

IN THE SUPREME COURT OF THE STATE OF OREGON

DAN HARMON,

Case No. 61929

Petitioner,

v.

ELLEN F. ROSENBLUM,
Attorney General, State of Oregon

Respondent.

PETITION TO REVIEW BALLOT TITLE
CERTIFIED BY ATTORNEY GENERAL

Initiative Petition 35 (2014)

BALLOT TITLE CERTIFIED
December 20, 2013
Initiative Petition
Chief Petitioner: Joseph Baessler

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Of Attorneys for Respondent

I. PETITION TO REVIEW BALLOT TITLE

A. Petitioner's Interest

Petitioner Dan Harmon is an elector of this State, a person dissatisfied with the ballot title that is the subject of this action, and adversely affected by Respondent's actions. Because Petitioner submitted written comments concerning the draft ballot title, he has standing to seek review pursuant to ORS 250.085(2).¹

B. Certified Ballot Title

On December 20, 2013, the Attorney General certified the following ballot title:

**Voters must approve “restricting” designated “employee rights”
regarding minimum wage, leave, payroll deduction, collective bargaining**

Result of “Yes” Vote: “Yes” vote requires voter approval of proposed laws “restricting” designated “employee rights” currently in effect under minimum wage, family leave, payroll deduction, collective bargaining law.

Result of “No” Vote: “No” vote retains the legislature’s authority to “restrict” designated “employee rights” under minimum wage, family leave, payroll deduction, and collective bargaining law, without voter approval.

Summary: Current law provides for minimum wage (annually adjusted for inflation), family leave, payroll deductions, employees’ right to organize, and collective bargaining for contract provisions – including provisions requiring all represented employees within a bargaining unit share the costs of union representation. Measure designates that law as enumerated “employee rights.” Measure requires voter approval of legislation or initiative “restricting” those rights, as they exist on January 1, 2014. Requires legislation or initiative altering those rights to describe current law and specify whether change “enhances” or “restricts” employee rights; if “restricts,” ballot title for legislation or initiative must inform voters that measure “restricts employee rights;” labor commissioner resolves disputes over whether legislation or initiative “enhances” or “restricts” employee rights, subject to review by Oregon Supreme Court. Other provisions.

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¹ A copy of IP 35 is attached as Exhibit 1; the draft ballot title is attached as Exhibit 2; Petitioner’s 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.

II. ARGUMENTS AND AUTHORITIES

A. Introduction

IP 35 would significantly infringe upon the equal protection and free speech rights of individuals who support “restricting employee rights.” Under the guise of strengthening Oregon’s economy and preventing “exploitation and unfair treatment” of workers by employers, IP 35 creates additional hurdles for enacting laws which are deemed to “restrict” the “right” to minimum wage, family leave, payroll deductions, collective bargaining, and union security agreements. Specifically, IP 35 would require all initiatives and referrals that “restrict” these laws to have a ballot title caption that contains the prejudicial phrase “restricts employee rights” and seeks to subject such measures to an additional review process by requiring the commissioner of the Bureau of Labor and Industries (BOLI) to determine whether a law enhances or restricts employee rights in the case of disputes. Additionally, IP 35 takes the unprecedented step of removing from the Oregon Legislature the legislative authority to enact certain laws – laws that “restrict employee rights.” However, the Legislature would remain authorized to pass laws which “enhance employee rights.”

B. Standard of Review

On review, this Court must determine whether the title substantially complies with the requirements of ORS 250.035. ORS 250.085(5).

C. The Summary

A ballot title's summary must be 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 goal of the summary is to “help voters[] understand what will happen if the measure is approved” and the “breadth of [the measure's] impact.” *Mabon v. Myers*, 332 Or 633, 640 (2001) (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169,175 (1989)).

The summary does not comply with these standards for several reasons. First, the word “disputes” is vague and undefined in the initiative and this ambiguity is carried into the

summary. As mentioned above, in determining whether a proposed law would be subject to the burdens created by IP 35, the initiative states, “In the event of a dispute, the Commissioner of the Bureau of Labor and Industries shall determine whether a law enhances or restricts employee rights.” The text of IP 35 provides no additional guidance regarding this BOLI review process, such as: who has standing to dispute a proposed law; what type of dispute triggers BOLI review; when must a dispute be made known; to whom is a dispute made known; and how does someone dispute a proposed law. Can any voter dispute a bill’s purported effect on “employee rights,” and thereby send a legislator’s bill to BOLI? Or must it be disputed by another legislator? It’s unclear. Also unclear is who has the authority to send initiatives to BOLI review. Must the dispute be from the Secretary of State or the Attorney General, or can any Oregon resident dispute the proposed law? And must the dispute concern the proposed law’s effect on employees, or can the dispute be about any aspect of the proposed law?

