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I N I T I A T I V E P E T I T I O N

TO: All Interested Parties

FROM: Lydia Plukchi, Compliance Specialist

DATE: June 14, 2018

SUBJECT: Initiative Petition **2020-001** Certified Ballot Title

The Elections Division received a certified ballot title from the Attorney General on June 14, 2018, for Initiative Petition **2020-001**, proposed for the November 3, 2020, General Election.

Caption

Amends Constitution: Allows laws that “regulate” (undefined) contributions and expenditures made to influence elections

Chief Petitioners

Ron Buel 1810 NE 70th Avenue, Portland, OR 97213
B. Elizabeth Trojan 12320 SW 60th Avenue, Portland, OR 97219

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 by completing and filing form [SEL 324 Notice of Ballot Title Challenge](#). If this notice is not timely filed, the petition to the Supreme Court may be dismissed.

Appeal Due

June 28, 2018

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

1st business day after
appeal filed with
Supreme Court, 5 pm

How to Submit Notice

Scan and Email
Fax
Mail

Where to Submit Notice

irrlistnotifier.sos@oregon.gov
503.373.7414
255 Capitol St NE Ste 501, Salem OR 97310

More information, including the certified ballot title and the Secretary of State'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.

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CONSTITUTIONAL REQUIREMENT RULING

Initiative Petition No.	Date Filed	Comment Deadline	Certified Ballot Title Due
2020-001	February 6, 2018	May 30, 2018	June 14, 2018

Draft Ballot Title Caption

Amends Constitution: Allows laws that "regulate" (undefined) contributions and expenditures made to influence elections

Chief Petitioners

Ronald A. Buel	1810 NE 70th Avenue Portland, OR 97213
B. Elizabeth Trojan	12320 SW 60th Avenue Portland, OR 97219

Procedural Constitutional Requirement Commentor

Kyle Markley	PO Box 1959, Beaverton, OR 97075
Steven Berman	209 SW Oak Street, Suite 500, Portland, OR 97204
Daniel Meek	10266 SW Lancaster Road, Portland, OR 97219

Certification

I have reviewed the above-captioned initiative petition, including any comments submitted regarding constitutional requirements, and find that:

It **complies** with the procedural constitutional requirements.

It **does not comply** with the procedural constitutional requirements.

Dennis Richardson, Secretary of State

Dated



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

June 14, 2018

Stephen N. Trout
Director, Elections Division
Office of the Secretary of State
255 Capitol St. NE, Ste. 501
Salem, OR 97310



Re: Proposed Initiative Petition — Amends Constitution: Allows Laws That “Regulate” (Undefined) Contributions and Expenditures Made to Influence Elections.
DOJ File #BT-01-18; Elections Division #2020-001

Dear Mr. Trout:

We have received the comments submitted in response to the draft ballot title for prospective Initiative Petition #01 (2020). Comments were submitted by Mr. Kyle Markley, on behalf of the Libertarian Party of Oregon; by Mr. Steve Berman, on behalf of Mr. Trent Lutz; and by Mr. Daniel Meek, on behalf of Chief Petitioners Ms. Elizabeth Trojan and Mr. Ron Buel (Trojan commenters). This letter summarizes the comments we received, our responses to those comments, and the reasons we did or did not make changes to the ballot title in light of the submitted comments. ORAP 11.30(6) requires this letter to be included in the record in the event that the Oregon Supreme Court reviews the ballot title.

We also enclose a copy of the certified ballot title.

A. Procedural constitutional requirements

Mr. Markley and Mr. Lutz assert that the proposed measure fails to adhere to all applicable procedural constitutional requirements. The Trojan commenters assert that the measure complies with all procedural requirements. Those issues are beyond the scope of the ballot title drafting process. *See* OAR 165-014-0028 (providing for separate review process by Secretary of State to determine whether measure complies with constitutional procedural requirements for proposed initiative measures). Accordingly, we do not address them here.

B. Background

Initiative Petition #01 (2020) is nearly identical to Initiative Petition #28 (2018). The ballot title for IP 28 was fully litigated. *See Markley/Lutz v. Rosenblum*, 362 Or 531 (2018); *Markley/Lutz v. Rosenblum*, 362 Or 855 (2018). After being referred to the Attorney General for

modification two times, the Supreme Court certified the modified ballot title for IP 28 on May 18, 2018.

The changes made in IP 1 occur in the last clause. That clause states: “provided, that such laws are adopted or amended by an elected legislative body by a three-fourths vote of each chamber or by initiative.” In IP 28, that clause stated: “provided, that such laws are adopted or amended by initiative or by an elected legislative body by a three-fourths vote.” The change appears to be a response the court’s opinion, which concluded that text of IP 28 was ambiguous concerning whether the three-fourths vote requirement applied to initiatives in addition to votes by legislative bodies. See *Markley/Lutz* 362 Or at 540 (explaining ambiguity in IP 28).

