IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

KIMBERELY DIXON, Petitioner, v. CARRIE MACLAREN, in her official capacity as Metro Attorney, Respondent.	)	Case No. 22CV13078 OPINION

INTRODUCTION

Pursuant to ORS 255.140, petitioner seeks judicial review of respondent (Metro)'s determination that a proposed initiative petition—entitled "Everyone Deserves Safe Shelter" and identified by the Multnomah County Elections Division as "MetroInit-03"—cannot be enacted through the initiative process. Metro concluded that the initiative petition violates the Oregon Constitution in two respects: (1) it is administrative, not legislative, in nature, contrary to Article IV, section 1(5); and (2) it does not contain the "full text" of all code provisions that would be amended by the measure, in violation of Article IV, section 1(2)(d). Petitioner contends that Metro's conclusions are wrong.

Intervenor Multnomah County and other parties allowed to participate in this proceeding as *amici curiae* contend that Metro's conclusions were correct.[1] *Amici curiae* HereTogether and Angela Martin (collectively, HereTogether), and Coalition of Communities of Color and Marcus Mundy (collectively, Coalition) offer an additional reason for concluding that the proposed

[1] Intervenor Multnomah County and *amici* Clackamas and Washington Counties contend that the petition is administrative, not legislative, in nature. The counties do not present a "full text" argument in their briefs.

initiative does not comply with the Oregon Constitution, contending that the petition improperly addresses matters that are not of "metropolitan concern," thereby exceeding Metro's home rule authority in violation of Article XI, section 14(4) of the Oregon Constitution and Metro's Charter.

For the reasons explained below, the court concludes that the initiative petition (1) proposes changes in the law that are legislative, not administrative, in nature; (2) does not comply with the "full text" requirement; and (3) proposes changes to the Metro Code that exceed Metro's constitutional authority.

DISCUSSION

Background

In the May 2020 primary election, Metro voters overwhelmingly approved a "Supporting Housing Services" (SHS) ballot measure that had been referred to voters by the Metro Council. The SHS measure imposed a 1 percent income tax on certain individuals and businesses, with the revenue to be used to fund a housing services program to alleviate homelessness in the Metro area. Metro then codified the measure in Title XI, specifically, chapter 11.01, of the Metro Code.

Under the SHS measure and applicable code provisions, the SHS tax revenues collected by Metro are disbursed to Multnomah, Clackamas, and Washington Counties in specified proportions. To participate in the SHS program, a county must adopt a "Local Implementation Plan" (LIP) describing (among other things) how the county proposes to spend its share of SHS funds. *See* Metro Code 11.01.060(a). As part of the program, Metro enters into an Intergovernmental Agreement (IGA) with each participating county; the IGA governs the disbursement and uses of SHS funds. *See* Metro Code 11.01.040; 11.01.100(b). The SHS program is reviewed annually by the Regional Oversight Committee composed of 15 members

(five from each of the three participating Counties). Metro Code 11.01.040; 2.19.280. Among other things, the Regional Oversight Committee is charged with reviewing LIPs, annual reports, program expenditures, and other aspects of the program, and is required to provide annual reports to the governing bodies of Metro and the Counties. Metro Code 2.19.280(b)

Under the Metro Code, expenditures and services provided by the SHS program are to be prioritized to "first address the unmet needs of people who are experiencing or at risk of experiencing long-term or frequent episodes of homelessness." Metro Code 11.01.050(b). In addition, Metro "will prioritize" expenditures and services "in a manner that provides equitable access to people of color and other historically marginalized communities." *Id.*

On April 12, 2022, three petitioners filed the prospective initiative petition that is at issue in this case. The petition, if enacted, would add four new code sections to Chapter 11.01 of the Metro Code. The petition, in its entirety, is set forth below:

> THE PEOPLE OF METRO ORDAIN AS FOLLOWS: The following Sections 11.01.055, 11.01.210, 11.01.220, and 11.01.230 are added to Metro Code Chapter 11.01:
>
> **11.01.055 Distribution of Program Funds to Provide Shelter for All**
> No less than 75% of Supportive Housing Services program funds distributed to a Local Implementation Partner shall be expended exclusively for the purpose of construction, maintenance, and operation of safe, sanitary emergency shelters, unless and until:
>
> (a) The number of emergency shelter beds in the Local Implementation Partner's county meets or exceeds the homeless population in that county; and
>
> (b) Each municipality within the Local Implementation Partner's county boundary is enforcing its own anti-camping ordinances.
>
> **11.01.210 Annual Performance Audit**
> Metro shall contract for an annual independent, comprehensive performance audit of the Supportive Housing Services Program, conducted by a qualified private-sector auditing firm and based on nationally recognized standards for audit services.