Because the term “disputes” is ambiguous as used in the measure, the appropriate solution for purposes of drafting the ballot title is to put it in quotation marks. *See, e.g., Morgan v. Myers*, 342 Or. 165, 169, 149 P.3d 1160 (2006) (adding quotation marks around words “conduct” and “personal behavior” in ballot titles involving free speech rights, when terms were undefined in measure itself). The term should also be modified by the word “undefined” in parentheses. *See, e.g., Martin/Bendl v. Myers*, 340 Or. 569, 572, 135 P.3d 315 (2006) (certifying ballot title using phrase from measure identified by quotation marks and modified by word “undefined” in parentheses). While IP 35 does not have to provide more details of the proposed BOLI review process, its failure to do so must be conveyed to potential signers and voters so they know that the measure does not define key terms.

The Attorney General appropriately uses quotation marks in the ballot title summary for the other vague words “restricting,” “enhancing,” and “employee rights;” however, those words should also be followed by the word “undefined” in parentheses. The Attorney General declines to do so in the caption “given the limited number of words available for the caption,” but the summary’s 125 word allowance provides ample room to convey this important information to

voters. Additionally, contrary to the Attorney General’s position, Petitioner believes it is necessary to inform voters that these key phrases in IP 35 are undefined by the measure, especially since voters could mistakenly believe that the quotation marks indicate that the words are defined by the text of the initiative.

This Court has approved of the use of quotation marks followed by the word “defined” in parentheses to signal that the initiative specially defines a certain word and uses the word in that specially defined sense. *Carley/Towers v. Myers*, 340 Or 222, 132 P3d 651 (2006), citing *Hunnicut v. Myers*, 340 Or 83, 86, 127 P3d 1182 (2006) (illustrating principle). Because quotation marks can be used to indicated totally opposite types of initiatives – sometimes signaling that the word is defined in the initiative, sometimes signaling that the word is undefined in the initiative – Petitioner believes the summary must inform voters of what the quotation marks mean in this instance: that IP 35 does not define the vague words “restricts,” “enhance,” “employee rights,” and “disputes.”

Finally, the summary is incorrect by stating that “labor commissioner resolves disputes over whether legislation or initiative ‘enhances’ or ‘restricts’ employee rights, subject to review by Oregon Supreme Court.” (Emphasis added.) IP 35 explicitly states that BOLI shall determine whether “a law enhances or restricts employee rights.” (Emphasis added.) As written, the initiative arguably does not accomplish what it aims to accomplish by limiting BOLI review to the effect of *laws*, and does not give BOLI any review rights over *proposed laws*. However, the summary incorrectly states that BOLI would have the right to review legislation and initiatives, which incorrectly implies that BOLI could require certain proposed laws to be subject to the burdens imposed by IP 35. This is new language in the certified ballot title which Petitioner has not had the opportunity to comment on previously.

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III. CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court declare that the certified ballot title does not substantially comply with ORS 250.035 and refer the ballot title back to the Attorney General for modification.

DATED this 7th day of January, 2014.

Respectfully submitted,

/s/ Jill Gibson Odell
Jill Gibson Odell, OSB #973581
GIBSON LAW FIRM, LLC

Of Attorneys for Petitioner

CERTIFICATE OF FILING

I hereby certify that I electronically filed the PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition 35) with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16 on January 7, 2014.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition 35) upon the following individuals on January 7, 2014, by delivering a true, full and exact copy thereof via U.S. Mail to:

Patrick M. Ebbett
Assistant Attorney General
Department of Justice
1162 Court St., NE
Salem, OR 97301-4096
Attorneys for Respondent

Bill Sizemore
810 NW Rimrock Drive
Redmond, OR 97756

Joseph Baessler
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Portland, OR 97205

Margaret S. Olney
Bennett, Hartman, Morris & Kaplan, LLP
210 SW Morrison Street, Suite 500
Portland, OR 97204

Steven C. Berman
Stoll Berne
209 SW Oak Street, Suite 500
Portland, OR 97204

And upon the following individual via facsimile transmission:

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

DATED this 7th day of January, 2014.

