

IN THE SUPREME COURT OF THE STATE OF OREGON

**DAN HARMON,**

Petitioner,

v.

**ELLEN F. ROSENBLUM,**  
Attorney General, State of Oregon

Respondent.

Case No.

PETITION TO REVIEW BALLOT TITLE  
CERTIFIED BY THE ATTORNEY  
GENERAL

Initiative Petition 26 (2016)

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BALLOT TITLE CERTIFIED

May 18, 2015

Initiative Petition 26

Chief Petitioners: Gary Cobb, Laura Illig, Ben Unger

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*Of Attorneys for Respondent*

## I. PETITION TO REVIEW BALLOT TITLE

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 timely submitted written comments concerning the draft ballot title, he has standing to seek review pursuant to ORS 250.085(2).<sup>1</sup>

## II. ARGUMENTS AND AUTHORITIES

### A. Introduction

Oregon residents pay personal income taxes on their taxable income. IP 26 proposes to increase personal income taxes by amending ORS 316.037 as follows:

If taxable income is:	The tax is:
Not over \$2,000	\$5% of taxable income
Over \$2,000 but not over \$5,000	\$100 plus 7% of the excess over \$2,000
Over \$5,000 but not over \$125,000	\$310 plus 9% of the excess over \$5,000
Over \$125,000 but not over \$250,000	\$11,110 plus [9.9] 11.5% of the excess over 125,000
Over \$250,000 but not over \$500,000	\$25,485 plus 13.5% of the excess over \$250,000
Over \$500,000	\$59,235 plus 15.5% of the excess over \$500,000

The Attorney General has certified the following ballot title for IP 26:

**Increases tax rate on personal taxable income over \$125,000  
(\$250,000 for joint filers)**

**Result of "Yes" Vote:** "Yes" vote increases tax on personal taxable income over \$125,000 (\$250,000 for joint filers) to 11.5, 13.5, or 15.5 percent (depending on income).

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<sup>1</sup> A copy of IP 26 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.

**Result of “No” Vote:** “No” vote retains existing personal income tax rate of 9.9% for any taxable income over \$125,000 (individual filers) and \$250,000 (joint filers).

**Summary:** Currently, personal income tax rate is 9.9% on any taxable income over \$125,000 (individual filers) or over \$250,000 (joint filers). Measure increases rate to 11.5% on taxable income of \$125,001 to \$250,000 (individual filers) and \$250,001 to \$500,000 (joint filers). Increases tax rate to 13.5% on taxable income of \$250,001 to \$500,000 (individual) and \$500,001 to \$1,000,000 (joint). Increases rate to 15.5% on taxable income over \$500,000 (individual) and \$1,000,000 (joint). Keeps current tax rate on taxable income of \$125,000 or less (individual) and \$250,000 or less (joint). Any additional tax revenues to General Fund for education, healthcare, public safety, other services. Applies starting tax year 2017.

### B. 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 purpose of a ballot title’s summary is to give voters enough information to understand what will happen if the initiative is adopted. See *Whitsett v. Kroger*, 348 Or 243, 252, 230 P.3d 545 (2010).

This draft summary does not comply with the statutory standards because it is underinclusive and contains information outside the scope of IP 26. Currently, individual taxpayers who have over \$125,000 in taxable income pay a specified, fixed tax of \$11,110 and 9.9% of the excess over \$125,000. IP 26 proposes to increase both the fixed tax and the percentage tax for such taxpayers; however, the summary only mentions the increased *tax rate* and omits all information regarding the increased *fixed tax*. If IP 26 passed, the fixed tax would increase to \$25,485 for individual filers who have taxable income over \$250,000 (\$500,000 joint) and would increase to \$59,235 for individual filers who have taxable income over \$500,000 (\$1,000,000 joint). These are significant tax increases and because voters are not notified of them the summary is underinclusive and incorrect. Furthermore, omitting all information regarding the increased fixed taxes will likely mislead voters to mistakenly believe

that high-income taxpayers only pay a percentage tax on their taxable income, while in actuality they will be subject to an additional tax of \$25,485 or \$59,235.

Although the summary omits important information regarding the proposed tax increases, it includes information which is outside the scope of IP 26. The summary states “Any additional tax revenues to General Fund for education, healthcare, public safety, other services”; however, the measure does not pertain to the General Fund, the distribution of tax revenue, or current appropriations. The General Fund is controlled by ORS 293.105 *et seq.* (payments into) and ORS 291.232 *et seq.* (payments out of) and IP 26 does not propose to change any aspect of the operation of the General Fund. The measure only increases personal income taxes and information regarding the General Fund does not summarize the measure, as required by ORS 250.035(2)(d). The challenged sentence will also likely mislead voters to mistakenly believe that the measure appropriates money to education, health care, and public safety; however, the measure does not even purport to appropriate money to any specific program.

The challenged sentence provides extraneous information which most voters will likely support (funding education), thus the sentence appears to be an inappropriate statement of support for IP 26. To be neutral and fair, the summary should only summarize the measure and its proposed changes to the law. The challenged sentence would be appropriate in the context of a campaign, provided by proponents as a reason to support the measure, but its inclusion in the ballot title is inappropriate. Furthermore, while the motivation of the chief petitioners may be to increase the General Fund to fund programs, a measure’s intention has no place in the ballot title. *See, e.g., Ransom v. Roberts*, 309 Or 654, 663, 791 P2d 489 (1990).

### 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 2<sup>nd</sup> day of June, 2015.

Respectfully submitted,

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Jill Gibson, 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 26) with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16 on June 2, 2015.

### **CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition 26) upon the following individuals on June 2, 2015, by delivering a true, full and exact copy thereof via U.S. Mail to:

Matthew J. Lysne, OSB #903285  
Senior Assistant Attorney General  
Department of Justice  
1162 Court St., NE  
Salem, OR 97301-4096

Gary Cobb  
9805 N. Lombard  
Portland, OR 97203

Laura Illig  
741 E. 20<sup>th</sup> Ave.  
Eugene, OR 97405

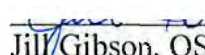
Ben Unger  
909 N. Beech St., Ste. C  
Portland, OR 97227

And notified the following individual via email ([irrlistnotifier@sos.state.or.us](mailto:irrlistnotifier@sos.state.or.us)) on June 2, 2015:

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

DATED this 2nd day of June, 2015.

GIBSON LAW FIRM, LLC

  
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Jill Gibson, OSB # 973581  
Of Attorneys for Petitioner