11.01.220 No Conflicts of Interest
No applicant for or recipient of Program Funds, including any director, officer, agent or employee of an applicant or recipient and any spouse, child, parent or sibling thereof, shall serve as a member of the Regional Oversight Committee.

11.01.230 Enforcement
Any resident or taxpayer of the Metro district may commence an action in circuit court to enforce the requirements of this chapter. The court shall award reasonable attorney fees and costs to a prevailing plaintiff in any action under this section.

On April 14, 2022, Metro notified the Multnomah County Elections Director that the Metro Attorney had determined pursuant to Metro Code Section 9.02.030(f) that the petition does not meet constitutional requirements. Specifically, Metro concluded that (1) the petition does not comply with Article IV, section 1(5) of the Oregon Constitution because it is administrative, not legislative, in nature; and (2) the petition does not comply with Article IV, section 1(2)(d) of the Oregon Constitution because it does not include the "full text" of existing sections of the Metro Code that would be amended if the petition is enacted. Petitioner seeks judicial review of Metro's decision pursuant to ORS 255.140.

Article IV, section 1(5)—Legislative or Administrative

Article IV, section 1(5) reserves to "the qualified voters of each municipality and district" the initiative power reserved to the people by Article IV, section 1(2), "as to all local, special and municipal legislation of every character in or for their municipality or district."[2] The Oregon Supreme Court has long recognized that this provision creates "a dichotomy between 'administrative' matters, as to which the initiative and referendum are not available, and 'legislative' matters, as to which such powers are available." *Foster v. Clark*, 309 Or 464, 472 (1990) (citing *Long v. City of Portland*, 53 Or 92, 98 (1908); *Monahan v. Funk*, 137 Or 580, 587 (1931)). The court has stated that a particular activity is "administrative" and not "legislative"

[2] Article IV, section 1(2) states that the people "reserve to themselves the initiative power, which is the power to propose laws and amendments to the Constitution and enact or reject them at an election independently of the Legislative Assembly."

"if it does not set a new policy, but merely carries out legislative policies and purposes already declared." *Lane Transit District v. Lane County*, 327 Or 161, 168 (1998), (citing *Monahan*, 137 Or at 584).

In *Lane Transit District*, the court reviewed a proposed initiative measure that, if enacted, would reduce the current salary of the district's general manager and establish procedures by which the salary could be increased, concluding that the measure was "administrative" in nature. The court explained that existing statutes "declare as legislative policy of the state that the board of the transit district shall have the power to appoint a general manager for the district, to fix the terms of employment for that position, including compensation (*i.e.*, salary and benefits), and to remove the general manager." 327 Or at 169. That existing statutory structure "constitutes a 'completed legislative plan' for [the district]'s appointment, compensation, and removal of a general manager." *Id.* (quoting *Foster*, 309 Or at 473).

In *Foster*, the court held that a proposed initiative measure to rename Martin Luther King, Jr., Boulevard was administrative, not legislative, in nature. The court explained that determining whether a particular activity is administrative or legislative "often depends not on the nature of the action but the nature of the legal framework in which the action occurs." 309 Or at 474. The legal framework in that case consisted of Portland City Code (PCC) provisions that "contain a complete scheme for changing Portland city street names, including rules on petition forms, fees, review by various City officials, and final consideration by the City Council." *Id.* at 473. Those PCC provisions, the court concluded, amounted to "a completed legislative plan, requiring no further legislative contribution." *Id.*

In *Rossolo v. Multnomah County Elections Div.*, 272 Or App 572 (2015), the Court of Appeals held that a petition that sought to refer parts of an ordinance that amended county code

provisions regulating transient lodging taxes was administrative, not legislative, in nature. The court explained that the proposed measure "precludes a particular expenditure of transient lodging taxes, a closely circumscribed factual situation, and does not establish or repeal general policies applicable to expenditures of tax funds." *Id.* at 587. "Most importantly, adoption of the pledge of tax funds and the convention center hotel bond funding portions of the ordinance were preordained and compelled by the previously adopted intergovernmental agreement and board resolution." *Id.* at 587-88. Legislative choices, the court explained, "are discretionary in nature, and are not required to be made." *Id.* at 588.