GIBSON LAW FIRM, LLC

/s/ Jill Gibson Odell
Jill Gibson Odell, OSB # 973581
Of Attorneys for Petitioner

The people of the State of Oregon hereby enact this ACT TO ESTABLISH EMPLOYEE RIGHTS AT WORK, which shall be made part of ORS Chapter 659A.

Section 1. FINDINGS: (1) Oregon's economy is strengthened when employees are treated fairly and allowed to organize and be represented by a union; (2) without legal protections, employees are vulnerable to exploitation and unfair treatment by employers; and (3) established employee rights should not be restricted without voter approval.

Section 2. The people of Oregon recognize and establish the following Employee Bill of Rights at Work:

1. The right to be paid a minimum wage for work performed, annually adjusted for inflation;
2. The right to family leave to care for oneself, a sick child or other family members;
3. The right to use payroll deductions to make contributions or conduct other financial transactions, including charitable, political or union-related deductions;
4. The right to organize with other employees free from retaliation, including the right to join together with other employees to bargain with their employer regarding the terms and conditions of employment;
5. The right to negotiate agreements requiring all employees who receive the benefits of union representation to share in the costs of that representation.

Section 3. The rights set forth in Section 2 shall be determined based on Oregon law as of January 1, 2014.

Section 4. If the legislature or the people seek to enact laws changing employee rights identified in this "Employee Bill of Rights at Work," the bill or initiative must describe current law and identify whether the proposed law enhances or restricts employee rights.

Section 5. If the proposed law restricts employee rights established by this "Employee Bill of Rights at Work," then it must be approved by the voters before becoming law. The caption for any referred or initiated measure must include the statement "restricts employee rights," which will not count towards the word limit for ballot titles.

Section 6. In the event of a dispute, the Commissioner of the Bureau of Labor and Industries shall determine whether a law enhances or restricts employee rights. The Commissioner's decision will be subject to direct review by the Oregon Supreme Court for errors of law.

Section 7. Nothing in this Act is intended to conflict with or otherwise limit employee rights under federal law. The provisions of this Act are intended to be severable and if any part of this Act is held invalid or unconstitutional, the remaining provisions shall remain in full force and effect.

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KATE BROWN
SECRETARY OF THE STATE

DRAFT BALLOT TITLE

Designates certain laws as employee rights; proposed restrictions must be identified and approved by voters

Result of “Yes” Vote: “Yes” vote requires voter approval of laws restricting designated employee rights under minimum wage, family leave, payroll deduction, collective bargaining laws in effect January 2014.

Result of “No” Vote: “No” vote retains existing law allowing laws restricting employee rights, including minimum wage, family leave, payroll deduction, and collective bargaining laws, without requiring voter approval.

Summary: Current statutes provide for annually inflation-adjusted minimum wage and family leave for certain categories of employees, payroll deductions for certain purposes, collective bargaining for contract provisions—including provisions that require all represented employees within a bargaining unit to share the costs of union representation. Measure deems those laws, as in effect on January 1, 2014, to protect enumerated employee rights. Measure requires any legislation or initiative that alters those rights to describe current law and specify whether legislation/initiative enhances or restricts employee rights; disputes over whether a provision enhances or restricts employee rights resolved by labor commissioner; requires voter approval of any legislation/initiative restricting those rights; requires ballot title for such legislation/initiative inform voters that measure “restricts employee rights.” Other provisions.

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KATE BROWN
SECRETARY OF THE STATE
EXHIBIT 2
PAGE 1 OF 1



December 5, 2013

Via Facsimile - (503) 373-7414

The Honorable Kate Brown
Secretary of State
Elections Division
255 Capitol Street NE, Ste 501
Salem, OR 97310-0722

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KATE BROWN
SECRETARY OF THE STATE

Re: Public Comment on Initiative Petition #35 (2014)

Dear Secretary Brown,

I represent Dan Harmon, who is an elector in the State of Oregon and wishes to comment on the draft ballot title for IP #35 (2014). The Attorney General has proposed the following ballot title for IP #35:

**Designates certain laws as employee rights;
proposed restrictions must be identified and approved by voters**

Result of "Yes" Vote: "Yes" vote requires voter approval of laws restricting designated employee rights under minimum wage, family leave, payroll deduction, collective bargaining laws in effect January 2014.

