

IN THE SUPREME COURT OF THE STATE OF OREGON

HANNA VAANDERING AND)	
BETHANNE DARBY,)	Supreme Court Case No.
)	
Petitioners,)	PETITION TO REVIEW BALLOT
)	TITLE CERTIFIED BY THE
v.)	ATTORNEY GENERAL.
)	
ELLEN ROSENBLUM, Attorney)	Initiative Petition 59 (2014)
General, State of Oregon,)	
)	
Respondent.)	

Initiative Petition 59 (2014)
Ballot Title Certified February 12, 2014

Chief Petitioners:

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Bend, OR 97702

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Attorneys for Respondent

PETITIONER'S INTEREST

Pursuant to ORS 250.085(2) and ORAP 11.30, Petitioners Hanna Vaandering and BethAnne Darby ask the court to review the ballot title for Initiative Petition 59 (2014) ("IP 59"), certified by the Attorney General on or about April 28, 2014 and to refer the ballot title back to the Attorney General for modification. Petitioners Vaandering and Darby are Oregon electors who timely submitted written comments and therefore have standing to seek review.¹

ARGUMENTS AND AUTHORITIES

I. Introduction.

Initiative Petition 59 (2014) is a statutory proposal that would make multiple changes to Oregon election laws. Dubbed the "Respect Oregon Voters Act," it is substantially similar to IP 11 (2014), filed by the same Chief Petitioners. The essential elements are:

- A registered voter has a "right" to have his/her signature "counted" on a petition, provided the petition has been timely submitted. Section 2. This means that current laws and administrative rules designed to prevent fraud or forgery cannot be enforced in a manner which requires rejecting a signature sheet collected in violation of the law.² In addition, because IP 59 provides that the signatures of all "registered" voters, it would change current law that only counts the signatures of voters whose registration was "active" at the time of signing (i.e., those who are eligible to vote without more).

¹ A copy of IP 59 is attached as Exhibit 1; the draft ballot title is attached as Exhibit 2; Petitioners' comments are attached as Exhibit 3; the Attorney General's explanatory letter is attached as Exhibit 4; and the certified ballot title is attached as Exhibit 5.

² Currently, ORS 250.042 prohibits the counting of signatures on sheets where the circulator failed to follow the applicable requirements.

- A registered voter or chief petitioner can file a private lawsuit to require a signature to be counted, with the Secretary of State bearing the burden of proving that the signature should not be counted. Section 4.

- Eliminates ballot titles for petitions that contain 100 words or fewer. Instead, the full text of the measure must be printed on the petition and ballot. Section 17 and 8.

- The Secretary of State or elections officer must treat the signature on a petition sheet with at least the same “respect and deference” as a signature on a vote-by-mail ballot. Section 3. The measure does not define “respect and deference” but it likely means that a petition signature that does “not match” must be treated the same as a ballot signature that “does not match.” That is, before a signature is disqualified, the elections officer must take affirmative steps to contact the voter and determine whether the signature is valid. 2014 Vote-by-Mail Manual, p. 44-45.

In crafting the ballot title, the Attorney General correctly used the ballot title certified for IP 11 – and approved by this court – as the starting point.³ However, in

³ In *Buehler v. Rasmussen*, 354 Or 318 (2013), the court reviewed the certified ballot title for IP 11. Chief Petitioner and amicus Dan Meek challenged virtually all sections of the ballot title. While the court agreed with petitioners on two points (the measure did not expressly “repeal” current law, nor did it prohibit anti-fraud and forgery laws themselves, just the enforcement of them), it otherwise rejected Chief Petitioner’s arguments, including challenges to the phrase “signatures unlawfully rejected” and “authorizes lawsuits challenging disqualified signatures.” *Id.* 354 at 326-27.

The differences between IP 50 and IP 11 do not warrant a significantly different approach. The primary difference is in drafting, as opposed to ultimate effect. For example, IP 11 explicitly prohibited the enforcement of anti-fraud laws by disqualifying signature sheets collected unlawfully. IP 59 does not contain that express prohibition, but it is a necessary result of the provision giving registered voters a right to have their signature count, a right that can be asserted by Chief Petitioners as well as an individual

response to comments from Vaandering/Darby as well as Chief Petitioners, the Attorney General made some revisions that render the ballot title deficient. We will discuss our concerns below.

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:

Changes petition signature qualifications; authorizes lawsuits challenging disqualified signatures; shorter measures' text replaces ballot title

There are two problems with this caption. First, it is underinclusive. The phrase “changes petition signature qualifications” gives the impression that the only change made

relates to *whose* signature counts.⁴ However, the proposal also changes the verification or “counting” process itself by (1) giving registered voters the right to have a signature count and (2) requiring elections officials to treat petitions signatures with at least the same “respect and deference” as a signature on a vote-by-mail ballot. These changes must be identified. *Kain/Waller, supra*.

III. 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

⁴ Vaandering/Darby did not expressly raise this issue in their comments because the draft caption used the more inclusive phrase, “amends laws governing petition signatures.” In addition, petitioners’ alternative caption included the additional detail. They proposed: “Amends laws governing petition signature qualification, verification, counting; eliminates certain ballot titles; authorizes lawsuits.”

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 amends laws governing petition signature qualification, verification, and counting; authorizes lawsuits challenging disqualified signatures; replaces ballot titles for shorter measures with measures’ text.

Result of “No” Vote: “No” vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by registered voter; all measures receive ballot titles.

The “yes” vote result statement meets the statutory requirements. Unlike the certified caption, it makes clear that the proposal would change laws governing signature qualification *and* verification and counting. It need not be modified.

However, the revised “no” vote result statement is deficient. It is almost identical to the draft “no” vote result statement (and that certified for IP 11), except that the phrase “signed by *inactive/unregistered* voters” has been replaced by “signed by *registered* voter.” The Attorney General appears to have made the change in order to address Chief Petitioner’s concern that the measure does not change how elections officials count signatures by *unregistered* voters. Ex. 4, p. 5. While that may be true, IP 59 does change the law around whether signatures of *inactive* registered voters count. Therefore, the “no” statement is deficient because it fails to identify an important aspect of current law that is being changed. 335 Or at 431.