C. The Caption

The ballot title must include “[a] caption of not more than 15 words that reasonably identifies the subject matter of the state measure.” ORS 250.035(2)(a). The “subject matter” is “the ‘actual major effect’ of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words).” *Lavey v. Kroger*, 350 Or 559, 563, 258 P3d 1194 (2011). To identify the “actual major effect” of a measure, the Attorney General must consider the “changes that the proposed measure would enact in the context of existing law.” *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011). The draft caption provides:

Amends Constitution: Allows laws that “regulate” (undefined) contributions and expenditures made to influence elections

Mr. Lutz and the Trojan commenters assert that the caption does not comply with ORS 250.035 and suggest modifications.

Mr. Lutz asserts that the caption should quote additional text of measure and state that the measure applies to contributions and expenditures made “to influence the outcome of” elections. Mr. Lutz notes that the current caption contains twelve words and so adding “the outcome of” would not require other changes. Mr. Lutz argues that the “yes” result should contain the same language; words would have to be deleted from the “yes” result to accommodate the additional three words.

We note that Mr. Lutz raised related issues (though not identical) in his petition for review seeking modifications to IP 28 and in his objections to the modified ballot title. Mr. Lutz asserted that the certified ballot title for that measure was flawed because it failed to inform voters of the scope of the measure; in his view, the caption did not explain that the measure applied to contributions and expenditures “of any type or description, to influence the outcome of any election.” Lutz Pet at 7 (quoting IP 28). The court did not order modifications based on that argument. *Markley/Lutz v. Rosenblum*, 362 Or 531, 537 (2018). When the Attorney General submitted a modified ballot title that included the phrase “to influence the outcome of

any election” in the caption (among other quoted material), Mr. Lutz asserted that the caption was flawed because it simply quoted the terms of the measure. Lutz Obj at 5. The court agreed with Mr. Lutz’s objections and suggested following caption: “Amend Constitution: Allows laws that ‘regulate’ (undefined) contributions and expenditures made to influence elections.” *Markley/Lutz*, 362 Or at 859. The Attorney General modified the caption for IP 28 as suggested by the court, and the court certified it.

The Trojan commenters also assert that the caption should include the word “outcome” in the caption and suggest that the caption should mention that the laws permitted by the measure would have be consistent with the First Amendment.

We decline to modify the draft caption. The major effect of IP 1 is the same as the major effect of IP 28. The caption previously certified by the Supreme Court for IP 28 substantially complies with ORS 250.035 and is appropriate for IP 1. Although the caption perhaps could be drafted in a different way and still comply with the statutory requirements, such changes are not required.

The Attorney General certifies the following caption:

Amends Constitution: Allows laws that “regulate” (undefined) contributions and expenditures made to influence elections

D. The “Yes” and “No” Vote Result Statements

We next consider the draft “yes” vote result statement. A ballot title must include “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is approved.” ORS 250.035(2)(b). The “yes” vote result statement should identify “the most significant and immediate” effects of the measure. *Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). The draft “yes” vote result statement provides:

Result of “Yes” Vote: “Yes” vote allows laws passed by elected legislative body by a three-fourths vote or by initiative that “regulate” (undefined) contributions/expenditures to influence elections.

A ballot title also must include “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected.” ORS 250.035(2)(c). The “no” vote result statement “should ‘address the substance of current law *on the subject matter of the proposed measure*’ and ‘summarize the current law accurately.’” *McCann v. Rosenblum*, 354 Or 701, 707, 320 P3d 548 (2014) (quoting *Novick/Crew*, 337 Or at 577) (emphasis added in *Novick/Crew*; alterations omitted). The draft “no” vote result statement provides:

Result of “No” Vote: “No” vote retains Oregon Constitution’s existing free-expression provision; laws limiting contributions to candidates or political committees by a person, corporation or union violate constitution.

Mr. Lutz raises the same issue with “yes” result that he raised regarding the caption; for the same reasons, we reject his suggestion. Mr. Lutz raises two additional arguments. First, he asserts that the phrase “three-fourths vote of each chamber” is ambiguous because it could refer either to a quorum requirement or to a super-majority requirement. He asserts that the “yes” result should reflect that ambiguity. Mr. Lutz also asserts that the “yes” result is flawed because it fails to mention that laws enacted by the legislature under the measure could not be referred to the voters.

We disagree with those assertions. First, the measure plainly requires a “three-fourths vote”—a super majority—to enact laws regulating contributions and expenditures. It is implausible to construe that phrase as a quorum requirement for a majority vote. Second, we decline to speculate about whether a law passed by the legislature under this measure could be referred to the voters. *See Wolf v. Myers*, 343 Or 494, 501, 173 P3d 812 (2007) (“This court consistently has declined to speculate – or to permit the Attorney General to speculate – about the possible effects of a proposed measure.”). At most, that is a secondary issue to be litigated as necessary, should the measure be adopted by the voters.