In *State ex rel Dahlen v. Ervin*, 158 Or App 253 (1999), the Court of Appeals held that a proposed initiative that would amend the Multnomah County Charter to establish new requirements for the siting of community corrections facilities was legislative, not administrative, in nature. The court explained that, unlike the proposed initiatives at issue in *Foster* and *Lane Transit District*, this initiative "does not attempt to change a specific siting decision of the county but, rather, to change the framework within which the county makes siting decisions." *Id.* at 257. The court concluded that "[a]dopting a policy, and establishing procedures for implementing that policy, are the essence of legislation." *Id.*

Here, petitioner contends that the provisions in the proposed initiative measure are not administrative because they "do not compel a particular result from the existing legal framework; rather, they propose changes to the laws that make up that legal framework." Petitioner's Memorandum, p. 11. The proposed changes, in petitioner's view, are legislative because they "would apply to *all* counties, for *all* Local Implementation Plans, as to *all* expenditures, and they would apply permanently, for as long as the law is in place." *Id.* (emphasis in original).

Metro, intervenor, and the *amici* all contend that the existing SHS program is a completed legislative plan, so that any changes to the plan accomplished through this initiative petition must be administrative in nature. They argue that these changes are analogous to the changes found to be administrative in *Lane Transit District*, *Foster*, and *Rossalo*.

The court agrees with petitioner. If enacted, the measure on its face would require Multnomah, Clackamas, and Washington Counties to spend at least 75% of the SHS funds on constructing, maintaining, and operating shelters. That requirement would remain in place in each county until (1) the number of shelter beds meets or exceeds the homeless population in the county; and (2) each municipality within the county is enforcing any existing anti-camping ordinance.[3]

Those requirements do not seek to change a specific expenditure or mandate a specific result under the existing SHS program analogous to the administrative changes at issue in *Lane Transit District* and *Foster*. Nor are the results "preordained and compelled" by the previously adopted provisions, as in *Rossolo*. Instead, this initiative petition would significantly change the policy focus of the entire program to prioritize first and foremost shelter construction, maintenance, and operation.

In addition, proposed section 11.01.230 would add an enforcement mechanism—a civil action that can be brought by any Metro resident or taxpayer—that is not part of the existing SHS program. That is also a significant change in public policy. Thus, while the existing SHS program itself constitutes a completed legislative plan, this proposed measure would

[3] The fact that the 75% expenditure requirement could end when a county has enough shelter beds and municipalities within the county are "enforcing" anti-camping ordinances does not make the petition "temporary." The petition, if enacted, would permanently change the law governing the SHS program even though the impact of the measure could end in the future when those conditions are satisfied.

fundamentally change the policies approved in the original legislative plan. As in *Dahlen*, the policy changes proposed by this initiative petition are legislative, not administrative, in nature.

Article IV, section 1(2)(d)—Full Text

Article IV, section 1(2)(d) provides in pertinent part that an initiative provision "shall include the full text of the proposed law." In *Schnell v. Appling*, 238 Or 202 (1964), the Oregon Supreme Court held that a proposed initiative petition that sought to amend the existing workers' compensation statute complied with the "full text" requirement even though the petition did not include the text of existing provisions that would be repealed or left unchanged by the measure. The court explained that, because the repealed or unchanged matter "is no part of the proposed law, it need not be made a part of the initiating petition." *Id.* at 204-05.

In *Kerr v. Bradbury*, 193 Or App 304 (2004), *rev dismissed as moot*, 340 Or 241, *opinion adh'd to on recons.*, 341 Or 200 (2006), the Court of Appeals addressed a proposed initiative petition that sought to amend two existing statutes to prohibit Oregon public schools from teaching about sexual orientation "in a manner that would express approval of, promote or endorse the behaviors of homosexuality or bisexuality." 193 Or App at 307 (quoting proposed petition). The court held that the petition violated the "full text" requirement.