Result of "No" Vote: "No" vote retains existing law allowing laws restricting employee rights, including minimum wage, family leave, payroll deduction, and collective bargaining laws, without requiring voter approval.

Summary: Current statutes provide for annually inflation-adjusted minimum wage and family leave for certain categories of employees, payroll deductions for certain purposes, collective bargaining for contract provisions - including provisions that require all represented employees within a bargaining unit to share the costs of union representation. Measure deems those laws, as in effect on January 1, 2014, to protect enumerated employee rights. Measure requires any legislation or initiative that alters those rights to describe current law and specify whether legislation/ initiative enhances or restricts employee rights; disputes over whether a provision enhances or restricts employee rights resolved by labor commissioner; requires voter approval of any legislation/initiative restricting those rights; requires ballot title for such legislation/initiative inform voters that measure "restricts employee rights." Other provisions.

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Comments on IP 36
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I. CAPTION

ORS 250.035(2)(a) requires a ballot title to contain "[a] caption of not more than 15 words that reasonably identifies the subject matter of the state measure." To comply with this standard, case law requires that the caption identify the proposal's subject matter in terms that will not "confuse or mislead potential signers and voters." *Kain/Waller v. Myers*, 337 Or 36, 40 (2004). The Oregon Supreme Court has emphasized that the "subject matter" is the "actual major effect" of the measure. *Lavey v. Kroger*, 350 Or 559 563 (2011). If a draft ballot title is challenged for failure to comply with these requirements, upon review the Oregon Supreme Court's "initial task is to determine whether the title prepared by the Attorney General is unfair or insufficient." *Remington v. Paulus*, 296 Or 317, 320 (1984).

The draft caption does not meet these statutory requirements because it includes the vague and undefined term "restrictions." IP 35 seeks to institute a new initiative process for measures which "restrict" employee rights, but the measure does not explain what would be considered a "restriction" of employee rights or how to determine whether a change amounts to such a "restriction." In fact, the text of the measure concedes that a "restriction" may not be self-evident by adding the provision, "In the event of a dispute, the Commissioner of the Bureau of Labor and Industries shall determine whether a law enhances or restricts employee rights." This provision shows that even the drafters of IP 35 foresee disputes and uncertainty regarding what qualifies as a "restriction" of employee rights.

Because the term "restricts" is ambiguous as used in the measure, the appropriate solution for purposes of drafting the ballot title is to put it in quotation marks. *See, e.g., Morgan v. Myers*, 342 Or 165, 169, 149 P3d 1160 (2006) (adding quotation marks around words "conduct" and "personal behavior" in ballot title involving free speech rights, when terms were undefined in measure itself). The term should also be modified by the word "undefined" in parentheses. *See, e.g., Martin/Bendl v. Myers*, 340 Or 569, 572, 135 P3d 315 (2006) (certifying ballot title using phrase from measure identified by quotation marks and modified by word "undefined" in parentheses). This approach will inform voters that the measure uses the word "restricts"¹ without providing a definition.

We propose the following caption:

**Designates certain laws as employee rights; voters must approve of measure that
"restricts" (undefined) such**

II. RESULT OF "YES" VOTE

250.035(2)(b) requires that a ballot title contain a "simple and understandable statement," 25 words long, explaining what will happen if the measure is approved. The purpose of this portion of the ballot title is to "notify petition signers and voters of the results of enactment that

¹ IP 35 uses the word "restricts." However, given the close derivation, the same rule should apply to "restrictions."

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would have the greatest importance to the people of Oregon. *Novick v. Myers*, 337 Or 568, 574 (2004).

The draft "Yes" statement does not meet this requirement because of the same reason as stated above. Specifically, the "Yes" statement uses the vague word "restricting" without indicating that the word is used but undefined in the measure. To address this defect, we suggest the following statement:

Result of "Yes" Vote: "Yes" vote requires voter approval if proposed law "restricts employee rights" (undefined) under minimum wage, family leave, payroll deduction, collective bargaining laws effective January 2014.

III. RESULT OF "NO" VOTE

ORS 250.035(2)(c) requires that a ballot title contain a "simple and understandable statement," 25 words long, explaining what will happen if voters reject the measure. This means that the statement must explain to voters "the state of affairs" that will exist if the initiative is rejected, i.e., the status quo. It is essential that the "no" vote result statement relate to the subject matter of the proposed measure to avoid misleading petition signers or voters about the effect of their signature or vote. *Nesbitt v. Myers*, 335 Or 219 (2003), (original review) 335 Or 424, 431 (2003) (review of modified ballot title).

