consider the capability classification system or the cubic foot site class of the land as described in ORS 197.298 (2).]*

*[(b) Notwithstanding the procedural requirements for boundary changes under ORS 268.354, when the district adopts an urban growth boundary, the urban growth boundary becomes the boundary of the district.]*

*[(4) A district may review the comprehensive plans adopted by the cities and counties within the district that affect areas designated by the district under subsection (1) of this section or the urban growth boundary adopted under subsection (3) of this section and recommend or require cities and counties, as it considers necessary, to make changes in any plan to ensure that the plan and any actions taken under the plan substantially comply with the district's functional plans adopted under subsection (2) of this section and its urban growth boundary adopted under subsection (3) of this section.]*

*[(5) Pursuant to a regional framework plan, a district may adopt implementing ordinances that:]*

*[(a) Require local comprehensive plans and implementing regulations to substantially comply with the regional framework plan within two years after compliance acknowledgment.]*

*[(b) Require adjudication and determination by the district of the consistency of local comprehensive plans with the regional framework plan.]*

*[(c) Require each city and county within the jurisdiction of the district and making land use decisions concerning lands within the land use jurisdiction of the district to make those decisions consistent with the regional framework plan. The obligation to apply the regional framework plan to land use decisions shall not begin until one year after the regional framework plan is acknowledged as complying with the statewide land use planning goals adopted under ORS chapters 195, 196 and 197.]*

*[(d) Require changes in local land use standards and procedures if the district determines that changes are necessary to remedy a pattern or practice of decision-making inconsistent with the regional framework plan.]*

- [(6) A process established by the district to enforce the requirements of this section must provide:]
- [(a) Notice of noncompliance to the city or county.]
  - [(b) Opportunity for the city or county to be heard.]
  - [(c) Entry of an order by the district explaining its findings, conclusions and enforcement remedies, if any.]
- [(7) Enforcement remedies ordered under subsection (6) of this section may include, but are not limited to:]
- [(a) Direct application of specified requirements of functional plans to land use decisions by the city or county;]
  - [(b) Withholding by the district of discretionary funds from the city or county; and]
  - [(c) Requesting an enforcement action pursuant to ORS 197.319 to 197.335 and withholding moneys pursuant to an enforcement order resulting from the enforcement action.]
- [(8) An order issued under subsection (6) of this section:]
- [(a) Must provide for relief from enforcement remedies upon action by the city or county that brings the comprehensive plan and implementing regulations into substantial compliance with the requirement.]
  - [(b) Is subject to review under ORS 197.830 to 197.845 as a land use decision.]
- [(9) The regional framework plan, ordinances that implement the regional framework plan and any determination by the district of consistency with the regional framework plan are subject to review under ORS 197.274.]

**SECTION 6. ORS 195.020 is amended as follows:**

- (1) Special districts shall exercise their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use, including a city or special district boundary change as defined in ORS 197.175 (1), in accordance with goals approved pursuant to ORS chapters 195, 196 and 197.
- (2) A county assigned coordinative functions under ORS 195.025 (1)[, or the Metropolitan Service District, which is assigned coordinative functions for Multnomah, Washington and Clackamas counties by ORS 195.025 (1),] shall enter into a cooperative agreement with each special district that provides an urban service within the boundaries of the county[ or the metropolitan district]. A county [or the Metropolitan Service District] may enter into a cooperative agreement with any other special district operating within the boundaries of the county or the metropolitan district.
- (3) The appropriate city and county [and, if within the boundaries of the Metropolitan Service District, the Metropolitan Service District,] shall enter into a cooperative agreement with each special district that provides an urban service within an urban growth boundary. The appropriate city and county[, and the Metropolitan Service District,] may enter into a cooperative agreement with any other special district operating within an urban growth boundary.
- (4) The agreements described in subsection (2) of this section shall conform to the requirements of paragraphs (a) to (d), (f) and (g) of this subsection. The agreements described in subsection (3) of this section shall:
- (a) Describe how the city or county will involve the special district in comprehensive planning, including plan amendments, periodic review and amendments to land use regulations;
  - (b) Describe the responsibilities of the special district in comprehensive planning, including plan amendments, periodic review and amendments to land use regulations regarding provision of urban services;
  - (c) Establish the role and responsibilities of each party to the agreement with respect to city or county approval of new development;
  - (d) Establish the role and responsibilities of the city or county with respect to district interests including, where applicable, water sources, capital facilities and real property, including rights of way and easements;
  - (e) Specify the units of local government which shall be parties to an urban service agreement under ORS 195.065;
  - [(f) If a Metropolitan Service District is a party to the agreement, describe how the Metropolitan Service District will involve the special district in the exercise of the Metropolitan Service District's regional planning responsibilities;] and
  - (g) Contain such other provisions as the Land Conservation and Development Commission may require by rule.
- (5) Agreements required under subsections (2) and (3) of this section are subject to review by the commission. The commission may provide by rule for periodic submission and review of cooperative agreements to insure that they are consistent with acknowledged comprehensive plans.

**SECTION 7. ORS 195.025 is amended as follows:**

- (1) In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. [In addition to being subject to the provisions of ORS chapters 195, 196 and 197 with respect to city or special district boundary changes, as defined by ORS 197.175 (1), the governing body of the Metropolitan Service District shall be considered the county review, advisory and coordinative body for Multnomah, Clackamas and Washington Counties for the areas within that district.]
- (2) For the purposes of carrying out ORS chapters 195, 196 and 197, counties may voluntarily join together with adjacent counties as authorized in ORS 190.003 to 190.620.
- (3) Whenever counties and cities representing 51 percent of the population in their area petition the Land Conservation and Development Commission for an election in their area to form a regional planning agency to exercise the authority of the counties under subsection (1) of this section in the area, the commission shall review the petition. If it finds that the area described in the petition forms a reasonable planning unit, it shall call an election in the area on a date specified in ORS 203.085, to form a regional planning agency. The election shall be conducted in the manner provided in ORS chapter 255. The county clerk shall be considered the elections officer and the commission shall be considered the district elections authority. The agency shall be considered established if the majority of votes favor the establishment.

(4) If a voluntary association of local governments adopts a resolution ratified by each participating county and a majority of the participating cities therein which authorizes the association to perform the review, advisory and coordination functions assigned to the counties under subsection (1) of this section, the association may perform such duties.

**SECTION 8. ORS 195.141 is amended as follows:**

(1) A county [and a metropolitan service district established under ORS chapter 268 may enter into an intergovernmental agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to] may designate rural reserves pursuant to this section and urban reserves pursuant to ORS 195.145 (1)(b).