Before reaching that conclusion, the *Kerr* court engaged in a detailed analysis of the text, context and enactment history of Article IV, section 1(2)(d). The court noted that the purpose of the "full text" requirement as applied to an initiative petition "is to provide sufficient information so that registered voters can intelligently evaluate whether to sign the initiative petition." *Id.* at 320 (quoting *Mervyn's v. Reyes*, 69 Cal App 4th 93, 81 Cal Rptr 2d 148, 151 (1998)). The court concluded, consistent with the purpose of the requirement, that the "full text" provision required publication of "the full text of the statute as it would appear if amended." *Id.* at 325.

The *Kerr* court cautioned against reading *Schnell* "too broadly," noting that the court in *Schnell* "construed the earlier version of Article IV, section 1." *Id.* at 316. The court also noted that *Schnell* "concerned only the question whether the statutes to be repealed and statutes that are mentioned, but that would be unchanged by the proposed amendment, must be published at full length." *Id.* at 316-17.

In addition, the *Kerr* court considered Article IV, section 22, "as part of the context of" the full text provision. *Id.* at 314. Under Article IV, section 22, if the Legislative Assembly proposed to revise or amend an existing statute, "the act revised, or the section amended shall be set forth, and published at full length." The court stated in *Kerr* that the voters likely adopted Article IV, section 1(2)(d) "with a similar purpose in mind." *Id.* at 325. Thus, the court concluded that "in adopting Article IV, section 1(2)(d), the voters intended to require publication of the same information—that is, the full text of the statute as it would appear if amended—regardless of whether the amendment is proposed by the legislature or by initiative." *Id.* at 325.

Applying that test, the *Kerr* court found it "not difficult to determine" that the initiative petition at issue in that case did not comply with the full text requirement. *Id.* The court explained that the petition "sets out only the text of the amendatory wording. It does not contain the text of either ORS 336.067 or ORS 659.855 as they would read if the petition were to be enacted." *Id.* Thus, the petition "does not publish the 'full text of the proposed laws,' as Article IV, section 1(2)(d), requires." *Id.* at 325-26.

In *Carey v. Lincoln Loan Co.*, 203 Or App 399 (2005), the Court of Appeals held that the 1910 initiative petition that proposed the adoption of Article VII (Amended) did not violate the full text requirement because it contained the full text of what became Article VII (Amended). The court concluded that the case "is like *Schnell* and unlike *Kerr*." *Id.* at 406. That was

because the 1910 initiative petition "contained the full text of the proposed amendment to the constitution" and "replaced rather than modified the text of the existing constitutional provisions and, thus, did not raise the issue" that was decided in *Kerr*. *Id.*

Here, petitioner contends that this petition complies with the full text requirement because the petition includes the full text of what would be added as new sections of the Metro Code without amending the words of the existing sections of the Metro Code, much like the petitions at issue in *Schnell* and *Carey*. However, the fact that the existing SHS program requirements were codified in chapter 11.01 using different section headings, and the initiative petition at issue adds four new sections with new section headings, is not determinative. Under the Metro Code, "Title, chapter and section headings contained herein shall not be deemed to govern, omit, modify or in any matter affect the scope, meaning or intent of the provisions of any title, chapter or section hereof." Metro Code 1.01.070.[4]

The more difficult question is whether the court's analysis ends with determining whether the *words* of the existing code provisions are changed, as petitioner contends, or, whether the court also must analyze the *effect* the petition will have on existing code provisions, as Metro and *amici* HereTogether and Coalition contend. Metro and the *amici* read *Kerr* to require courts to examine the legal effect of a proposed measure to determine whether it meets the purpose of the full text requirement. In their view, if the effect of a petition is to change existing law, the full text provision requires the petitioner to include the full text of the provisions as they would appear if amended, including any existing provisions that would be changed by the legal effect of the petition. Otherwise, they contend, voters would not have enough information to intelligently evaluate whether to sign the petition.

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[4] Similarly, ORS 174.540 provides that "Title heads, chapter heads, division heads, section and subsection heads or titles and explanatory notes" in the Oregon Revised Statutes "do not constitute any part of the law."