The draft "No" statement does not comply with these requirements because it is misleading, inaccurate, and unclear in a number of ways. First, as discussed above, the draft statement inappropriately uses the unclear phrase "restricting employee rights." Second, the statement is inaccurate because it implies that *all* "laws restricting employee rights" would be affected by the measure, "including" laws regarding minimum wage, family leave payroll deduction, and collective bargaining. However, rather than "including" the listed categories of laws, the measure is limited to these types of laws.

Third, the phrase "retains existing law allowing laws restricting employee rights" is inaccurate and misleading because it makes it sound like existing law restricts employee rights. Additionally, it implies that there is a specific law that allows restricting employee rights. No such law exists; rather we have a form of government that authorizes the Oregon Legislature to enact laws generally, including laws that affect employees. If the phrase "existing law" is referring to the Legislature's constitutional powers, this should be made clear so potential signers and voters understand that a "No" vote is retaining the Legislature's ability to pass laws, not retaining a specific law which allows "restricting employee rights" without voter approval.

To cure these defects, we suggest the following "No" statement:

Result of "No" Vote: "No" vote retains existing law; retains Legislature's ability to pass a law that "restricts" (undefined) designated employee rights without referral to voters for approval.

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IV. SUMMARY

ORS 250.035(2)(d) requires that a ballot contain a "concise and impartial statement of not more than 125 words summarizing the measure and its major effects." "[T]he purpose of the summary is to 'help voters understand what will happen if the measure is approved' and 'the breadth of its impact.'" *Mabon*, 322 Or at 640 (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175 (1989)).

The draft summary does not comply with these standards because, as discussed above, undefined terms such as "restricts" and "enhances" should be in quotation marks and modified by the word "undefined." Additionally, the word "disputes" is unclear and the measure does not explain what circumstances and what type of disagreement would result in the labor commissioner having to decide if a proposed law "enhances or restricts employee rights." As such, the word "disputes" should also be in quotation marks with the modifier "undefined."

To address the problems identified, we suggest the following summary:

Summary: Currently statutes provide for annually inflation-adjusted minimum wage, family leave for certain employees, payroll deductions for certain purposes, collective bargaining for contract provisions - including provisions that require all represented employees within a bargaining unit to share costs of union representation. Measure deems those laws, as in effect on January 1, 2014, to protect employee rights. Measure requires any legislation or initiative that alters those rights to describe current law and specify whether legislation/ initiative "enhances or restricts employee rights" (undefined); "disputes" (undefined) over whether a provision "enhances or restricts employee rights" (undefined) resolved by labor commissioner; requires voter approval of any legislation/initiative that "restricts" (undefined) those rights; requires ballot title for such legislation/initiative inform voters that measure "restricts employee rights" (undefined). Other provisions.

Thank you for considering our comments to the draft ballot title.

Very truly yours

Jill Gibson Odell
Gibson Law Firm

JGO/cd

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SECRETARY OF THE STATE



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

December 20, 2013

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KATE BROWN
SECRETARY OF THE STATE

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

Re: Proposed Initiative Petition — Voters Must Approve "Restricting" Designated
"Employee Rights" Regarding Minimum Wage, Leave, Payroll Deduction, Collective
Bargaining
DOJ File #BT-35-13; Elections Division #35

Dear Mr. Williams:

We have received the comments submitted in response to the draft ballot title for Initiative Petition 35 (2014). The comments were submitted by Jill Gibson Odell, on behalf of Dan Harmon; Bill Sizemore; Margaret Olney, on behalf of Joseph Baessler and BethAnne Darby; and Steven C. Berman, on behalf of Arthur Towers. We provide the enclosed certified ballot title. This letter summarizes the comments we received, our response to those comments, and the reasons we made or declined to make the changes proposed by the commenters. This letter must be included in the record in the event the Oregon Supreme Court is asked to review this ballot title. ORAP 11.30(7).

Commenter Sizemore has submitted two letters commenting on the proposed initiative. In his first letter, Sizemore only raises the issue of whether the proposed initiative violates the single subject rule. That issue is 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). In his second letter, Sizemore broadly states that the draft ballot title does not comply with ORS 250.035 and provides a critique of the measure, but does not identify any specific defects in the draft ballot caption, result statements, or summary. Accordingly, Mr. Sizemore's comments are outside the narrow scope of this response. *See* ORS 250.035 (specifying form of ballot titles).

