

3/5/2024

Testimony in Opposition to HB 4026A

Chair Lieber, Members of the Committee:

For the record, my name is Nellie McAdams and I represent Friends of North Plains Smart Growth.

Thank you for the opportunity to testify in opposition to HB 4026A - a bill that would, for the first time we know of, limit Oregon voters' constitutional right to call a referendum.

According to Legislative Counsel, the bill likely does nothing, since they believe Urban Growth Boundary expansion decisions are likely not subject to referenda. But if LC's interpretation is wrong and the bill does anything at all, LC agrees that the bill is likely unconstitutional.

In short, either there is no need for this bill, or it sets the state up for a lawsuit.

Our organization's attorney argues that UGB expansions are subject to referenda, and that the bill is unconstitutional in that it limits a constitutional right by statute, rather than constitutional amendment. This is a view shared by Washington County planning staff and it has been expressed by their counsel, Mr. Bovett. While the county takes no official position on this matter, Mr. Bovett repeatedly explained how UGB decisions are legislative in nature, since that affects the procedures for a county review. Further, in minute 45 of the 12/6/2023 Washington County Planning Commission Meeting stated that his and the county's opinion was consistent with that of Mr. Dobson's, the attorney representing Friends of North Plains Smart Growth.

First, urban growth boundary expansion decisions are clearly subject to referenda. A referendum may only be called on a jurisdiction's legislative decision that is of "general applicability and is more than temporary in duration" as opposed to an administrative or executive action that "applies previous policy to particular actions, or is otherwise compelled in substance or process by predicate policy."

UGB expansion decisions are legislative in nature. North Plains' own charter calls them Type IV Legislative Actions (§ 155.032(D)). Like other legislative decisions, UGB expansions are generally applicable to the entire city and functionally permanent. Unlike administrative decisions, they are not "compelled in substance" since cities have "reasonable discretion" in how they meet their 20-year planning goals. Since UGB expansion decisions are legislative, the voters may call a referendum on them.

Second, a right that is granted by the state constitution can only be limited by an amendment to the constitution. Since the right to call a referendum on a UGB expansion decision is permitted in the constitution, it cannot be altered by a statute alone, but can only be

changed by a constitutional amendment that is passed under the procedures set forth by the constitution.

The argument has been made that since land use decisions are extremely complicated, this constitutional right should be denied for these decisions. I argue that **this bill isn't just about land use, it's about the public right to call a referendum**. Land use decisions are not distinct from other complex, legislative decisions made by bodies of government every day and yet the legislature has not contemplated limiting the public's right to question any other decisions. Moreover, many administrative decisions like individual housing production strategies or siting decisions are *not* subject to referenda, as has been claimed elsewhere.

A referendum on **any** ordinance is uncommon. That is because they are very difficult to bring. They require signatures of 10% of the voting residents within 30 days of the decision. However, as a practical matter, signature gatherers do not even have 30 days, since it takes up to several weeks for documents to be filed and referendum language to be finalized.

North Plains' referendum only made it to the ballot because:

1. **the consequences of the decision were so massive** - the largest known UGB expansion by percentage increase in Oregon's history;
2. **the public engagement was so lacking** - see Aaron Nichols's testimony about failure to notice an initial meeting, and failure to meaningfully include those who did not have a direct interest in the expansion; and
3. **a referendum was much more targeted than a recall** - the community objected only to this ill-conceived and poorly vetted plan, not to the service and work of the electeds generally.

The fact that this bill was brought as a gut and stuff in a short session, and that it is retroactive to block the only known referendum on such a decision exacerbates the undemocratic process underlying its purpose.

For these reasons and more, **please do not pass a bill that, if it does anything at all, is unconstitutional. At least please do not make this bill retroactive.**

Thank you for your time and consideration.

Nellie McAdams