(2) Land designated as a rural reserve:

(a) Must be outside an urban growth boundary.

(b) May not be designated as an urban reserve during the urban reserve planning period described in ORS 195.145 (4).

(c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.

(3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county [and a metropolitan service district] shall base the designation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:

(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;

(b) Is capable of sustaining long-term agricultural operations;

(c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and

(d) Is suitable to sustain long-term agricultural operations, taking into account:

(A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;

(B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;

(C) The agricultural land use pattern, including parcelization, tenure and ownership patterns; and

(D) The sufficiency of agricultural infrastructure in the area.

(4) The Land Conservation and Development Commission shall, after consultation with the State Department of Agriculture, adopt by goal or by rule a process and criteria for designating rural reserves pursuant to this section.

**SECTION 9. ORS 195.143 is amended as follows:**

(1) A county [and a metropolitan service district] must consider simultaneously the designation and establishment of:

(a) Rural reserves pursuant to ORS 195.141; and

(b) Urban reserves pursuant to ORS 195.145 (1)(b).

[(2) An agreement between a county and a metropolitan service district to establish rural reserves pursuant to ORS 195.141 and urban reserves pursuant to ORS 195.145 (1)(b) must provide for a coordinated and concurrent process for adoption by the county of comprehensive plan provisions and by the district of regional framework plan provisions to implement the agreement. A district may not designate urban reserves pursuant to ORS 195.145 (1)(b) in a county until the county and the district have entered into an agreement pursuant to ORS 195.145 (1)(b) that identifies the land to be designated by the district in the district's regional framework plan as urban reserves. A county may not designate rural reserves pursuant to ORS 195.141 until the county and the district have entered into an agreement pursuant to ORS 195.141 that identifies the land to be designated as rural reserves by the county in the county's comprehensive plan.]

[(3)] (2) A county [and a metropolitan service district] may not [enter into an intergovernmental agreement to] designate urban reserves in the county pursuant to ORS 195.145 (1)(b) unless the county [and the district also agree to designate] designates rural reserves in the county.

(4) Designation and protection of rural reserves pursuant to ORS 195.141 or urban reserves pursuant to ORS 195.145 (1)(b):

(a) Is not a basis for a claim for compensation under ORS 195.305 unless the designation and protection of rural reserves or urban reserves imposes a new restriction on the use of private real property.

(b) Does not impair the rights and immunities provided under ORS 30.930 to 30.947.

**SECTION 10. ORS 195.145 is amended as follows:**

(1) To ensure that the supply of land available for urbanization is maintained:

(a) Local governments may cooperatively designate lands outside urban growth boundaries as urban reserves subject to ORS 197.610 to 197.625 and 197.626.

[(b) Alternatively, a metropolitan service district established under ORS chapter 268 and a county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate urban reserves. A process and criteria developed pursuant to this paragraph are an alternative to a process or criteria adopted pursuant to paragraph (a) of this subsection.]

(2) (a) The Land Conservation and Development Commission may require a local government to designate an urban reserve pursuant to subsection (1)(a) of this section during its periodic review in accordance with the conditions for periodic review under ORS 197.628.

(b) Notwithstanding paragraph (a) of this subsection, the commission may require a local government to designate an urban reserve pursuant to subsection (1)(a) of this section outside of its periodic review if:

(A) The local government is located inside a Primary Metropolitan Statistical Area or a Metropolitan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and

- (B) The local government has been required to designate an urban reserve by rule prior to November 4, 1993.
- (3) In carrying out subsections (1) and (2) of this section:
- (a) Within an urban reserve, neither the commission nor any local government shall prohibit the siting on a legal parcel of a single family dwelling that would otherwise have been allowed under law existing prior to designation as an urban reserve.
  - (b) The commission shall provide to local governments a list of options, rather than prescribing a single planning technique, to ensure the efficient transition from rural to urban use in urban reserves.
- (4) Urban reserves designated by *[a metropolitan service district and a county]* local governments pursuant to subsection *[(1)(b)]* (1)(a) of this section must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296.
- (5) *[A district and a county]* Local governments shall base the designation of urban reserves under subsection *[(1)(b)]* (1)(a) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:
- (a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
  - (b) Includes sufficient development capacity to support a healthy urban economy;
  - (c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
  - (d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
  - (e) Can be designed to preserve and enhance natural ecological systems; and
  - (f) Includes sufficient land suitable for a range of housing types.
- (6) A county may take an exception under ORS 197.732 to a statewide land use planning goal to allow the establishment of a transportation facility in an area designated as urban reserve under subsection *[(1)(b)]* (1)(a) of this section.
- (7) The commission shall adopt by goal or by rule a process and criteria for designating urban reserves pursuant to subsection *[(1)(b)]* (1)(a) of this section.

**SECTION 11. ORS 197.296 is amended as follows:**

- (1)(a) The provisions of this section apply to *[metropolitan service district regional framework plans and]* local government comprehensive plans for lands within the urban growth boundary of a city that is located **within a metropolitan service district or a city that is outside of a metropolitan service district and has a population of 25,000 or more.**
- (b) The Land Conservation and Development Commission may establish a set of factors under which additional cities are subject to the provisions of this section. In establishing the set of factors required under this paragraph, the commission shall consider the size of the city, the rate of population growth of the city or the proximity of the city to another city with a population of 25,000 or more or to a metropolitan service district.
- (2) At periodic review pursuant to ORS 197.628 to 197.651 or at any other legislative review of the comprehensive plan or regional plan that concerns the urban growth boundary and requires the application of a statewide planning goal relating to buildable lands for residential use, a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years. The 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review.
- (3) In performing the duties under subsection (2) of this section, a local government shall:
- (a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and
  - (b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.
- (4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, "buildable lands" includes:
- (A) Vacant lands planned or zoned for residential use;
  - (B) Partially vacant lands planned or zoned for residential use;
  - (C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and
  - (D) Lands that may be used for residential infill or redevelopment.
- (a) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:
- (A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;
  - (B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and
  - (C) The presence of a single family dwelling or other structure on a lot or parcel.
- (c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.
- (5)(a) Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:
- (A) The number, density and average mix of housing types of urban residential development that have actually occurred;
  - (B) Trends in density and average mix of housing types of urban residential development;

- (C) Demographic and population trends;
- (D) Economic trends and cycles; and
- (E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph.

(6) If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or more of the following actions to accommodate the additional housing need:

(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary;

(b) Amend its comprehensive plan, regional plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or

(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.

(7) Using the analysis conducted under subsection (3)(b) of this section, the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (5)(a)(A) of this section, or if that mix is different from the actual mix of housing types determined under subsection (5)(a)(A) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years.