More fundamentally, the new phrase renders the “no” statement inaccurate – or at a minimum impermissibly confusing. This is because it suggests that a “no” vote retains current law allowing “disqualification of signatures * * * by registered voter.” Of course,

that is not the law, unless the signature was unlawfully obtained or did not “match” – both aspects of law already mentioned. In short, the “no” vote result statement must be revised to make clear that current law allows disqualification of signatures signed by *unregistered* voters.

IV. Summary

ORS 250.035(2)(d) requires that the ballot title contain a 125 word summary which accurately and impartially summarizes the measure and its major effects, with the goal of providing 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 certified summary does not meet these standards in one critical area – it fails to provide voters with clear information about the effect of the measure on how signatures are counted.

The Attorney General certified the following summary. The language added in response to comments is italicized and the omitted language is struck out:

Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting. Measure limits enforcement of laws disqualifying registered voter's valid signature *and provides right to have petition signature counted.* ;—
~~Secretary of State must count every signature of a registered voter on any~~
~~timely filed petition, even if gatherer/circulator obtains the signature~~
~~illegally.~~ Elections officers must treat petition signatures with "at least the same respect and deference" (undefined) as signatures on vote-by-mail envelopes. "Petition" includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing registered voter or chief petitioner to bring lawsuit to contest ~~disqualification~~
~~of a disqualified signature.~~ Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

In their comments, Vaandering/Darby criticized the draft *summary* on a limited basis – it failed to alert voters to the requirement that elections officials treat the petition signatures with “the same respects and deference” as signatures on vote-by-mail envelopes. The Attorney General added information to address this change, but deleted a critical sentence: “Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally.” The Attorney General did so because IP 59, unlike IP 11, does not include a provision expressly requiring the counting of every signature. Ex. 4, p. 7. The problem is that, as the Attorney General recognized elsewhere, the practical effect of the measure is the same. Ex. 4, p. 5. In order to avoid lawsuits by the signing voter or a Chief Petitioner, IP 59 effectively requires the counting of every signature by a registered voter, regardless of whether the signature was obtained unlawfully. This effect is nowhere mentioned in the certified ballot title. It must be in order to substantially comply with the statutory standards. Moreover, it is easy to do so in accurate and easily understood terms. For example, the following sentence could be added after the sentence describing the authorization for lawsuits: “Secretary of State must count every signature of a registered voter, regardless of whether signature was lawfully obtained, or risk lawsuit.” Word space could be found by deleting the sentence setting out the definition of “petition,” in light of the opening sentence which clearly identifies the various types of petitions, all of which are included in IP 59’s definition.

CONCLUSION

For the reasons stated above, the caption, “no” vote result statement and summary fail to substantially comply with the statute. The court should, therefore, should refer the ballot title back to the Attorney General for modification.

DATED this 12th day of May, 2014.

Respectfully Submitted,

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

s/Margaret S. Olney

Margaret S. Olney, OSB #881359
of Attorneys for Petitioners

CERTIFICATE OF FILING

I certify that, I directed the PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition #59) 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 May 12, 2014.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition #59) upon the following individuals on May 12, 2014, by delivering a true, full and exact copy thereof via U.S. Mail to:

Ellen Rosenblum, Attorney General
 Matthew J. Lysne, Assistant Attorney General
 Department of Justice
 1162 Court St. NE
 Salem, OR 97310-4096
 Telephone: (503) 378-4402
 Facsimile: (503) 378-6306
 Attorneys for Respondent

Knut Buchler
 363 SW Bluff Drive #410
 Bend, OR 97702

Duane Ray Fletchall
 4262 Bison Court NE
 Salem, OR 97305

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 12th day of May, 2014.

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

s/Margaret S. Olney
 Margaret S. Olney, OSB #881359
 of Attorneys for Petitioners

KATE BROWN
SECRETARY OF STATE



JIM WILLIAMS
DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

March 21, 2014

To All Interested Parties:

Secretary of State Kate Brown is responsible for the pre-election review of proposed initiative petitions for compliance with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. This review will be completed before approving the form of the cover and signature sheets for the purpose of circulating the proposed initiative petition to gather signatures.

The Secretary of State is seeking public input on whether proposed initiative petition (#59), satisfies the procedural constitutional requirements for circulation as a proposed initiative petition. Petition #59 was filed in our office on March 20, 2014, by Knute Buehler and Duane Ray Fletchall, for the General Election of November 4, 2014.

A copy of the text of this proposed initiative petition is on the second page of the letter. If you are interested in providing comments on whether the proposed initiative petition meets the procedural constitutional requirements, please write to the secretary at the Elections Division. Your comments, if any, must be received by the Elections Division no later than April 11, 2014, in order for them to be considered in the review.

KATE BROWN
Secretary of State

BY:

Lydia Plukchi
Compliance Specialist

The People of the State of Oregon adopt the following statute:

Section 1. This 2014 Act shall be known as the Respect Oregon Voters Act. It is the intention of this Act to protect and strengthen Oregon's long and proud history of encouraging and respecting the participation of the people in the election process. This Act establishes respect for registered voters as to their signatures on a petition. It also provides that the full text of reasonably short ballot measures be presented to voters on the ballot itself, not just in the voters' pamphlet, so voters can readily see the actual full text.

Section 2. Each registered voter who signs a petition shall have an individual, enforceable right to have his or her signature counted on the petition, provided the petition has been timely filed with the election official assigned to process such petition.

Section 3. The Secretary of State and elections officers shall treat the signature of a registered voter on a petition with at least the same respect and deference as the signature of a registered voter on a vote-by-mail ballot envelope.

Section 4. If the Secretary of State or an elections officer disqualifies a signature from a petition, the registered voter or a chief petitioner of the petition may bring an action in circuit court to require the counting of the voter's signature on the petition. In any action under this section, the secretary or elections officer bears the burden of proving that the signature should not be counted. The courts of this state shall give precedence to actions under this section to the extent necessary to ensure that the secretary or elections officer counts the signature within time limits prescribed by the constitution or by law.