The Trojan commenters assert that the draft “yes” statement is confusing because it begins with process for enacting a law and then describes the substance of the permissible regulations. They suggest switching the word order of the “yes” result. Although a “yes” result with their suggested word order may comply with the ORS 250.035(2), that does not mean that the draft “yes” result is deficient. We decline to modify the “yes” result.

Concerning the “no” result, Mr. Markley asserts that the result is misleading because it uses the phrase “person, corporation or union,” and thereby suggests that those classes somehow have special status under current law. The Trojan commenters also object to that phrase, asserting that current Oregon law does not bar limits on contributions by corporations or unions.

The Supreme Court considered and rejected an objection to that same phrasing in the litigation over IP 28. Regarding IP 28, Mr. Lutz objected to that phrase appearing in the modified “no” result because, in his view, it was not accurate. (Lutz Obj at 7). The court rejected that argument and did not require modifications to the “no” result. *Markley/Lutz*, 362 Or at 859. The “no” result, as previously certified by the court, is an accurate description of Oregon law. Accordingly, we decline to modify the draft result statements.

The Attorney General certifies the following result statements:

Result of “Yes” Vote: “Yes” vote allows laws passed by elected legislative body by a three-fourths vote or by initiative that “regulate” (undefined) contributions/expenditures to influence elections.

Result of “No” Vote: “No” vote retains Oregon Constitution’s existing free-expression provision; laws limiting contributions to candidates or political committees by a person, corporation or union violate constitution.

E. The Summary

We next consider the draft summary. A ballot title must include “[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” ORS 250.035(2)(d). “The purpose of a ballot title’s summary is to give voters enough information to understand what will happen if the initiative is adopted.” *McCann*, 354 Or at 708. The draft summary provides:

Summary: Amends Constitution. The Oregon Supreme Court has interpreted the Oregon Constitution’s free-expression provision (Article I, section 8) to prohibit limits on many political campaign contributions and expenditures. The proposed measure amends Article I, section 8, to allow laws that “regulate contributions and expenditures” made to “influence the outcome of any election” (quoted terms undefined). Such laws would need to be consistent with the federal constitution’s free-speech provision and “adopted or amended by an elected legislative body by a three-fourths vote of each chamber or by initiative.” If amendment passes, Measure 47 (2006), which limited campaign contributions/expenditures, established new reporting/advertising disclosure requirements for the sources and amounts of campaign contributions/expenditures, might be revived.

Mr. Lutz asserts that the summary must mention that the measure does not allow referrals. We reject that assertion for the same reasons discussed above.

Mr. Markely and the Trojan commenters suggest adding the word “be” before “adopted.” The Trojan commenters also suggest that we add “(First Amendment)” to the description of federal law. We agree with both suggestions and add the requested words.

The Attorney General certifies the following summary:

Summary: Amends Constitution. The Oregon Supreme Court has interpreted the Oregon Constitution’s free-expression provision (Article I, section 8) to prohibit limits on many political campaign contributions and expenditures. The proposed measure amends Article I, section 8, to allow laws that “regulate contributions and expenditures” made to “influence the outcome of any election”

(quoted terms undefined). Such laws would need to be consistent with the federal constitution's free-speech provision (First Amendment) and be "adopted or amended by an elected legislative body by a three-fourths vote of each chamber or by initiative." If amendment passes, Measure 47 (2006), which limited campaign contributions/expenditures, established new reporting/advertising disclosure requirements for the sources and amounts of campaign contributions/expenditures, might be revived.

Sincerely,

/s/ Carson L. Whitehead

Carson L. Whitehead
Assistant Attorney General
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Enclosure

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Certified by Attorney General on June 14, 2018.

/s/ Carson Whitehead

Assistant Attorney General

BALLOT TITLE

Amends Constitution: Allows laws that “regulate” (undefined) contributions and expenditures made to influence elections

Result of “Yes” Vote: “Yes” vote allows laws passed by elected legislative body by a three-fourths vote or by initiative that “regulate” (undefined) contributions/expenditures to influence elections.

Result of “No” Vote: “No” vote retains Oregon Constitution’s existing free-expression provision; laws limiting contributions to candidates or political committees by a person, corporation or union violate constitution.

Summary: Amends Constitution. The Oregon Supreme Court has interpreted the Oregon Constitution’s free-expression provision (Article I, section 8) to prohibit limits on many political campaign contributions and expenditures. The proposed measure amends Article I, section 8, to allow laws that “regulate contributions and expenditures” made to “influence the outcome of any election” (quoted terms undefined). Such laws would need to be consistent with the federal constitution’s free-speech provision (First Amendment) and be “adopted or amended by an elected legislative body by a three-fourths vote of each chamber or by initiative.” If amendment passes, Measure 47 (2006), which limited campaign contributions/expenditures, established new reporting/advertising disclosure requirements for the sources and amounts of campaign contributions/expenditures, might be revived.