(8)(a) A local government outside a metropolitan service district that takes any actions under subsection (6) or (7) of this section shall demonstrate that the comprehensive plan and land use regulations comply with goals and rules adopted by the commission and implement ORS 197.295 to 197.314.

(b) The local government shall determine the density and mix of housing types anticipated as a result of actions taken under subsections (6) and (7) of this section and monitor and record the actual density and mix of housing types achieved. The local government shall compare actual and anticipated density and mix. The local government shall submit its comparison to the commission at the next periodic review or at the next legislative review of its urban growth boundary, whichever comes first.

(9) In establishing that actions and measures adopted under subsections (6) or (7) of this section demonstrably increase the likelihood of higher density residential development, the local government shall at a minimum ensure that land zoned for needed housing is in locations appropriate for the housing types identified under subsection (3) of this section and is zoned at density ranges that are likely to be achieved by the housing market using the analysis in subsection (3) of this section. Actions or measures, or both, may include but are not limited to:

- (a) Increases in the permitted density on existing residential land;
- (b) Financial incentives for higher density housing;
- (c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
- (d) Removal or easing of approval standards or procedures;
- (e) Minimum density ranges;
- (f) Redevelopment and infill strategies;
- (g) Authorization of housing types not previously allowed by the plan or regulations;
- (h) Adoption of an average residential density standard; and
- (i) Rezoning or redesignation of nonresidential land.

#### **SECTION 12. ORS 197.299 is amended as follows:**

(1) A city within a metropolitan service district organized under ORS chapter 268 shall complete the inventory, determination and analysis required under ORS 197.296 (3) not later than five years after completion of the previous inventory, determination and analysis.

(2)(a) The [metropolitan service district] city shall take such action as necessary under ORS 197.296 (6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3) within one year of completing the analysis.

(b) The [metropolitan service district] city shall take all final action under ORS 197.296 (6)(a) necessary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two years of completing the analysis.

(c) The [metropolitan service district] city shall take action under ORS 197.296 (6)(b), within one year after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable land within the urban growth boundary to accommodate the estimated housing needs for 20 years from the time the actions are completed. The [metropolitan service district] city shall consider and adopt new measures that the governing body deems appropriate under ORS 197.296 (6)(b).

(3) The Land Conservation and Development Commission may grant an extension to the time limits of subsection (2) of this section if the Director of the Department of Land Conservation and Development determines that the [metropolitan service district] city has provided good cause for failing to meet the time limits.

(4)(a) The [metropolitan service district] city shall establish a process to expand the urban growth boundary to accommodate a need for land for a public school that cannot reasonably be accommodated within the existing urban growth boundary. The [metropolitan service district] city shall design the process to:

(A) Accommodate a need that must be accommodated between periodic analyses of urban growth boundary capacity required by subsection (1) of this section; and

(B) Provide for a final decision on a proposal to expand the urban growth boundary within four months after submission of a complete application by a large school district as defined in ORS 195.110.

(b) At the request of a large school district, the [metropolitan service district] city shall assist the large school district to identify school sites required by the school facility planning process described in ORS 195.110. A need for a public school is a specific type of identified land need under ORS 197.298 (3).

#### **SECTION 13. ORS 197.301 is amended as follows:**

(1) A city within a metropolitan service district organized under ORS chapter 268 shall compile and report to the Department of Land Conservation and Development on performance measures as described in this section at least once every two years. The information shall be reported in a manner prescribed by the department.

(2) Performance measures subject to subsection (1) of this section shall be adopted by a [metropolitan service district] city and shall include but are not limited to measures that analyze the following:

(a) The rate of conversion of vacant land to improved land;

(b) The density and price ranges of residential development, including both single family and multifamily residential units;

(c) The level of job creation within individual cities and the urban areas of a county inside the metropolitan service district;

(d) The number of residential units added to small sites assumed to be developed in the metropolitan service district's inventory of available lands but which can be further developed, and the conversion of existing spaces into more compact units with or without the demolition of existing buildings;

(e) The amount of environmentally sensitive land that is protected and the amount of environmentally sensitive land that is developed;

(f) The sales price of vacant land;

(g) Residential vacancy rates;

(h) Public access to open spaces; and

(i) Transportation measures including mobility, accessibility and air quality indicators.

#### **SECTION 14. ORS 197.302 is amended as follows:**

(1) After gathering and compiling information on the performance measures as described in ORS 197.301 but prior to submitting the information to the Department of Land Conservation and Development, a city within a metropolitan service district shall determine if actions taken under ORS 197.296 (6) have established the buildable land supply and housing densities necessary to accommodate estimated housing needs determined under ORS 197.296 (3). If the [metropolitan service district] city determines that the actions undertaken will not accommodate estimated need, the [district] city shall develop a corrective action plan, including a schedule for implementation. The [district] city shall submit the plan to the department along with the report on performance measures required under ORS 197.301. Corrective action under this section may include amendment of the urban growth boundary, comprehensive plan, [regional framework plan, functional plan] or land use regulations as described in ORS 197.296.

(2) Within two years of submitting a corrective action plan to the department, the [metropolitan service district] city shall demonstrate by reference to the performance measures described in ORS 197.301 that implementation of the plan has resulted in the buildable land supply and housing density within the urban growth boundary necessary to accommodate the estimated housing needs for each housing type as determined under ORS 197.296 (3).

(3) The failure of the [metropolitan service district] city to demonstrate the buildable land supply and housing density necessary to accommodate housing needs as required under this section and ORS 197.296 may be the basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335.

#### **SECTION 15. If any provision of this act is barred from operation by superior law, the other provisions shall remain unaffected.**



KATE BROWN  
SECRETARY OF STATE



JIM WILLIAMS  
DIRECTOR

255 CAPITOL STREET NE, SUITE 501  
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(503) 986-1518

# INITIATIVE PETITION

**TO:** All Interested Parties  
**FROM:** Lydia Plukchi, Compliance Specialist  
**DATE:** October 10, 2014  
**SUBJECT:** Initiative Petition **2016-008** Draft Ballot Title

The Elections Division received a draft ballot title from the Attorney General on October 10, 2014, for Initiative Petition **2016-008**, proposed for the November 8, 2016, General Election.

## Caption

Eliminates authority of Metropolitan Service District ("Metro") to coordinate land use plans for cities, counties

## Chief Petitioners

Eugene Schoenheit 13780 SE Fernridge Avenue Milwaukie, OR 97222  
Lauri Hein 20630 NW Rockspring Lane Beaverton, OR 97006

## Comments

Written comments concerning the legal sufficiency of the draft ballot title may be submitted to the Elections Division. Comments will be delivered to the Attorney General for consideration when certifying the ballot title.