Section 5. If a voter's signature was selected for verification as part of a signature sample as authorized by statute, and the voter's signature is required to be counted as provided by this Act or by order of any court of competent jurisdiction, the voter's signature shall be re-inserted into the results of the sample.

Section 6. For purposes of this 2014 Act:

- (a) "Petition" means an initiative, referendum, candidate nomination, formation of a political party, or recall petition;
- (b) "Count" or "Counted" means to include the registered voter's signature in the final tally as to whether the petition contains the required number of voter signatures.
- (c) "Signature" means a person's name, or a mark used by a person, to indicate that the person has signed a petition.

Section 7. Except as required by the constitution of this state, laws governing ballot titles for petitions and ballot measures do not apply to petitions and ballot measures by citizen initiative that contain 100 words or fewer of text (excluding the enacting or amendatory clause).

Section 8. Any ballot measure by citizen initiative that contains 100 words or fewer of text (excluding the enacting or amendatory clause) shall have the full text of the measure presented on the ballot immediately after the measure number and the enacting or amendatory clause. The full text of the proposed measure shall be printed on any petition sheet instead of any ballot title.

Section 9. This 2014 Act supersedes any Oregon law which is inconsistent with the Act.

Section 10. This 2014 Act is effective January 1, 2015.

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2013 AUG 21 AM 10 06
STATE BROWN
SECRETARY OF THE STATE
Exhibit 1
Page 2 of 2

KATE BROWN
SECRETARY OF STATE



JIM WILLIAMS
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

For Immediate Release:
March 28, 2014

Contact: Lydia Plukchi
Elections Division
(503) 986-1518

The Office of the Secretary of State received a draft ballot title from the Attorney General on March 28, 2014, for initiative petition #59, proposing a statutory amendment, for the General Election of November 4, 2014.

The draft ballot title is as follows:

**Amends laws governing petition signatures, ballot titles, and voter qualification;
authorizes lawsuits challenging disqualified signatures**

Result of "Yes" Vote: Yes" vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuit to challenge disqualification of signature; requires printing entire text of short measures.

Result of "No" Vote: "No" vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter; all measures receive ballot titles.

Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure limits enforcement of laws disqualifying registered voter's valid signature; Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally. "Petition" includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing voter or chief petitioner to bring lawsuit to contest disqualification of a signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

Chief Petitioner(s): Knute Buehler, 363 SW Bluff Drive #410, Bend, OR 97702 and Duane Ray Fletchall, 4262 Bison Court NE, Salem, OR 97305.

Copies of the text of this initiative are available at www.oregonvotes.gov.

There now follows a comment period of 10 business days during which any member of the public may submit written comments which address the specific legal standards a ballot title must meet to the Secretary of State's office. This period ends April 11, 2014. Comments must be addressed to: Elections Division, 255 Capital St NE Ste 501, Salem, OR 97310; fax (503) 373-7414.

The Secretary of State will deliver all written comments to the Attorney General. If comments are received, the Attorney General shall issue the certified ballot title not later than the 10th business day after receiving the comments from the Secretary of State. If no comments are received, the Attorney General shall issue the certified ballot title not later than the 10th business day after the deadline for submitting comments.

In addition, during this ballot title comment period, the Secretary of State will also seek statements from interested persons regarding whether or not a proposed initiative petition complies with procedural constitutional requirements for submission of proposed initiative petitions. The Secretary will consider the information provided in the statements received from interested persons. If you wish to comment, this period ends April 11, 2014. Comments must be addressed to: Elections Division, 255 Capitol St NE, Suite 501, Salem, OR 97310; fax (503) 373-7414.

Any elector who is dissatisfied with the ballot title certified by the Attorney General, and who timely submitted written comments which addressed the specific legal standards a ballot title must meet, may petition the Oregon Supreme Court seeking a different title. This appeal must be filed not later than the 10th business day after the Attorney General certifies a ballot title to the Secretary of State.

The required number of signatures for placement on the 2014 General Election ballot is 87,213. These signatures shall be filed in this office not later than July 3, 2014.



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

March 28, 2014

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

Re: Proposed Initiative Petition — Amends Laws Governing Petition Signatures, Ballot
Titles, and Voter Qualification; Authorizes Lawsuits Challenging Disqualified Signatures
DOJ File #BT-59-14; Elections Division #59

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 laws governing petition signatures, ballot titles, and voter qualifications; as well as authorizing lawsuits challenging disqualified signatures.

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/5136529

Enclosure

Knute Buehler
363 SW Bluff Drive #410
Bend, OR 97702

Duane Ray Fletchall
4262 Bison Court NE
Salem, OR 97305

RECEIVED
2014 MAR 28 AM 10 12
KATE BROWN
SECRETARY OF THE STATE

DRAFT BALLOT TITLE

**Amends laws governing petition signatures, ballot titles, and voter qualification;
authorizes lawsuits challenging disqualified signatures**

Result of “Yes” Vote: “Yes” vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuit to challenge disqualification of signature; requires printing entire text of short measures.

Result of “No” Vote: “No” vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter; all measures receive ballot titles.

Summary: Currently, only “qualified voters” may sign initiative/referendum, candidate nomination, political party formation, recall petitions; “qualified voters” are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure limits enforcement of laws disqualifying registered voter’s valid signature; Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally. “Petition” includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing voter or chief petitioner to bring lawsuit to contest disqualification of a signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions:

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2014 MAR 28 AM 10 12
KATE BROWN
SECRETARY OF THE STATE

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* ALSO MEMBER
WASHINGTON BAR
§ ALSO MEMBER
NEW YORK BAR

April 11, 2014

Via Fax Only: (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 59 (2014) - Draft Ballot Title Comments
Our File No. 18700-04

RECEIVED
2014 APR 11 PM 3 12
KATE BROWN
SECRETARY OF THE STATE

Dear Secretary Brown:

This office represents Hanna Vaandering and BethAnne Darby, Oregon electors and interested parties in Initiative Petition 59 (2014). Hanna Vaandering is the President of the Oregon Education Association and BethAnne Darby is the Associate Executive Director for Public Affairs. We write to comment on the draft ballot title for IP 59. The Oregon Education Association is a labor organization that represents over 40,000 education employees throughout Oregon.