A. The Draft Caption

The draft caption provides:

Designates certain laws as employee rights; proposed restrictions must be identified and approved by voters

Currently, Oregon law generally provides for inflation-adjusted minimum wage, family leave, payroll deductions for certain purposes, collective bargaining, and for “fair share” agreements that require non-union employees to share the cost of union representation services they receive. The subject matter of the initiative—its major effect—is to designate that body of law as protecting “employee rights” that cannot be “restricted” without voter approval.

Commenter Harmon

Commenter Harmon identifies one potential problem with the caption. He suggests that the undefined term “restricts” should be in quotation marks because “the measure does not explain what would be considered a ‘restriction’ of employee rights or how to determine whether a change amounts to such a ‘restriction.’” Harmon also recommends that the word “(undefined)” should follow the use of “restricts” or “restriction.”

We agree with Harmon’s suggestion that “restricts” should be put in quotation marks. As the commenter notes, the Supreme Court has added quotation marks to a similarly undefined term in a ballot title. *See, e.g., Morgan v. Myers*, 342 Or 165, 169, 149 P3d 1160 (2006) (adding quotation marks to the words “conduct” and “personal behavior” in ballot title for initiative modifying Oregon’s free speech clause because those terms are undefined and subject to debate).

We do not agree, however, that the term “restricts” needs to be followed by the parenthetical, “(undefined).” Although petitioner is correct that in *Martin v. Myers*, 340 Or 569, 135 P3d 315 (2006), the court approved a ballot title containing that parenthetical, the court did not hold that it was necessary. Given the limited number of words available for the caption, we do not include it.

Finally, because it is not self-evident that all of the designated laws are “employee rights,” the caption needs to reflect that the measure establishes that they are. Accordingly, we put the phrase “employee rights” in quotations as well.

Commenters Baessler and Darby

Commenters Baessler and Darby identify three potential problems with the caption. First, they argue that the caption is too vague because the phrase “certain laws” does not inform the voters of what laws the measure designates as employee rights that cannot be restricted without voter approval. Second, they contend that the draft caption fails to adequately capture the major effect of the measure—to require voter approval to restrict the designated “employee rights.” Finally, they object to the use of the word, “laws,” because, they argue, the “rights” identified by the measure are contained not just in statutes, but in court precedent.

We agree that the caption is too vague. The caption must “inform potential petition signers and voters of the sweep of the measure.” *Terhune v. Myers*, 342 Or 475, 479, 154 P3d 1284 (2007). And it must “disclose the subject matter of the proposed measure in terms that give notice to the voters of the principal substantive choice or choices that the measure presents.” *Rogers v. Myers*, 344 Or 219, 224, 179 P3d 627 (2008). Given the word limit, and the specific

areas of law designated as “employee rights,” the “restriction” of which requires voter approval, finding a satisfactory way to convey the “sweep of the measure” is difficult. However, with the commenters’ suggestions, we have modified the caption to satisfy that requirement.

We do not entirely agree with Baessler and Darby’s contention that the caption inadequately conveys what they characterize as the single major effect of the measure—to require voter approval of restrictions on employee rights. While that is undeniably a significant effect, we submit that the major effect is somewhat broader—it encompasses both the designation of particular Oregon law as protecting “employee rights,” *and* the requirement of voter approval to protect those designated rights. Baessler and Darby presume that it is self-evident that all of those laws are employee rights and the measure merely recognizes that fact. We do not agree that that is self-evident. Accordingly, we capture the measure’s designation of those laws as “employee rights” in the caption.

As for the use of the word “laws,” we agree that it may be unclear whether that word encompasses court precedent. Regardless, however, as modified, the caption omits the word “laws,” thus addressing Baessler and Darby’s concern.

Commenter Towers

Commenter Towers’ first two concerns about the caption—that it is too vague and that use of the word “laws” is inappropriate—mirror Baessler/Darby’s. Accordingly, those complaints are addressed above.

Towers also argues that the phrase “proposed restrictions must be identified and approved by voters,” is misleading and confusing because it incorrectly implies that the voters are the ones who identify the proposed restrictions. We agree that the draft caption is misleading in that regard. As Towers notes, the initial burden of identifying proposed restrictions is on the legislature or initiative drafter and the caption incorrectly implies otherwise.