Additionally, Secretary of State Kate Brown is seeking public input on whether the petition complies with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. The Secretary will review any procedural constitutional comments received by the deadline and make a determination whether the petition complies with constitutional requirements.

To be considered, draft ballot title comments and procedural constitutional requirement comments must be received in their entirety by the Elections Division no later than 5 pm:

Comments Due	How to Submit	Where to Submit
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October 24, 2014	Scan and Email	irrlistnotifier.sos@state.or.us
	Fax	503.373.7414
	Mail	255 Capitol St NE Ste 501, Salem OR 97310

More information, including the draft ballot title and text of the petition, is contained in the IRR Database available at [www.oregonvotes.gov](http://www.oregonvotes.gov).



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

October 10, 2014

Jim Williams  
Director, Elections Division  
Office of the Secretary of State  
141 State Capitol  
Salem, OR 97310

RECEIVED  
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KATE BROWN  
SECRETARY OF THE STATE

Re: Proposed Initiative Petition — Eliminates Authority of Metropolitan Service District  
("Metro") to Coordinate Land Use Plans for Cities, Counties  
DOJ File #BT-08-14; Elections Division #2016-008

Dear Mr. Williams:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to eliminating Metro's authority to coordinate land use plans for cities and counties in Clackamas, Multnomah, and Washington counties.

Written comments from the public are due to you within ten business days after your receipt of this draft title. A copy of all written comments provided to you should be forwarded to this office immediately thereafter.

A copy of the draft ballot title is enclosed.

Legal Secretary

AFT/5907372

Enclosure

Eugene Schoenheit  
13780 S.E. Fernridge Ave.  
Milwaukie, OR 97222

Lauri S. Hein  
20630 N.W. Rockspring Ln.  
Beaverton, OR 97006

## **DRAFT BALLOT TITLE**

### **Eliminates authority of Metropolitan Service District ("Metro") to coordinate land use plans for cities, counties**

**Result of "Yes" Vote:** "Yes" vote eliminates Metro's authority to coordinate land use planning in tri-county region, adopt urban growth boundary, review city/county land use plans for compliance.

**Result of "No" Vote:** "No" vote retains Metro's authority to adopt land use planning goals for tri-county region, coordinate planning, review local plans for compliance, adopt urban growth boundary.

**Summary:** Metro is a metropolitan service district that includes land in Clackamas, Multnomah, and Washington counties. Metro is responsible for coordinating land use planning in that district. Metro's authority includes preparing and adopting functional plans for areas within the district and adopting land use goals. Metro adopts a regional urban growth boundary. Metro and the county designate urban and rural reserves. Metro reviews city and county land use plans, regulations and land use decisions for compliance with Metro's functional plans and urban growth boundary. Metro may require city or county to change parts of local plan and may require changes in local land use standards and procedures, for consistency with the regional framework plan. Measure eliminates Metro's authority, participation in city and county land use planning.

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October 24, 2014

*Via Fax No. 1-503-373-7414*

The Honorable Kate Brown  
 Secretary of State  
 Elections Division  
 255 Capital Street NE, Suite 501  
 Salem, Oregon 97310-0722

*Re. Initiative Petition 8 (2016) - Draft Ballot Title Comments*  
 Our File No. 4815-1186

Dear Secretary Brown:

This firm represents Ben Unger, an Oregon elector and the Executive Director of Our Oregon. We write in response to your October 10, 2014, News Release which invites comments regarding the legal sufficiency of the draft ballot title for IP 8. It is Mr. Unger's position that the draft ballot title for IP 8 is statutorily non-compliant.

**DRAFT BALLOT TITLE COMMENTS**

**1. INTRODUCTION.**

IP 8 is a statutory initiative that makes changes to ORS chapters 268, 195, and 197 to eliminate the authority of metropolitan service districts to coordinate city and county land use plans, manage urban growth (including the urban growth boundary and urban reserves), protect air and water quality, regulate transportation impacts in a region, and participate in the designation of rural reserves. By eliminating the authority to address these issues at the regional level through metropolitan service districts, IP 8 requires these functions to be fulfilled by individual municipalities and counties. Finally, it eliminates the authority of metropolitan service districts, including Metro (the metropolitan service district with a voter-approved home rule charter that serves the metropolitan area within the boundaries of Clackamas, Multnomah, and Washington counties), to serve as the metropolitan planning organization (MPO) for purposes of receipt and distribution of federal transportation funds. The initiative does not create an alternative MPO. How this change interacts with federal law and funding is unclear. We discuss the changes effected by IP 8 by subject matter with references to sections below.

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Honorable Kate Brown

*Re. IP 8 (2016) - Draft Ballot Title Comments*

October 24, 2014

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**a. Removal of MPO Functions**

Federal transportation law requires that every urban area with a population greater than 50,000 must designate an MPO, which must consist of elected and/or appointed state and local officials and representatives of relevant agencies. 23 USC § 134(d). An MPO is established "by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population." 23 USC § 134(d). The purpose of the federal MPO requirement is to ensure that federal funding for transportation projects and programs is based on a cooperative and comprehensive planning process. All federal transportation funds are then channeled through the MPO for distribution in the urban area. Federal statutes require MPOs to adopt a long-range transportation plan and to update that plan every four years. 23 USC § 134(i). The MPO must also adopt a transportation improvement program that implements the transportation plan by approving funding for specific improvement projects that are identified in the transportation plan. 23 USC § 134(j).

IP 8, Section 2 (6), prohibits a metropolitan service district from serving as a metropolitan planning organization (MPO) for purposes of federal law. Metro currently serves as the MPO for 25 cities and 3 counties in the Portland metropolitan region and has served in this role, distributing millions of dollars annually, for over 30 years. If IP 8 passes, Metro would no longer be able to serve in this capacity and the region would be unable to spend millions of federal transportation dollars until a new MPO is created by the process outlined above, resulting in a potential loss of transportation funds for the region. New roads, new highway interchanges, added lanes and improved transit, to name a few, would be on hold until cities and counties in the region came together to agree upon a new MPO.

MPOs are also responsible for protecting air quality in the area by being the entity in charge of compliance with federal Clean Air Act requirements regarding transportation plans and projects. 23 USC § 134(i). In that role, Metro undertakes an air quality conformity determination every two years that estimates carbon monoxide emissions and precursors of smog (volatile organic compounds and oxides of nitrogen) from cars and trucks in the greater Portland airshed, based on an assumption that all facilities identified in the regional transportation plan are actually built. The results of the air quality conformity analysis are provided to Oregon DEQ and the US Environmental Protection Agency to determine federal Clean Air Act compliance with the carbon monoxide budget approved for the Portland metropolitan region. This work is time consuming and expensive in that it requires traffic volume and air quality modeling for the region every two years. If the MPO function is removed from Metro, the region could be at risk of losing federal transportation funding if there is no new MPO created in time to undertake the modeling and demonstrate that the region is still in conformance with air quality standards within the deadlines imposed by federal law. IP 8 does not provide for creation of another MPO or explain how an alternative MPO would be created.