1. INTRODUCTION

Initiative Petition 59 (2014) is a statutory proposal that would make multiple changes to Oregon election laws. Dubbed the "Respect Oregon Voters Act," it is substantially similar to IP 11, filed by the same Chief Petitioners. The essential elements are:

- A registered voter has a "right" to have his/her signature "counted" (defined) on a petition, provided the petition has been timely submitted. Section 2.¹ This means that current laws and administrative rules designed to prevent

¹ "Petitions" are defined to include petitions for citizens' initiatives, referenda, candidate nomination, formation of a political party and recall petition. Section 6(a).

The Honorable Kate Brown
Vaandering/Darby IP 59 (2014) DBT
April 10, 2014
Page 2

fraud or forgery cannot be enforced in a manner which requires rejecting a signature sheet collected in violation of the law.

- A registered voter or chief petitioner can bring file a private lawsuit to require a signature to be counted, with the Secretary of State bearing the burden of proving that the signature should not be counted. Section 4.
- Eliminates ballot titles for petitions that contain 100 words or fewer. Instead, the full text of the measure shall be printed on the petition and ballot. Section 17 and 8.
- The Secretary of State or elections officer must treat the signature on a petition sheet with at least the same "respect and deference" as a signature on a vote-by-mail ballot. Section 3. The measure does not define "respect and deference" but it likely means that a petition signature that does "not match" must be treated the same as a ballot signature that "does not match." That is, before a signature is disqualified, the elections officer must take affirmative steps to contact the voter and determine whether the signature is valid. 2014 Vote-by-Mail Manual, p. 44-45.

The primary difference between IP 59 and IP 11 is in drafting.² IP 11 contained additional details, but the ultimate effect is the same. For example, IP 11 explicitly prohibited the enforcement of anti-fraud laws by disqualifying signature sheets collected unlawfully. IP 59 does not contain that express prohibition, but it is a necessary result of the provision giving registered voters a right to have their signature count, a right that can be asserted by Chief Petitioners as well as an individual voter.

² The general concepts proposed by both IP 59 and IP 11 are familiar. The concept of creating a "right" to have one's signature counted has been the subject of multiple measures and Oregon Supreme Court cases. See, IP 12 (2012), *Rasmussen v. Kroger*, 350 Or 271, 253 P3d 1037 (2011); IP 43 (2010), *Caruthers v. Kroger*, 347 Or 660, 227 P3d 723 (2010) (*Caruthers I*, rejecting certified ballot title); 348 Or 63, 228 P3d 549 (2010) (*Caruthers II*, rejecting modified ballot title); 348 Or 269, 230 P3d 923 (2010) (*Caruthers III*, certifying second modified ballot title); see also IP 1 (2009), IP 32 (2008), IP 19 (2006) and IP 115 (2004). The key message in those cases is that the actual subject of these proposals is to "prevent the application of laws intended to prevent forgery or fraud in the circulation of initiative and referendum petitions." *Rasmussen*, 350 Or at 273.

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Page 3

Because the initiatives are substantially identical, the Attorney General correctly used the ballot title certified for IP 11 as the starting point for this initiative.³ However, it can be improved as discussed below.

Amends laws governing petition signature verification, circulator accountability; eliminates ballot titles/requires full text for certain initiatives; authorizes lawsuits challenging disqualified signatures.

2. LEGAL FRAMEWORK

As set forth in detail in the Court's opinions regarding IP 12 (2012) and IP 43 (2010), current law contains a myriad of laws and regulations designed to prevent fraud and forgery and to ensure compliance with Article IV, section 1b of the Oregon Constitution ("Measure 26") and ORS 260.569. *Rasmussen*, 350 Or at 276; *Caruthers I*, 347 Or at 664-665. Specifically, once a petition is submitted to the elections official for verification, signature sheets are first reviewed for compliance with rules relating to signature gathering and circulator verification. As authorized by ORS 250.042, sheets that do not meet the legal requirements are pulled and are not included as part of the statistical sample.⁴ By giving Chief Petitioners and individuals the right to go to court to require that each signature on a sheet count, IP 59 effectively prohibits elections officials from pulling signature sheets that are unlawfully obtained. It thus eliminates the most effective mechanism for enforcing these anti-fraud and anti-forgery provisions.

3 Chief Petitioners and *Amicus*, Dan Meek challenged most aspects of the Attorney General's ballot title. The court agreed with petitioners on two points – the measure did not expressly "repeal" current law, nor did it prohibit anti-fraud and forgery laws themselves, just the enforcement of them. *Buehler v. Rasmussen*, 354 Or 318, 326-27 (2013). The court otherwise rejected Chief Petitioner's arguments, including challenges to the phrase "signatures unlawfully rejected" and "authorizes lawsuits challenging disqualified signatures."

⁴ Sheets can be pulled for a variety of defects, including: (1) The sheet is not verified by the person who circulated it or contains no verification at all (ORS 250.042, OAR 165-014-0030(3)(c), OAR 165-014-0270); (2) a paid circulator was not registered at the time of circulation (ORS 250.048) or was unable to show proof of registration (OAR 165-014-0280(5)(c)); (3) the Chief Petitioner's right to collect signatures was suspended based upon failure to provide certain "account" information (ORS 260.262(6)(b)); and (4) the petition differs from the approved version (OAR 165-014-0030(3)(a)).