The court agrees with Metro and the *amici*. The court's ultimate task in construing and applying the full text provision "is to determine the intent of the voters" in enacting the provision. *Kerr*, 193 Or App at 311. In analyzing the full text provision's enactment history, the *Kerr* court noted that "full text provisions are not uncommon features of state constitutions." *Id.* at 318. The general purposes of these provisions "are fairly well-established." *Id.* The "full length" requirement in Article IV, section 22, for amendments proposed by the legislature is needed because "without the utmost watchfulness the legislators could not know the extent or effect of the proposed amendments." *Id.* (quoting *City of Portland v. Stock*, 2 Or 69, 71-72 (1863)). As noted above, the *Kerr* court concluded that the voters likely adopted the full text requirement of Article IV, section 1(2)(d) "with a similar purpose in mind." 193 Or App at 325.

It follows that *Kerr* requires courts to examine "the extent or effect" of the amendments proposed in the petition, not just whether the words of existing provisions are changed. That is the only way to assess whether a petition contains enough information for voters to intelligently evaluate whether to sign it.

In contending that the petition proposes legislative and not administrative changes, petitioner acknowledges that this petition would significantly change the SHS program. For example, proposed section 11.01.055—which would appear in the Metro Code between existing sections 11.01.050 (addressing services and priorities for the SHS program) and 11.01.060 (addressing Local Implementation Plans)—effectively changes the existing priorities listed in section 11.01.050 by making shelter construction, maintenance, and operation the overriding priority. It also effectively changes the LIP process described in section 11.01.060 by making shelter construction, maintenance, and operation the overriding priority for SHS funding, thereby

limiting the implementation "flexibility" that would be allowed under existing section 11.01.060(c).

Existing sections 11.01.050 and 11.01.060 are not simply "mentioned" but left "unchanged" by proposed section 11.01.055, as was the case in *Schnell*. *See Kerr*, 193 Or App at 316-17 (noting that *Schnell* "concerned only the question whether statutes to be repealed and statutes that are mentioned, but that would be unchanged by the proposed amendment, must be published at full length"). Rather, proposed section 11.01.050 effectively changes the existing provisions by restructuring the priorities of the SHS program without showing voters the existing priorities.

Proposed sections 11.01.210, 11.01.220, and 11.01.230 would be added to the Metro Code at the end of chapter 11.01, appearing after existing section 11.01.190. Voters seeing only the new code sections would not be able to see the context in which they appear in chapter 11.01. One of those new sections—proposed section 11.01.230—would authorize any Metro resident or taxpayer to bring an action "to enforce the requirements of this chapter." Voters seeing that proposed provision would not see the requirements of "this chapter" (chapter 11.01) that could be enforced if the measure passes.

In addition, the proposed petition uses capitalized terms—Local Implementation Partner, Program Funds, Regional Oversight Committee—that are defined in existing 11.01.040. A voter seeking to evaluate whether to sign the petition would not know from reading the petition alone what those terms mean in the context of the SHS program.

The court concludes that the provisions that would be added to chapter 11.01 of the Metro Code through this petition are analogous to the provisions that would have been added to

ORS 336.067 and ORS 659.855 by the petition in *Kerr*.[5] Unlike the petition at issue in *Schnell*, this petition does not just exclude existing Code provisions that would be left unchanged by the measure if enacted. Nor does it simply replace without modifying existing provisions, as in *Carey*. This petition precludes voter consideration of the full text of chapter 11.01 of the Code as it would appear if amended because not all Code provisions changed by the petition are included. Thus, like the petition at issue in *Kerr*, this petition does not comply with the full text requirement.

Article IV, section 1(5) and Article XI, section 14(4)—Metropolitan Concern

Article XI, section 14(4) provides: "A metropolitan service district shall have jurisdiction over matters of metropolitan concern as set forth in the charter of the district." Metro's Charter states: "Metro has jurisdiction over matters of metropolitan concern." Metro Charter, ch II, § 4. *Amici* HereTogether and Coalition contend that the initiative petition at issue in this case does not address matters of metropolitan concern. Petitioner responds that this argument is not properly before the court because ORS 255.140(1) limits the court's review to compliance with section 1(2)(d) and (5) of Article IV.