We certify the following ballot title caption:

Voters must approve “restricting” designated “employee rights” regarding minimum wage, leave, payroll deduction, collective bargaining

B. The Result Statements

The draft “yes” result statement provides:

RESULT OF “YES” VOTE: “Yes” vote requires voter approval of laws restricting designated employee rights under minimum wage, family leave, payroll deduction, collective bargaining laws in effect January 2014.

The draft "no" vote result statement provides:

RESULT OF "NO" VOTE: "No" vote retains existing law allowing laws restricting employee rights, including minimum wage, family leave, payroll deduction, and collective bargaining laws, without requiring voter approval.

Commenter Harmon

Commenter Harmon identifies a single potential problem with the "yes" statement that mirrors his concern with the caption: that "restricts" should be in quotation marks. We agree, for the reasons stated concerning the draft caption, above.

Harmon identifies three potential problems with the "no" statement. First, he reiterates his complaint about the use of the phrase "restricting employee rights" without putting quotation marks around "restricting." Second, he argues that the statement is misleading because, by using the word "including" before the list of laws designated as rights, the statement implies that the measure applies to all "laws restricting employee rights," not just the ones designated in the statute. Third, Harmon contends that the phrase "retains existing law allowing laws restricting employee rights," is inaccurate and misleading "because it makes it sound like existing law restricts employee rights," and implies that there exists a specific law that allows restriction of employee rights.

Regarding his first complaint, for the reasons discussed above, we agree with Harmon's concern that the use of the word "restricts" without quotation marks is problematic.

We also agree that use of the word "including" is misleading in that implies that the measure applies to more than the body of law it designates.

Moreover, we agree that the phrase "retains existing law allowing laws restricting employee rights" is confusing. We have modified the "no" result statement in response.

Commenters Baessler and Darby

Commenters Baessler and Darby identify one potential problem with the "yes" statement. As with the caption, they suggest that the statement improperly suggests that the designated "employee rights" are defined exclusively by statutory law and not also by the case law interpreting those statutes. To clarify that they propose adding the word "established" to the statement, so that the statement reads, in part, "...employee rights *established* under minimum wage, family leave, payroll deduction, collective bargaining laws in effect January 2014."

As noted above, we agree that use of "laws" may not capture both statutes and court precedent. But we do not understand how the proposed addition of the word "established" clarifies that "laws" includes both statutory law and court precedent. We address the problem by replacing "laws" with the broader "law."

Baessler and Darby also identify one potential problem with the “no” vote statement. They argue that the phrase “retains existing laws allowing laws restricting employee rights,” is confusing and potentially misleading. They suggest that the phrase “allowing laws” be modified to refer exclusively to legislative action since that is the primary change made by the measure. Although we do not adopt their proposed language, we agree that the statement should be modified to clarify that a “no” vote allows legislation restricting employee rights.

Commenter Towers

Commenter Towers objects to the “yes” result statement for the same reason as commenters Baessler and Darby: that the phrase “laws” does not encompass both statutes and court precedent. As noted above, we address that concern by replacing “laws” with “law.”

Regarding the “no” statement, Towers asserts the phrase “retains existing law” is “redundant, confusing, and potentially misleading.” He observes that there is no “existing law” that expressly permits restricting the designated “employee rights.” We agree, and we have modified the “no” statement accordingly.

We certify the following results statements:

Result of “Yes” vote: “Yes” vote requires voter approval of proposed laws “restricting” designated “employee rights” currently in effect under minimum wage, family leave, payroll deduction, collective bargaining law.

Result of “No” vote: “No” vote retains the legislature’s authority to “restrict” designated “employee rights” under minimum wage, family leave, payroll deduction, and collective bargaining law, without voter approval.

C. The Summary

The draft summary provides:

Summary: Current statutes provide for annually inflation-adjusted minimum wage and family leave for certain categories of employees, payroll deductions for certain purposes, collective bargaining for contract provisions—including provisions that require all represented employees within a bargaining unit to share the costs of union representation. Measure deems those laws, as in effect on January 1, 2014, to protect enumerated employee rights. Measure requires any legislation or initiative that alters those rights to describe current law and specify whether legislation/initiative enhances or restricts employee rights; disputes over whether a provision enhances or restricts employee rights resolved by labor commissioner; requires voter approval of any legislation/initiative restricting those rights; requires ballot title for such legislation/initiative inform voters that measure “restricts employee rights.” Other provisions.