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Once the initial "sort" is complete and the elections officials determine that there are sufficient signatures to begin the process of signature verification, the Secretary then verifies signatures identified in the statistical sampling process. OAR 165-014-0030(5) – (16). Signatures that do not "match" those contained in the voter registration records (determined after multiple levels of review) are excluded. While there is no process for "curing" a determination that a signature does not match, the process used to verify signatures ensures consistency, protects petitioner's rights, and serves important administrative and regulatory interests in efficiency, particularly in light of short deadlines. *Lemons v. Bradbury*, 538 F3d 1098, 1104-1105 (9th Cir. 2008)⁵

IP 59 changes this verification process in at least two ways. First, it requires the Secretary of State or elections official to "treat the signature of a registered voter on a petition with at least the same respect and deference as the signature of a registered voter on a vote-by-mail ballot envelope. This means that the elections official must

⁵ The Ninth Circuit explained:

"Oregon's interests in detecting fraud and in the orderly administration of elections are weighty and undeniable. Requiring the state to provide thousands of petition signers with individual notice that their signatures have been rejected and to afford them an opportunity to present extrinsic evidence during the short thirty-day verification period would impose a significant burden on the Secretary and county elections officials. In contrast to the significant weight of the state's interests, plaintiffs' interest in the additional procedures they seek is slight. First, the verification process is already weighted in favor of accepting questionable signatures, in part because only rejected signatures are subject to more than one level of review by county elections officials. Providing notice and allowing individuals to contest a determination that a signature did not match would further skew the process in favor of accepting invalid signatures, as there would be no corresponding notice to those whose signatures were erroneously deemed to match. Second, as previously noted, the Secretary's procedures already allow chief petitioners and members of the public to observe the signature verification process and challenge decisions by county elections officials. The value of additional procedural safeguards therefore is negligible, and the burden on plaintiffs' interests from the state's failure to adopt their proposed procedures is slight at most."

538 F3d at 1104-1005 (citations and footnote omitted).

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notify the voter of the disqualification and a new voter registration card. The voter then has an opportunity to update his/her registration with a new card or otherwise prove that the signature was valid. *See*, 2014 Voter-by-Mail Manual, p. 45. Separately, a registered voter or Chief Petitioner can file a private lawsuit challenging exclusion of a signature. Section 4.

In addition to changing the laws regarding how signatures are collected and verified, IP 59 also changes *which* signatures may be counted. Currently, only "qualified voters" may sign a petition. Article IV, section 1. To be "qualified," a voter's registration must be "active." This means that the voter must have voted in the past five years or, where there is a change in registration information (such as address), confirmed that the new information is correct. ORS 247.013.⁶ With regard to registration, individuals who sign a voter registration card must wait until the registration card is turned in to sign a petition. Until then, they are not "qualified" to vote. Section 2 of the proposal effectively eliminates the "active registration" requirement for purposes of petition signatures.

The last significant area of change relates to ballot titles. Under current law, all measures receive a ballot title in order to provide voters with an impartial and accurate description of the proposals' subject and how it works. ORS 250.0035. That process allows interested parties to comment on draft ballot titles and seek review by the Oregon Supreme Court, if necessary. ORS 250.085. As reflected in case law, often the true subject of a proposal -- that is, the significant change brought on by the passage -- is

⁶ ORS 247.013 provides, in pertinent part:

"(6) The registration of an elector shall be considered inactive if:

"(a) The county clerk has received evidence that there has been a change in the information required for registration under this chapter or the elector has neither voted nor updated the registration for a period of not less than five years; and

"(b) The county clerk has mailed the notice described in ORS 247.563.

"(7) The registration of an elector shall not be moved to an inactive file during the 60-day period prior to any election because the elector has neither voted nor updated the registration for a period of not less than five years.

"(8) The inactive registration of an elector must be updated before the elector may vote in an election. [1993 c.713 §8; 1999 c.410 §7; 1999 c.824 §2; 2001 c.965 §44]"

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not reflected in the actual language of the measure. Under IP 59, initiative petitions of 100 words or fewer would not receive a ballot title. Rather, the text of the initiative itself would be printed on the signature petitions as well as on the ballot. Thus, voters would be deprived of a key tool to understand what they are signing or to cast an informed vote.

3. 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 "headline" or "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." *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004) (quoting *Greene v. Kulongoski*, 322 Or 169, 174-75, 903 P2d 366 (1995)). As the court recently emphasized, the "subject matter" is the "actual major effect" or effects of the measure. *Lavey v. Kroger*, 350 Or 559, 563, 285 P3d 1194 (2011). "To identify the 'actual major effect' of a measure, this court examines the text of the proposed measure to determine the changes that the proposed measure would enact in the context of existing law and then examines the caption to determine whether the caption reasonably identifies those effects." *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011).

The draft caption reads:

**Amends laws governing petition signatures, ballot title,
and voter qualification; authorizes lawsuits challenging
disqualified signatures**

This caption is identical to that certified for IP 11. Overall, this is the correct approach. The two initiatives are substantially the same, which means the ballot title should be as well. Otherwise, petitioners can attempt to engineer "better" ballot title language by changes in drafting that have little substantive difference in the actual effect of the measure. However, commenters believe that the ballot titles needs to be revised slightly to eliminate the reference to "voter qualification." This is because the changes around "inactive/active" voter registration only concern petition signatures, and not voting. The following alternative more accurately signals that change (and is consistent

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with the draft "yes" vote result statement). It also gives additional detail about the actual change made concerning ballot titles. We propose:

**Amends laws governing petition signature qualification,
verification, counting; eliminates certain ballot titles;
authorizes lawsuits.**

4. RESULT OF "YES" VOTE

ORS 250.035(2)(b) requires that a ballot title contain a "simple and understandable statement of not more than 25 words that describes the result if the state measure is approved." The purpose of this section of the ballot title 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). Where the enforcement scheme is new and not just "mere procedural details," that enforcement scheme becomes one of the "major changes" or "results of enactment" that must be described to voters as high up in the ballot title as possible. *Greenberg v. Myers*, 340 Or 65, 70, 127 P3d 1192 (2006); *Sizemore v. Myers/Terkune*, 342 Or 578, 157 P3d 188, (2007). Typically, the "yes" vote result statement builds on the caption.