Article IV, section 1(5), provides (as relevant to Metro) that the initiative powers reserved to the people are "reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district." Petitioner does not dispute that the court may review the petition under ORS 255.140(1) and Article IV, section 1(5), to determine whether it is "legislation." Logically, that

[5] ORS 336.067 lists topics that are to be given "special emphasis" in public schools. The petition at issue in *Kerr* would have added a new section (e) and 8 new subsections to ORS 336.067 to provide that sexual orientation "shall not be taught in Oregon public schools in a manner that would express approval of, promote or endorse the behaviors of homosexuality or bisexuality." *Kerr*, 193 Or App at 306-07 (quoting measure). ORS 659.855 authorizes the Superintendent of Public Instruction to impose appropriate sanctions to public schools that do not comply with the law. The petition at issue in *Kerr* would have included noncompliance with the new section (e) that the petition would add to ORS 336.067 within the Superintendent's sanctioning authority.

review also should include whether the "legislation" is local, special, or municipal in character. However, Article IV, section 1(5) does not define what is meant by "local, special and municipal" legislation.

Article XI, section 14, provides textual context for what Article IV, section 1(5) means when it refers to "local, special and municipal" legislation. Article XI, section 14(5), confirms that, as to Metro and other metropolitan service districts, the initiative power reserved to the people are reserved to the electors of the district "relative to the adoption, amendment, revision or repeal of a district charter and district legislation enacted thereunder." And, as noted above, Article XI, section 14(4), limits the "jurisdiction" of the district to "matters of metropolitan concern as set forth in the charter of the district."

Reviewing the petition to determine whether the petition at issue is "local, special or municipal" legislation under Article IV, section 1(5) is expressly authorized by ORS 255.140(1). Resolving that issue requires the court to determine whether the petition proposes legislation that is of "metropolitan concern" within the scope of Metro's constitutional home rule authority. That conclusion is supported by the Oregon Supreme Court's decisions in *Boytano v. Fritz*, 321 Or 498 (1995), and *Foster*, 309 Or 464.

In *Boytano*, plaintiff contended that a proposed city initiative petition should be disqualified "because it is not a proper subject for a local initiative measure." 321 Or at 502. The court first concluded that plaintiff's argument presented a controversy that was justiciable before the election under the statute governing city measures, ORS 250.270. That statute, like ORS 255.140(1), limits pre-election review to determining whether "the initiative measure meets the requirements of section 1(2)(d) and (5), Article IV of the Oregon Constitution." ORS

250.270 (4).[6] Next, the *Boytano* court addressed the merits of plaintiff's argument that the proposed measure was not a "municipal" concern because a state law—ORS 659.165—effectively "reserves to the state the exclusive power to act" in the area addressed by the proposed city measure. *Id.* at 507. The court rejected that argument, concluding that a local election on this measure "is not 'contrary' to ORS 659.165, the general law adopted by the state legislature." *Id.* at 508.

In *Foster*, the Oregon Supreme Court concluded that "whether the proposed measure is 'municipal legislation' is a proper one for judicial scrutiny" before the election. 309 Or at 471. The court explained that "a court may inquire into whether the measure is 'municipal legislation,' because that qualifying language is used" in Article IV, section 1(5). *Id.* On the merits, as discussed above, the court concluded that the measure at issue could not be enacted through the initiative, not because it was not "municipal" but because it was not "legislative" in nature.[7]

Applying those principles here, the court concludes that whether this petition presents a proper subject for a Metro initiative measure is properly before the court. The Oregon Supreme Court has indicated that one limitation on the scope of a local government's constitutional home rule authority is that "local governments cannot interfere with another government's exercise of its own governmental power and functions." *Rogue Valley Sewer Servs. v. City of Phoenix*, 357 Or 437, 449 (2015).

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[6] As originally adopted in 1991, ORS 250.270 only authorized review of proposed city initiative petitions for compliance with Article IV, section 1(2)(d). The statute was amended in 2005 to add the authority to review for compliance with Article IV, section 1(5). *See* Or Laws 2005, ch 797, §42.