Commenter Harmon

Commenter Harmon objects to the summary on three related grounds. First, he reiterates his contention that the word “restricts” should be in quotation marks. Similarly, he contends that the words “enhances” and “disputes” should be in quotation marks as well, because those terms are undefined and unclear. In addition, he requests that those words be followed by “(undefined).”

We agree, for the reasons discussed above, that “restricts” should be in quotation marks. For the same reasons, we agree that “enhances” should be in quotation marks as well.

As for the word “disputes,” we do not believe it needs to be in quotation marks because we believe that, as used in the measure, the word is sufficiently clear and unambiguous: if there is a dispute over whether a proposed law restricts or enhances employee rights, the labor commissioner will resolve it, subject to review by the Supreme Court.

For the reasons discussed in our response to the comments to the caption, we do not believe that it is necessary to include “(undefined)” after the words in quotation marks.

Commenters Baessler and Darby

Commenters Baessler and Darby object to the draft summary on six grounds.

First, they fault the use of the word “statutes” in the summary’s description of current law because they claim it does not include “case law interpreting those statutes.” We agree.

Second, the commenters contend that the description of the designated “employee rights” is difficult to understand because of the qualifying language used (such as, “certain categories” and “certain purposes”). Further, they contend that those qualifiers do not add useful information and are under-inclusive. They propose replacing the qualifiers with the word “generally” at the beginning of the description of the designated laws. Their point is well-taken but we have decided that the word “generally” is not necessary either. We conclude that the best way to resolve the problem is to simply omit the qualifying language.

Third, Baessler and Darby assert the draft summary’s description of current law does not include reference to the right to organize, separate from the right to bargain collectively. We agree that inclusion of the right to organize (one of the rights designated in section 2 of the measure) is appropriate in the summary.

Fourth, they comment that the major effect of the proposal is to require voter approval in order to restrict the designated “employee rights,” and, therefore, the summary should inform voters of that effect. We agree, and have changed the summary to better explain the major effect of the measure.

Finally, Baessler and Darby note that the summary does not inform voters that the labor commissioner's resolution of disputes over whether a measure restricts employee rights is subject to Supreme Court review. We agree, and revise the summary accordingly.


Commenter Towers

Commenter Towers also objects that the summary does not inform voters that the commissioner's resolution of disputes is reviewable by the Supreme Court. As noted above, we agree.

We certify the following summary:

Summary: Current law provides for minimum wage (annually adjusted for inflation), family leave, payroll deductions, employees' right to organize, and collective bargaining for contract provisions—including provisions requiring all represented employees within a bargaining unit share the costs of union representation. Measure designates that law as enumerated "employee rights." Measure requires voter approval of legislation or initiative "restricting" those rights, as they exist on January 1, 2014. Requires legislation or initiative altering those rights to describe current law and specify whether change "enhances" or "restricts" employee rights; if "restricts," ballot title for legislation or initiative must inform voters that measure "restricts employee rights;" labor commissioner resolves disputes over whether legislation or initiative "enhances" or "restricts" employee rights, subject to review by Oregon Supreme Court. Other provisions.

As modified, we certify the ballot title.

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BALLOT TITLE

Voters must approve "restricting" designated "employee rights" regarding minimum wage, leave, payroll deduction, collective bargaining

Result of "Yes" Vote: "Yes" vote requires voter approval of proposed laws "restricting" designated "employee rights" currently in effect under minimum wage, family leave, payroll deduction, collective bargaining law.

Result of "No" Vote: "No" vote retains the legislature's authority to "restrict" designated "employee rights" under minimum wage, family leave, payroll deduction, and collective bargaining law, without voter approval.

Summary: Current law provides for minimum wage (annually adjusted for inflation), family leave, payroll deductions, employees' right to organize, and collective bargaining for contract provisions—including provisions requiring all represented employees within a bargaining unit share the costs of union representation. Measure designates that law as enumerated "employee rights." Measure requires voter approval of legislation or initiative "restricting" those rights, as they exist on January 1, 2014. Requires legislation or initiative altering those rights to describe current law and specify whether change "enhances" or "restricts" employee rights; if "restricts," ballot title for legislation or initiative must inform voters that measure "restricts employee rights;" labor commissioner resolves disputes over whether legislation or initiative "enhances" or "restricts" employee rights, subject to review by Oregon Supreme Court. Other provisions.

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SECRETARY OF THE STATE