The Attorney General issued the following draft "yes" vote result statement:

**RESULT OF "YES" VOTE: "Yes" vote amends laws
governing petition signature qualification, verification, and
counting; authorizes lawsuit to challenge disqualification of
signature; requires printing entire text of short measures.**

Again, as with the caption, the Attorney General used the "yes" vote result statement certified for IP 11 as her starting point. She appropriately chose to include detail about authorizing lawsuits, although we would also make clear that both Chief Petitioners and voters can bring the lawsuits. The last phrase however, fails to adequately identify for voters the fact the proposal eliminates ballot titles for certain short measures. While it is true that the proposal requires that the text of short measures be printed on the ballot, the more substantive change is the elimination of the ballot title process in its entirety for those short measures. As a review of ballot title

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cases reveal, it is all too common for the true subject of a measure not to be obvious from the words of the measure itself. Accordingly, we propose the following:

RESULT OF "YES" VOTE: "Yes" vote amends laws governing petition signature qualification, verification, counting; authorizes lawsuits by chief petitioner or voter challenging disqualified signatures; eliminates ballot titles for short measures.

5. RESULT OF "NO" VOTE:

ORS 250.035(2)(c) requires that the ballot title contain a "simple and understandable statement" of up to 25 words, explaining "the state of affairs" that will exist if the 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). Finally, it is generally impermissible for the "no" result statement to simply state that a "no" vote rejects the "yes" vote. *Nesbitt v. Myers*, 335 Or 424, 431, 71 P3d 530 (2003).

Here, the Attorney General proposed the same "no" vote result statement as that certified for IP 11. This is the correct approach, as the relevant current law is the same. It should not be modified at all.

RESULT OF "NO" VOTE: "No" vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voters; all measures receive ballot titles.

6. SUMMARY

ORS 250.035(2)(d) requires that the ballot title contain a summary 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 reads:

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Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure limits enforcement of laws disqualifying registered voter's valid signature; Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally. "Petition" includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing voter or chief petition to bring lawsuit to contest disqualification of a signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

Like the rest of the draft ballot title, the draft summary tracks that certified for IP 11. Again, this is the correct approach given the similarity of the measures. However, in one area, the draft summary needs to be modified to more clearly describe Section 3 of IP 59. This section states that petition signatures must be treated with at least the same "respect and deference" as signatures on vote-by-mail ballot envelopes. We propose that the phrase be quoted, but that voters also be told that it is undefined. Word space for this concept was found by making editorial changes and by deleting the definition of "petition." This is acceptable, so long as the opening sentence continues to make the various types of petitions.

We propose the following:

Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature

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gathering. Measure limits enforcement of those laws; every signature of a registered voter on any timely filed petition must be counted, even if gatherer/circulator obtains the signature illegally. Elections officers must treat petition signatures with "at least the same respect and deference" (undefined) as signatures on vote-by-mail ballot envelopes. Measure authorizes signing voter or chief petitioner to bring lawsuit challenging signature disqualification. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

7. CONCLUSION

Thank you for your careful consideration of these comments.

Sincerely,

Margaret S. Olney
Of Counsel

MSO:kaj
cc: Clients

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SECRETARY OF THE STATE



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

April 28, 2014

Jim Williams
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Re: Proposed Initiative Petition — Changes Petition Signature Qualifications; Authorizes
Lawsuits Challenging Disqualified Signatures; Shorter Measures' Text Replaces Ballot
Title
DOJ File #BT-59-14; Elections Division #59

Dear Mr. Williams:

We have reviewed the comments submitted on the draft ballot title for the Initiative Petition #59 (IP 59). We provide the enclosed certified ballot title. We have revised all parts of the draft ballot title.

We received two comment letters from (1) Hanna Vaandering and BethAnne Darby (through counsel Margaret S. Olney); and (2) Kniute Buehler, Duane Ray Fletchall, (through counsel, Kevin L. Mannix), chief petitioners for IP 59, and Kevin L. Mannix (on his own behalf). This letter summarizes the comments we received, our responses to those comments, and the reasons we made or declined to make some of the proposed changes. ORAP 11.30(7) requires this letter to be included in the record in the event that the Oregon Supreme Court reviews the ballot title.

A. The caption

The draft ballot title's caption reads:

Amends laws governing petition signatures, ballot titles, and voter qualification; authorizes lawsuits challenging disqualified signatures

1. Commenters Vaandering and Darby

Commenters Vaandering and Darby state that the caption, as a general matter, appropriately tracks the ballot title language that the Attorney General used for another recent ballot title measure, IP 11 (2014). However, they submit that the caption is deficient in one material respect. They argue that the phrase "[a]mends laws governing * * * voter qualification" inaccurately suggests that IP 59 changes how voters may qualify to vote in an election (as

opposed to when a registered voter's signature may be counted on specified petitions). Vaandering and Darby also propose that the caption should explain that IP 59 "eliminates certain ballot titles" (*i.e.* those that contain text of 100 words or fewer).

2. Commenters Buehler, Fletchall, and Mannix

Commenters Buehler, Fletchall, and Mannix contend that the caption fails to recognize "substantial changes" between IP 11 and IP 59, and argue that phrase "[a]mends laws governing petition signatures, ballot title, and voter qualifications" is too vague, and "tells us nothing about the content of this initiative." Through a proposed caption, they argue that the caption should identify two effects of IP 59: (1) that voters may bring a lawsuit to challenge the disqualification of a signature on a petition; and (2) that short measures (of 100 words or fewer) will be printed on a ballot.

3. Our responses to the comments

We agree with Vaandering and Darby that the term "voter qualification" is incorrect as IP 59 does not purport to change how a voter qualifies to vote in an election (as opposed to how or when a registered voter's signature on a petition may be counted), and have revised the caption accordingly. Although we also agree that IP 59 "eliminates" ballot titles for specified measures (those containing text of 100 or fewer words), the phrase "eliminates certain ballot titles," may be misleading to the extent that it does not describe related changes, that is, that the measure would require printing the entire text of certain short measures on ballots and petition sheets (instead of a ballot title). We have revised the caption to identify that, for certain measures, the text of the measure will "replace" a ballot title. We believe that text more accurately and reasonably identifies that particular effect of the measure.