**b. Removal of district air and water quality regulation under ORS chapter 268**

In addition to the air quality function of the MPO under federal law, metropolitan service districts are authorized by ORS 268.390 to enact air and water quality protections. ORS 268.390(1) and (2) provide metropolitan service districts the authority to adopt rules that protect air and water quality and control transportation impacts by enacting functional plans. Functional plans are the

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*Re. IP 8 (2016) – Draft Ballot Title Comments*

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portions of a metropolitan service district's code that create binding regulatory requirements that cities and counties within the region must comply with. ORS 268.390(4). All of these powers and authorities would be eliminated by IP 8.

For example, the Urban Growth Management Functional Plan (UGMFP), which includes regional land use planning requirements such as the urban growth boundary (UGB), as well as requirements regarding protection of water resources and wildlife habitat, would be gutted by IP 8. Water resources are protected under Titles 3 and 13 of the UGMFP (section 3.07 of the Metro Code), which are called "Water Quality and Flood Management" and "Nature in Neighborhoods." While Title 3 is aimed directly at water quality issues (pollution, temperature, erosion, etc.), Title 13 is aimed at fish and wildlife habitat protections, including protection of riparian areas, trees and other vegetation that provides habitat. These code provisions create requirements that all cities and counties in the region must comply with to protect water quality and habitat.

Thus, in addition to eliminating air quality protections associated with the MPO function described above, Section 5 of IP 8 would eliminate a metropolitan service district's statutory authority under ORS 268.390 to enact binding and enforceable rules protecting air and water quality through the adoption of functional plans. Section 5 removes the ability of a district to require cities and counties to implement such protections, and replaces that authority with a provision that merely allows the district to "encourage" cities and counties to address impacts on air and water quality.

**c. Removal of district land use planning powers in ORS chapter 268**

IP 8 also removes certain land use planning functions from the list of specific powers granted to metropolitan service districts under ORS chapter 268. IP 8, Section 3 amends ORS 268.380 to remove a district's abilities to: (a) adopt regional land use planning goals and objectives (also prohibited by Section 2 of IP 8), (b) review city and county comprehensive plans for consistency with the district's regional goals, and (c) coordinate the land use planning activities of cities and counties within the district. Section 4 of IP 8 repeals ORS 268.385, which similarly assigns to districts the authority to act as the regional coordinator for land use planning activities of cities and counties within a district under ORS 195.025(1) (the relevant portion of which is also repealed under Section 7 of IP 8).

Moreover, IP 8, Section 5, removes the authority of metropolitan service districts to do the following:

- Adopt a regional urban growth boundary;
- Require cities and counties within the district to make their comprehensive plan maps and policies comply with the urban growth boundary and land use policies and rules adopted by the district, including rules protecting air and water quality;
- Take enforcement action against cities or counties that fail to comply with the district's adopted UGB, plans and rules.

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**d. Removal of urban growth boundary authority in ORS chapter 197**

The statutes governing the adoption and amendment of urban growth boundaries by cities across the state are at ORS 197.295 *et seq.* All cities in Oregon are required to have an urban growth boundary. An urban growth boundary is Oregon's mechanism for reducing urban sprawl. All Oregon cities with a population of 25,000 are required to periodically review whether there is a need to expand their UGB in order to maintain a 20-year supply of land for housing inside the boundary, unless they are within a metropolitan service district, which funds and performs these functions on a regional basis. Most of the general requirements that apply to both metropolitan service districts and individual cities are in ORS 197.296.

Section 11 of IP 8 amends ORS 197.296 by taking responsibility for regional UGB review and expansion away from metropolitan service districts. Instead, IP 8 eliminates the regional efficiency of metropolitan service districts and applies the statutory requirements for the land supply inventory and analysis of whether a UGB expansion is needed to all cities located within a metropolitan service district.

There are also specific UGB requirements that apply only to metropolitan service districts in ORS 197.299, including a requirement that a district must undertake its inventory of buildable lands and analysis of whether more land is needed every five years.<sup>1</sup> There is no comparable five-year analysis required for individual cities. Section 12 of IP 8 amends the provisions of ORS 197.299 that apply only to metropolitan service districts by making those requirements apply directly to all cities within a metropolitan service district, rather than the district itself.

One effect of Sections 11 and 12 of IP 8 is that cities located within the Metro region would now be required to undertake their own individual UGB analysis and management processes, under the special requirements in ORS 197.299 that currently only apply to Metro. IP 8 provides no funding for these significant additional requirements imposed upon such municipalities.

**e. Removal of authority to designate urban and rural reserves in ORS chapter 195**

Under ORS 195.137 *et seq.*, counties and metropolitan service districts are granted authority to map land outside of an existing UGB as urban reserve or rural reserve areas. Land designated as urban reserve is land that can be more efficiently urbanized and provided with urban services, and therefore becomes the first priority for expansion of the UGB if a need is identified as part of a metropolitan service district's review cycle. Land designated as rural reserve is land that is suitable for long-term agricultural operations or natural resource protection, and therefore becomes protected against any future UGB expansion for the next 50 years.

Sections 8, 9 and 10 of IP 8 remove the authority of metropolitan service districts to designate urban and rural reserves. Like removal of the UGB function, this is a significant change in existing law that eliminates their ability to make significant growth management decisions for the region by

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<sup>1</sup> HB 4078 (2014) amended this statute to extend Metro's required buildable land inventory and analysis cycle to six years effective January 1, 2015.

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adopting decisions and mapping land outside of the UGB in a way that will dictate where the region will or will not grow in the next 50 years.

**f. Removal of authority to enter into cooperative agreements with special districts for provision of urban services under ORS 195.020**

Section 6 of IP 8 removes the authority of metropolitan service districts to enter into cooperative agreements with special districts regarding the provision of urban services within the metropolitan district. The purpose of such agreements is to coordinate land use activities between the metropolitan service district and special districts in order to encourage efficiencies and to ensure that urban services are not duplicative or overlapping.

As explained further below, because these changes go beyond coordination of land use plans for cities, and counties and apply broadly to metropolitan service districts in general, the draft ballot title is legally non-compliant and should be revised.