[7] As *amici* Coalition points out, there do not appear to be any prior court decisions *rejecting* a proposed initiative petition before enactment on the grounds that the petition does not address a matter of local concern. However, in *Boytano*, the court addressed the merits of petitioner's pre-election challenge that the petition at issue was not a proper subject of local legislation, concluding that the petition could be placed on the ballot. The cases holding that a local measure does not properly present a subject of local concern all involve challenges raised during after enactment. But those cases do not hold that such a claim can *only* be reviewed post-election.

In *Rogue Valley Sewer*, the Supreme Court held that a city could collect a franchise fee from a local service district without interfering with the district's exercise of its own governmental functions. The court explained that, while a city "cannot, on the basis of its home-rule authority, impose a duty on or impair a power of another governmental entity," that limitation "would not prevent a city from exercising the same kind of regulatory authority over specific services provided by another local government entity on the same basis as services provided within the city by a private business." 357 Or at 449-50.

In *City of Eugene v. Roberts*, 305 Or 641 (1988), the Supreme Court held that the City of Eugene could not compel Lane County election officials to place on the state primary election ballot an advisory question regarding which type of nuclear-free zone ordinance should be adopted by the Eugene City Council. The court explained that the city's home rule power "does not by its terms empower city governments to conscript the services of county and state officials in the conduct of city business." *Id.* at 650.

In *State v. Logsdon*, 165 Or App 28 (2000), the Court of Appeals affirmed defendant's conviction for possession of a controlled substance, holding that a Josephine County Charter provision that precluded any "public official" from entering private property without the owner's consent was invalid, and thus, violation of that provision could not provide a basis for suppressing the evidence. The court explained that local government authority "does not include governing the conduct of state and federal officials." *Id.* at 32. The charter provision at issue in that case, the court concluded, "goes well beyond any matter that legitimately may be regarded as a 'county concern.'" *Id.* at 33.

Here, the initiative petition, if enacted, would require Multnomah, Clackamas, and Washington Counties to spend at least 75% of the revenues they receive under the program on

shelter construction, maintenance, and operation, which is contrary to the expenditures described in each county's existing LIP and in the IGAs between Metro and each county. Metro has no authority to dictate through its Code how each county Board of Commissioners must spend the SHS revenues allocated to the county under the program.

Metro might be able to *condition* each county's receipt of SHS funds on the submission of an LIP and entry into an IGA that commits the county to spend a certain percentage of the funds on shelter construction, maintenance, and operation. But this measure does not say that. It does not require Metro to *condition* disbursement of SHS funds on a county's agreement to spend the money on shelters. Instead, it would require the counties to *spend* 75% of the funds they receive on shelters.[8] Metro cannot do that. Nor can Metro require each county to continue making those expenditures every year in the future until the number of shelter beds meets or exceeds the homeless population and all municipal governments within the county are enforcing their existing anti-camping ordinances.[9] Those matters are not matters of metropolitan concern within Metro's home rule powers.

CONCLUSION

Metro erred in concluding that this initiative petition proposes administrative, not legislative, changes to the Metro Code. However, Metro correctly concluded that the petition does not comply with the full text requirement of the Oregon Constitution. In addition, the court

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[8] Proposed section 11.01.055 uses the passive voice, stating that the "funds distributed to a Local Implementation Partner shall be expended" on shelters without specifying which entity is doing the "distributing" and which is doing the "expending." Restating this provision in the active voice, it becomes clear, under the SHS program, Metro distributes funds to the counties; the counties "expend" the funds. Thus, the plain meaning of the text of this provision would require the counties to spend at least 75% of the money they receive from Metro on shelter construction, maintenance, and operation.

[9] The initiative petition does not specify which municipalities have existing anti-camping ordinances or explain how the municipalities would demonstrate their enforcement of those ordinances. The petition also does not specify what would happen if a municipality adopted a non-enforcement policy by repealing an existing anti-camping ordinance.

concludes that the petition proposes changes to the Metro Code that exceed Metro's constitutional home rule authority.

Accordingly, for the reasons stated in this opinion, Metro's decision is AFFIRMED. Metro's counsel may submit a form of judgment consistent with this opinion.

Dated this 23RD day of May, 2022.

Stephen K. Bushong
Circuit Court Judge