In response to the comments from Buehler, Fletchall and Mannix, we disagree that the caption fails to identify the actual major effects of the measure, or that their proposed caption accurately does so. We agree that the measure would make the two changes they identify in their proposed caption, however, those changes are not the actual major effect of the measure (and, more importantly, leave out other important information that is necessary to avoid making the caption misleading or under-inclusive). For example, their proposed caption explains that the measure would permit "voters" to file certain lawsuits (but omits any reference as to whether a "chief petitioner" of an initiative could do so). Another example is that their proposed caption explains that the measure would require printing of the text of certain measures on ballots, but fails to explain that the text would be printed on ballots *and* petition sheets, and fails to explain that such measures would no longer include a ballot title. Lastly, the proposed caption fails to address a significant change IP 59 would make on existing law: allowing registered voters with an "inactive" registration status to validly sign petitions.

Given the 15-word limitation for the caption, it is impossible to reasonably identify every individual effect if the measure is approved. Instead, we believe that the modified caption reasonably identifies all of the actual major effects of the measure.

Accordingly, we certify the following caption:

Changes petition signature qualifications; authorizes lawsuits challenging disqualified signatures; shorter measures' text replaces ballot title

B. The "Yes" vote result statement

The draft ballot title's "Yes" vote result statement reads:

Result of "Yes" Vote: "Yes" vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuit to challenge disqualification of signature; requires printing entire text of short measures.

1. Commenters Vaandering and Darby

Commenters Vaandering and Darby state that the "Yes" vote result statement should make clear that the measure would authorize both a registered voter, and a chief petitioner, to initiate a lawsuit to challenge the disqualification of the registered voter's signature on a petition. They also contend that the "Yes" vote result statement, like the caption should explain that IP 59 "eliminates ballot titles for certain short measures."

2. Commenters Buchler, Fletchall, and Mannix

Commenters Buehler, Fletchall and Mannix argue that the "Yes" vote result statement, like the caption, fails to describe the results of the measure if it is approved. They posit that the phrase "amends laws governing petition signature qualification, verification, and counting" does not specify "what" results would occur if the measure is approved. They further suggest that the phrase "requires printing entire text of short measure" is "nonsensical" and fails to inform voters about precisely *where* the "entire text" would need to be printed. They argue that the statement should explain that the measure: (1) "authorizes court action by voter, challenging disqualification of voter's petition signature"; and (2) "requires ballot to contain text of initiative of 100 words or fewer."

3. Our responses to the comments

We disagree with Vaandering and Darby concerning their argument that the "Yes" vote result statement must identify *who* may commence civil actions to challenge disqualified signatures. We believe that the creation of the civil action to challenge the disqualification of a signature is the important effect of the measure, and that it is not necessary to identify who may initiate such civil actions.

We also disagree with Vaandering and Darby that the "Yes" vote result statement must state that the measure would "eliminate" certain ballot titles. We agree that the measure does "eliminate" certain ballot titles, however, it is necessary to explain that something else will "replace" the eliminated ballot titles. We have modified the language of the "Yes" vote result

statement to explain that the measure would allow for the replacement of ballot titles for certain measures with the text of the measure instead. That modified language, along with the “No” vote result statement (“all measures receive ballot titles”) fairly identifies that ballot titles for shorter measures will be replaced with the text of the measures instead. So modified, we believe that the “Yes” vote result statement reasonably identifies that ballot titles for certain shorter initiatives would be “eliminated” if the measure is approved.

With respect to the comments by Buehler, Fletchall, and Mannix, we disagree that the “Yes” vote result statement is too vague, or, that it fails to explain the results should the measure be approved by voters. We also disagree that the “Yes” vote result statement must be clarified to identify “where” the text of shorter measures will be printed (*e.g.*, on the ballot or on a petition sheet) and note that the Oregon Supreme Court rejected a similar objection that Buehler and Fletchall made to the “Yes” vote result statement in IP 11. *Buehler v. Rosenblum*, 354 Or 318, 328 n 2, 311 P3d 882 (2013).

Accordingly, we certify the following “Yes” vote result statement:

Result of “Yes” Vote: “Yes” vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuits challenging disqualified signatures; replaces ballot titles for shorter measures with measures’ text.

C. The “No” vote result statement

The draft ballot title’s “No” vote result statement reads:

Result of “No” Vote: “No” vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter; all measures receive ballot titles.

1. Commenters Vaandering and Darby

Vaandering and Darby do not challenge the “No” vote result statement.

2. Commenters Buehler, Fletchall, and Mannix

Buehler, Fletchall, and Mannix contend that the phrase “retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter” is inaccurate “because it creates the impression that a “Yes” vote would “take away such ‘existing laws.’” They contend that IP 59 does not change existing laws regarding signature disqualification and instead, merely provides a procedural mechanism—a civil action by a registered voter—to challenge a disqualified signature. They also argue that the phrase “all measures receive ballot titles,” when read in context with the “Yes” vote result statement (*i.e.* the phrase “requires printing entire text of short measures”), is misleading because it does not describe “where” the text of such measures would be printed.

3. Our responses to the comments

We disagree that the “No” vote result statement is inaccurate to the extent that it implies that the measure would change whether election officials may disqualify “unlawfully obtained” signatures or signatures that do not match voter records. Under existing law, election officials may disqualify signatures from registered voters that are “unlawfully obtained” or do not match voter records. In contrast, IP 59, if approved, gives registered voters an “enforceable right” to have their signatures on petitions “counted”—and provides that the “supersedes any Oregon law that is inconsistent with this [measure].” Thus, the measure permit the counting of petition signatures by registered voters that are currently disqualified under existing law (for example, signatures by inactive registered voters, or signatures that are “unlawfully obtained” or do not match voter records).

We agree that the measure does not change how elections officials may disqualify, verify, or count petition signatures signed by unregistered voters. We have modified the “No” vote result statement accordingly.

Lastly, we disagree that the measure does not change existing laws governing who may validly sign petitions, or how petition signatures may be verified or counted. For the reasons explained above with respect to the “Yes” vote result statement, we disagree that the “No” vote result statement must be revised to identify where the text of short initiatives will be printed. *Buehler*, 354 Or at 328 n 2.