**2. The Caption**

ORS 250.035(2)(a) provides that a ballot title contain “a [c]aption of not more than 15 words that reasonably identifies the subject matter of the state measure.” The first step in determining the subject matter of the initiative is “the changes, if any, the measure would enact in the context of existing law.” *Sizemore v. Myers*, 342 Or 578, 583 (2007) (quoting *Phillips v. Myers*, 325 Or 221, 225-226 (1997)). The caption is the “cornerstone for the other portions of the ballot title” and in order to comply with the statute, it must identify the proposal’s subject matter in terms that will not “confuse or mislead potential petition signers and voters.” *Mabon v. Myers*, 332 Or 633, 33 P3d 988 (2001) (citations omitted). It also cannot overstate or understate the scope of the legal changes the initiative would enact.

Here, the draft ballot title reads:

**Eliminates authority of Metropolitan Service District  
("Metro") to coordinate land use plans for cities, counties**

First, it is important to note that while Metro, which serves the metropolitan area within the boundaries of Clackamas, Multnomah, and Washington counties, is the only metropolitan service district currently in existence, ORS chapter 268 is written broadly to apply to “a district established under this chapter in any metropolitan area.” See ORS 268.030. Indeed, Article XI, section 14(1) of the Oregon Constitution also envisions that chapter 268 will apply to such a district created by the voters of any metropolitan area. That section expressly provides: “The Legislative Assembly shall provide by law a method whereby the legal electors of any metropolitan service district organized under the laws of this state, by majority vote of such electors voting thereon at any legally called election, may adopt, amend, revise or repeal a district charter.” Therefore, use of the singular with capital letters and the modifier “Metro” is legally deficient. Voters around the state (for example, in the Eugene Springfield area which has a “Metro Plan”)<sup>2</sup> need to know that the changes effected by IP

<sup>2</sup> See <http://www.lcog.org/metroplanning.cfm>



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8 would also limit their rights should they choose to create a metropolitan service district in their metropolitan area.

Second, the draft caption fails to provide voters with adequate information regarding the other important aspects of the changes effected by IP 8, such as the impact on regulations protecting air and water quality. In addition, as discussed further below, these other changes made by IP 8 should also be incorporated into the “yes” vote result statement.

Finally, within the metropolitan area served currently by Metro, voters need to be made aware that functions currently served regionally by Metro will become the unfunded added responsibility of individual municipalities. IP 8 provides no funding for such functions, nor does it reduce Metro’s funding. This is a concept that needs to be addressed in the ballot title. Even if it is not possible to include such info within the word limits of the caption, it should at least be included in the “yes” vote result statement and/or the summary.

The remaining deficiencies could, however, be addressed through revised language along the following lines:

**Eliminates metropolitan service districts’ authority to coordinate land use, air/water quality for cities, counties.**

### 3. The Results Statements

ORS 250.035(2)(b)-(c) require that a ballot title contain a simple understandable statement of not more than 25 words that describes the result if the state measure is approved or rejected. Typically, the “yes” vote result statement builds on the caption. The purpose of the “yes” vote result statement is to “notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon.” *Novick v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). In contrast, the “no” vote result statement must explain to voters “the state of affairs” that will exist if this initiative is rejected, that is, the *status quo*. It is also essential that the law described in the “no” vote result statement concern the subject matter of the proposal. Otherwise, the description could mislead voters about the effect of their vote. *Nesbitt v. Myers*, 335 Or 219, 223, 64 P3d 1133 (2003). *See also*, *Nesbitt v. Myers*, 335 Or 424, 431, 71 P3d 530 (2003)(review of modified ballot title). “[T]o comply with [\*\*\*] statutory requirements, the Attorney General may have to go beyond the words of a measure in order to give the voters accurate and neutral information about a proposed measure.” *Caruthers v. Myers*, 344 Or 596, 601, 189 P3d 1 (2008).

Here, the Attorney General’s draft ballot title provides the following result statements:

**Result of "Yes" Vote:** "Yes" vote eliminates Metro's authority to coordinate land use planning in tri-county region, adopt urban growth boundary, review city/county land use plans for compliance.

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**Result of "No" Vote:** "No" vote retains Metro's authority to adopt land use planning goals for tri-county region, coordinate planning, review local plans for compliance, adopt urban growth boundary.

The "yes" vote result statement makes some of the same errors noted above for the caption. It improperly focuses exclusively on Metro instead of metropolitan service districts in general. It also introduces a new term, "tri-county region," presumably to refer to the three counties of the Portland metropolitan region, but this term is not at all clear (other regions of Oregon, including Jefferson, Crook and Deschutes Counties, use this term) and it is not in common use; at any rate, for the reasons noted above, this term should be removed. The "yes" vote result statement also fails to account for changes made to the authority of metropolitan service districts to protect air and water quality, to regulate transportation impacts or to receive and distribute federal transportation dollars. Voters around the state need to know that a "yes" vote will limit their ability to manage all these issues at a regional level through a metropolitan service district. Finally, they need to understand that these functions do not disappear but must be performed by local jurisdictions (cities/counties) with no additional funding. Again, commenter understands that given the word limitations, the funding issues may have to be discussed in the summary.

The "no" vote result statement should be revised to track the changes made to the "yes" vote result statement so that voters understand that voting against the initiative will mean that metropolitan service districts will retain their authority to act in all these areas (i.e., urban growth, transportation, and air and water quality).

These deficiencies could be addressed through result statements which reads as follows:

**Result of "Yes" Vote:** "Yes" vote eliminates authority of metropolitan service districts to coordinate city/county land use, establish urban growth boundary, manage transportation impacts, protect air/water quality

**Result of "No" Vote:** "No" vote retains the authority of metropolitan service districts to coordinate city/county land use, establish urban growth boundary, manage transportation impacts, protect air/water quality

#### 4. Summary

ORS 250.035(2)(d) requires that the ballot title contain a 125 word statement which accurately summarizes the measure and its major effects in a concise and impartial manner. The goal is to provide voters with enough information to understand what will happen if the measure is approved and the "breadth of its impact." *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989).

The draft summary proposed by the Attorney General reads as follows:

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*Re. IP 8 (2016) - Draft Ballot Title Comments*

October 24, 2014

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**Summary:** Metro is a metropolitan service district that includes land in Clackamas, Multnomah, and Washington counties. Metro is responsible for coordinating land use planning in that district. Metro's authority includes preparing and adopting functional plans for areas within the district and adopting land use goals. Metro adopts a regional urban growth boundary. Metro and the county designate urban and rural reserves. Metro reviews city and county land use plans, regulations and land use decisions for compliance with Metro's functional plans and urban growth boundary. Metro may require city or county to change parts of local plan and may require changes in local land use standards and procedures, for consistency with the regional framework plan. Measure eliminates Metro's authority, participation in city and county land use planning.

Like the caption and the result statements, the summary incorrectly focuses exclusively on Metro, the voter-approved home-rule charter metropolitan service district of the Portland region, rather than all metropolitan service districts that may be created pursuant to the Oregon Constitution and ORS Chapter 268. Also, while the summary does a better job of explaining the authority of Metro as a metropolitan service district, it still fails to cover all the areas of authority of a metropolitan service district impacted by IP 8. For example, it includes no mention of the role metropolitan service districts play in the protection of air and water quality. It also does not discuss their role in regulating transportation impacts or potentially serving as an MPO for purposes of receipt and distribution of federal transportation dollars. These are all important impacts of the initiative about which voters need to be made aware. Without such information, the summary is inaccurate and underinclusive.

The summary should also note that there are other provisions, such as the savings clause, not discussed in the summary and provide some information about the fact that metropolitan service districts are generally created through voter-approved charters. See ORS 268.010 (2); Oregon Constitution, Article XI, section 14.

To correct these deficiencies, we propose the following alternative:

**Summary:** Metropolitan service districts are authorized by state law/voter-approved home rule charters to address issues of metropolitan significance. In accordance with charter/state law, they are authorized to protect air/water quality, adopt regional urban growth boundaries, designate urban/rural reserves in conjunction with counties, review city/county land use regulations for compliance with urban growth boundary/plan, regulate transportation impacts. Metro, a home-rule charter metropolitan service district for the Clackamas/Multnomah/Washington county area, also serves as metropolitan planning organization to receive/distribute federal transportation dollars. Measure eliminates authority of metropolitan service districts, including Metro, to perform these functions, requiring cities/counties to fulfill them. Provides no additional

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funding for cities/counties for functions formerly performed by  
metropolitan service districts. Other provisions.

Thank you for your careful consideration of these comments. Please send a copy of the  
certified ballot title as soon as it is available.

Sincerely,

AAM

cc: Clients

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2014 OCT 24 PM 4 11  
KATE BROWN  
SECRETARY OF THE STATE



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

November 10, 2014

Jim Williams  
Director, Elections Division  
Office of the Secretary of State  
141 State Capitol  
Salem, OR 97310

RECEIVED  
2014 NOV 10 PM 3:43  
KATE BROWN  
SECRETARY OF THE STATE

Re: Proposed Initiative Petition — Eliminates Authority of Metropolitan Service District to Adopt, Enforce Land Use, Air/water Quality Plans  
DOJ File #BT-08-14; Elections Division #2016-008

Dear Mr. Williams:

We received comments from Eugene Schoenheit, chief petitioner; Mary Kyle McCurdy; Aruna A. Masih on behalf of Ben Unger; and Steven C. Berman on behalf of Joseph Baessler. We have revised the draft ballot title in response to the comments we received. We greatly appreciate all of the comments received, which have been extremely helpful.

**A. Caption**

The draft caption provides:

**Eliminates authority of Metropolitan Service District ("Metro") to  
coordinate land use plans for cities, counties**

Commenters McCurdy and Unger point out, in essence, that the draft caption is underinclusive because the measure applies to any metropolitan service district, not solely to Metro, the district in the Portland metropolitan area. We agree, even though Metro is the only metropolitan service district currently established and, consequently, the only district immediately affected if the measure passes. Therefore, we have changed the caption and the other parts of the certified ballot title to reflect that the measure would apply equally to any metropolitan service district that is established in the future.

Commenter Schoenheit objects to the phrase "to coordinate land use plan" as incomplete and inaccurate. He comments that the measure prohibits a district from "forcing coordinated local land use plans," but retains authority to encourage that type of coordination. In addition, Mr. Schoenheit comments, the draft caption improperly refers to only one of the district's functions that the measure would limit. Therefore, he asserts, the caption does not reasonably describe the measure's subject matter.

Similarly, Ms. McCurdy comments that the draft caption does not identify the major effect of the proposed measure, which she describes as: "to eliminate the authority of any metropolitan service district to make land use and transportation decisions in order to manage, on a regional basis, urban growth and its impacts on air and water quality." Ms. McCurdy asserts that the caption should mention several other, "much more important effects of the measure," which she identifies.

Mr. Unger also objects that the draft caption fails to mention the other important changes the measure would effect. He further objects that voters need to be informed that functions currently served by Metro "will become the unfunded added responsibility of individual municipalities." Mr. Unger does not suggest that information should be in the caption, however.

Commenter Baessler notes deficiencies in the draft caption that are addressed above.

We agree that the draft caption fails to adequately describe the measure's subject matter. We have revised the caption to read:

**Eliminates authority of metropolitan service district to adopt, enforce land use, air/water quality plans**

**B. The vote result statements**

The draft vote result statements provide:

**Result of "Yes" Vote:** "Yes" vote eliminates Metro's authority to coordinate land use planning in tri-county region, adopt urban growth boundary, review city/county land use plans for compliance.

**Result of "No" Vote:** "No" vote retains Metro's authority to adopt land use planning goals for tri-county region, coordinate planning, review local plans for compliance, adopt urban growth boundary.

As already noted, we have removed references to Metro, as opposed to metropolitan service districts in general. For that reason, the references to "tri-county region" in the result statements are inappropriate, and we have removed them.

Mr. Schoenheit comments that the result statements are insufficiently parallel. In addition, both statements "highlight some aspects of the measure at the expense of others." In particular, the result statements do not mention the measure's limitation on the district's ability to enact land use regulations and to serve as an "MPO" (metropolitan planning organization) by receiving and transferring federal transportation dollars. We agree that the result statements are underinclusive. We disagree with Schoenheit's comment that the result statements exceed the statutory word limit.

Ms. McCurdy comments that the ballot title overall fails to sufficiently identify the measure's important effects. We have revised the draft ballot title in response.

Mr. Unger objects that the result statements fail to tell voters about the measure's effects on the district's authority to protect regional air and water quality, to regulate transportation impacts and to receive and distribute federal transportation dollars—functions that local jurisdictions would have to perform if the measure passes.

Mr. Baessler comments that the draft result statements are flawed for the same reasons as the caption. Like Mr. Unger, he comments that the result statements fail to inform voters of the measure's prohibition on a metropolitan service district functioning as an MPO. He also notes the result statements do not inform voters that the measure would shift certain costs to cities and counties, without providing any funding mechanism.

We have revised the draft "Yes" and "No" vote result statements in response to the comments received, as follows:

**Result of "Yes" Vote:** "Yes" vote eliminates metropolitan service district's authority to adopt regional plan for managing urban growth; coordinate land use; establish urban growth boundary, urban/rural reserves.