Accordingly, we certify the following “No” vote result statement:

Result of “No” Vote: “No” vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by registered voter; all measures receive ballot titles.

D. The summary

The draft ballot title’s summary reads:

Summary: Currently, only “qualified voters” may sign initiative/referendum, candidate nomination, political party formation, recall petitions; “qualified voters” are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure limits enforcement of laws disqualifying registered voter’s valid signature; Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally. “Petition” includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing voter or chief petitioner to bring lawsuit to contest disqualification of a signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

1. Commenters Vaandering and Darby

Vaandering and Darby contend that the summary should be modified “to more clearly describe Section 3 of IP 59[,]” which provides that “[t]he Secretary of State and elections officers shall treat the signature of a registered voter on a petition with at least the same respect and deference as the signature of a registered voter on a vote-by-mail ballot envelope.” They suggest that the phrase “at least the same respect and deference” should be quoted and noted as being undefined, and which may mean that elections officials must undertake affirmative efforts to contact a registered voter before disqualifying that registered voter’s signature. They propose that the summary should include the following statement: “Elections officers must treat petition signatures with ‘at least the same respect and deference’ (undefined) as signatures on vote-by-mail envelopes.”

2. Commenters Buehler, Fletchall, and Mannix

Buehler, Fletchall, and Mannix raise several objections to the summary. They contend that the summary includes unnecessary descriptions about “qualified voters” and the “motivation or intention” of existing laws affected by or related to the measure, (e.g., “to prevent fraud, forgery, improper signature gathering”). They also argue that the phrase “limits enforcement of laws disqualifying registered voter’s valid signature” is inaccurate in that the measure would not limit the enforcement of such laws. Relatedly, they argue that the following statement—“[t]he Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally”—is inaccurate because such provisions were included in IP 11, but not included in IP 59.

3. Our responses to the comments

We agree with Vaandering and Darby that the summary should be modified to identify that elections officers must treat signatures of registered voters with “at least the same respect and deference” as signatures on vote-by-mail envelopes. We revise the summary to reflect that addition.

We also agree with Buehler, Fletchall, and Mannix to the extent that the summary should be modified to exclude the “motivation or intention” of existing laws affected by or related to the measure. However, we believe that the description of “qualified voters” is necessary to identify which petition signatures may be counted under existing law, *i.e.* signatures from active registered voters.

We disagree with Buehler, Fletchall, and Mannix concerning their argument that the measure would not limit the enforcement of laws that disqualify a registered voter’s valid signature. The measure provides registered voters who sign a petition a “right to have his or her signature counted on the petition”—that is, “to include the registered voter’s signature in the final tally as to whether the petition contains the required number of voter signatures.” If IP 59 is approved, a registered voter who signs a petition that is otherwise “unlawfully obtained” (and therefore subject to disqualification from a signature count under existing law) could initiate a

civil action "to require the counting of the voter's signature on the petition." Thus, the measure does "limit the enforcement of laws that disqualify a registered voter's signature.

Lastly, we agree with Buehler, Fletchall, and Mannix, with respect to their assertion that the measure does not direct that the Secretary of State "must count every signature of a registered voter on any timely filed petition." We have removed that statement from the summary.

Considering all of those comments, and upon further review of the measure itself, we certify the following summary.

Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting. Measure limits enforcement of laws disqualifying registered voter's valid signature and provides a right to have petition signature counted. Elections officers must treat petition signatures with "at least the same respect and deference" (undefined) as signatures on vote-by-mail envelopes. "Petition" includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing registered voter or chief petitioner to bring lawsuit to contest a disqualified signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

We certify the attached ballot title.

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BALLOT TITLE

Changes petition signature qualifications; authorizes lawsuits challenging disqualified signatures; shorter measures' text replaces ballot title

Result of "Yes" Vote: "Yes" vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuits challenging disqualified signatures; replaces ballot titles for shorter measures with measures' text.

Result of "No" Vote: "No" vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by registered voter; all measures receive ballot titles.

Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting. Measure limits enforcement of laws disqualifying registered voter's valid signature and provides right to have petition signature counted. Elections officers must treat petition signatures with "at least the same respect and deference" (undefined) as signatures on vote-by-mail envelopes. "Petition" includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing registered voter or chief petitioner to bring lawsuit to contest a disqualified signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

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April 28, 2014

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Elections Division
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The Office of the Secretary of State received a certified ballot title from the Attorney General on April 28, 2014, for initiative petition #59, proposing a statutory amendment, for the General Election of November 4, 2014.

In addition, Secretary of State Kate Brown determined that the proposed initiative petition was in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions.

The certified ballot title is as follows:

Changes petition signature qualifications; authorizes lawsuits challenging disqualified signatures; shorter measures' text replaces ballot title

Result of "Yes" Vote: "Yes" vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuits challenging disqualified signatures; replaces ballot titles for shorter measures with measures' text.

Result of "No" Vote: "No" vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by registered voter; all measures receive ballot titles.

Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting. Measure limits enforcement of laws disqualifying registered voter's valid signature and provides right to have petition signature counted. Elections officers must treat petition signatures with "at least the same respect and deference" (undefined) as signatures on vote-by-mail envelopes. "Petition" includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing registered voter or chief petitioner to bring lawsuit to contest a disqualified signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

Chief Petitioner(s): Knute Buehler, 363 SW Bluff Drive #410, Bend, OR 97702 and Duane Ray Fletchall, 4262 Bison Court NE, Salem, OR 97305.

Copies of the text of this initiative are available at www.oregonvotes.gov.

There now follows an appeal period of 10 business days. Any elector dissatisfied with the ballot title certified by the Attorney General, who also submitted in a timely manner written comments which addressed the specific legal standards a ballot title must meet, may petition the Supreme Court for a different title. The appeal period ends at 5:00 p.m. on May 12, 2014. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2014 General Election ballot is 87,213. These signatures shall be filed in this office not later than July 3, 2014.

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