**Result of "No" Vote:** "No" vote retains metropolitan service district's authority to adopt regional plan for managing urban growth; coordinate land use; establish urban growth boundary, urban/rural reserves.

### C. Summary

The draft summary provides:

**Summary:** Metro is a metropolitan service district that includes land in Clackamas, Multnomah, and Washington counties. Metro is responsible for coordinating land use planning in that district. Metro's authority includes preparing and adopting functional plans for areas within the district and adopting land use goals. Metro adopts a regional urban growth boundary. Metro and the county designate urban and rural reserves. Metro reviews city and county land use plans, regulations and land use decisions for compliance with Metro's functional plans and urban growth boundary. Metro may require city or county to change parts of local plan and may require changes in local land use standards and procedures, for consistency with the regional framework plan. Measure eliminates Metro's authority, participation in city and county land use planning.

As above, we have revised the draft summary to eliminate references to Metro specifically.

Mr. Schoenheit comments that the draft summary improperly fails to mention the measure's prohibition on a metropolitan service district acting as an MPO. Ms. McCurdy and Mr. Unger object that the summary inaccurately fails to include other important functions of metropolitan service districts the measure would eliminate. Mr. Unger notes the summary is


November 10, 2014

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deficient for failing to state that the measure contains other provisions. Mr. Baessler notes the summary inaccurately focuses on the Portland area Metro. We agree with the comments and have revised the draft summary in response, as follows:

**Summary:** A metropolitan service district ("district") makes public services available in metropolitan area and adopts plans to control land use activities having metropolitan significance, including air and water quality, transportation impacts. Currently, only established district is Portland metropolitan area. A district adopts urban growth boundary; creates urban/rural reserves; creates regional plan; may review, change comprehensive plans of cities, counties in district; coordinates land use planning activities within district. District's land use rules are binding on cities, counties within district. Electors of district may change, repeal district's charter. Measure eliminates district's authority to designate urban, rural reserves; adopt, enforce regional land use rules, air and water quality rules; coordinate land use planning within district; receive/distribute federal transportation funds; shifts costs to cities/counties. Other provisions.

We certify the attached ballot title.

Matthew J. Lysne   
Senior Assistant Attorney General  
matthew.j.lysne@doj.state.or.us

ML4:aft/5989231

Enclosure

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KATE BROWN  
SECRETARY OF THE STATE



**BALLOT TITLE**

**Eliminates authority of metropolitan service district to adopt, enforce land use,  
air/water quality plans**

**Result of "Yes" Vote:** "Yes" vote eliminates metropolitan service district's authority to adopt regional plan for managing urban growth; coordinate land use; establish urban growth boundary, urban/rural reserves

**Result of "No" Vote:** "No" vote retains metropolitan service district's authority to adopt regional plan for managing urban growth; coordinate land use; establish urban growth boundary, urban/rural reserves.

**Summary:** A metropolitan service district ("district") makes public services available in metropolitan area and adopts plans to control land use activities having metropolitan significance, including air and water quality, transportation impacts. Currently, only established district is Portland metropolitan area. A district adopts urban growth boundary; creates urban/rural reserves; creates regional plan; may review, change comprehensive plans of cities, counties in district; coordinates land use planning activities within district. District's land use rules are binding on cities, counties within district. Electors of district may change, repeal district's charter. Measure eliminates district's authority to designate urban, rural reserves; adopt, enforce regional land use rules, air and water quality rules; coordinate land use planning within district; receive/distribute federal transportation funds; shifts costs to cities/counties. Other provisions.

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SECRETARY OF THE STATE

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SECRETARY OF STATE



JIM WILLIAMS  
DIRECTOR

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SALEM, OREGON 97310-0722

(503) 986-1518

# INITIATIVE PETITION

TO: All Interested Parties  
FROM: Lydia Plukchi, Compliance Specialist  
DATE: November 12, 2014  
SUBJECT: Initiative Petition **2016-008** Certified Ballot Title

The Elections Division received a certified ballot title from the Attorney General on November 10, 2014, for Initiative Petition **2016-008**, proposed for the November 8, 2016, General Election.

## Caption

Eliminates authority of metropolitan service district to adopt, enforce land use, air/water quality plans

## Chief Petitioners

Eugene Schoenheit 13780 SE Fernridge Avenue Milwaukie, OR 97222  
Lauri Hein 20630 NW Rockspring Lane Beaverton, OR 97006

## Appeal Period

Any registered voter, who submitted timely written comments on the draft ballot title and is dissatisfied with the certified ballot title issued by the Attorney General, may petition the Oregon Supreme Court to review the ballot title.

If a registered voter petitions the Supreme Court to review the ballot title, the voter must notify the Elections Division. If this notice is not timely filed, the petition to the Supreme Court may be dismissed.

## Appeal Due

November 25, 2014

## How to Submit Appeal

Refer to Oregon Rules of Appellate Procedure, Rule 11.30 or contact the Oregon Supreme Court for more information at 503.986.5555.

## Notice Due

1<sup>st</sup> business day after  
appeal filed with  
Supreme Court, 5 pm

## How to Submit Notice

Scan and Email  
Fax  
Mail

## Where to Submit Notice

irrlstnotifier.sos@state.or.us  
503.373.7414  
255 Capitol St NE Ste 501, Salem OR 97310

More information, including the certified ballot title and Secretary of State Kate Brown's determination that the proposed initiative petition is in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions, is contained in the IRR Database available at [www.oregonvotes.gov](http://www.oregonvotes.gov).

### CERTIFICATE OF FILING

I certify that, I directed the original and seven copies of the PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition #8) to be electronically filed with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16 on November 25, 2014.

### CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition #8) upon the following individuals on November 25, 2014, by delivering a true, full and exact copy thereof via U.S. Mail to:

Ellen F. Rosenblum  
Matthew Lysne OSB #025422  
Department of Justice  
1162 Court St. NE  
Salem, OR 97310-4096  
Telephone: (503) 378-4402  
Facsimile: (503) 378-6306  
Attorneys for Respondent

Eugene Schoenheit  
13780 SE Fernridge Avenue  
Milwaukie, OR 97222

Lauri Hein  
20630 NW Rockspring Lane  
Beaverton, OR 97006

and upon the following individual via facsimile transmission:

Kate Brown, Secretary of State  
Elections Division  
255 Capitol St. NE, Ste 501  
Salem, Oregon 97310-0722  
Fax: 1-503-373-7414

DATED this 25<sup>th</sup> day of November, 2014.

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

*s/Aruna A. Masih*  
Aruna A. Masih, OSB #973241  
of Attorneys for Petitioner