

IN THE SUPREME COURT OF THE STATE OF OREGON

PATRICIA MILNE, CLIFF SAIN-THOMASON, and WAYNE SIMMONS,	)	
	)	Supreme Court Case No. S061785
	)	
Petitioners,	)	
	)	PETITIONERS' REBUTTAL
v.	)	MEMORANDUM
	)	
ELLEN ROSENBLUM, Attorney General, State of Oregon,	)	Initiative Petition 31 (2014)
	)	<b>RECEIVED</b>
	)	STATE COURT ADMINISTRATOR
Respondent.	)	VIA HAND DELIVERY
<hr/>		DEC 05 2013

"What we've got here is failure to communicate."  
\_\_\_\_SUPREME COURT  
\_\_\_\_COURT OF APPEALS  
-Prison Warden, Captain Strother Martin, in the movie Cool Hand Luke (1967)

What we have here, with the Attorney General's Ballot Title, is a failure to communicate the essence of this ballot measure to the Oregon voters – who will vote after reading the Ballot Title, with many (sadly) never resorting to the Voters' Pamphlet to read the text of the measure.

Just for a moment, pretend you only vaguely recall what the Constitution provides as to use of Lottery proceeds. Pretend you have not read the text of this initiative. Then read the Attorney General's Ballot Title – especially the Caption, Result of Yes Vote, and Result of No Vote. What does it tell you? Attorneys and judges need to approach this process from the perspective of the Oregon voter.

The Attorney General's Answering Memorandum apparently relies upon the notion that, because the Oregon Constitution currently authorizes the Legislative Assembly to allocate Lottery revenues, all of the Ballot Title should be based on the notion that this is the Natural Order of things. But, it is only so because the Oregon

Constitution says it is so, and this measure clearly and deliberately changes the power structure.

At the same time, this measure does not take away any of the authorized uses of Lottery funds. It does add one new use, for counties: public safety. The Attorney General's Ballot Title nearly "hides the ball" as to this feature by mentioning it only in the Summary.

At the same time, it is wasteful to use precious word space (nine words out of 25) in the "Result of Yes Vote" section to emphasize the reduction of the amount of money available for legislative appropriations. This is a "Duh?" statement: if the legislature currently allocates all the Lottery funds, and with the amendment the counties get to allocate 50% of Lottery funds, then it is clear the legislature has 50% less funds to itself allocate.

A major provision – that counties may also allocate funds for public safety – is never mentioned in the certified Ballot Title Caption, Result of Yes Vote, and Result of No Vote. Our proposed alternative manages to get this point across, while it also makes it clear that all other authorized uses remain in place – something not covered in the Attorney General's version until you dig into the Summary.

A good way to present the general meaning of something is to develop an "elevator speech:" what would you say if you had 30-40 seconds to explain the matter? Here is our own version of an "elevator speech" on this ballot measure.

"Currently, the Constitution provides that the legislature appropriates all net lottery proceeds, with some specific allocations required as to public education and natural resources. Overall, the allowed purposes are creating jobs,

supporting economic development, financing public education, and restoring and protecting parks and natural resources. This measure amends the Constitution to provide 50% of the Lottery funds to counties. The counties are authorized to use the funds for the same purposes as now, plus one new purpose: public safety."

(Yes, this can be said in about 35 seconds.)

We do not suggest that the above approach reflects some new principle to be set out in analyzing whether Ballot Titles meet the statutory requirements. But the above approach is a good exercise for judges and attorneys to test the understanding of the initiative presently in issue. Essentially, we attorneys (and judges) know too much. We too easily assume, as the Attorney General does, that the average voter will innately understand that current lottery purposes are maintained as to county allocations. We assume that the average voter will dig into the Summary to discover that - Aha! - counties are now authorized to also use lottery funds for public safety. Might this not be important enough to squeeze it into the Result of Yes Vote, instead of telling voters the obvious: if counties get to allocate 50%, the legislature gets less to allocate?

Our alternative Ballot Title language fulfills the essence of the statutory requirements: to tell the voters, in as plain language as possible, what this measure is really all about. We maintain our assertion that the Attorney General's certified Ballot Title - especially as to the Caption, Result of Yes Vote, and Result of No Vote - is under-inclusive: it does not alert the voters to maintenance of currently authorized uses, with the counties now making the decision; it does not alert the voters to the new public safety authorized use of funds for counties.

The Ballot Title should be returned to the Attorney General with instructions to remedy the above matters (and, we hope, to use our alternative as a guide for revision).

DATED this 5<sup>th</sup> day of December 2013.

Respectfully Submitted,  
KEVIN L. MANNIX, P.C.

A handwritten signature in black ink, appearing to read 'Kevin L. Mannix', is written over a horizontal line.

By: Kevin L. Mannix  
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**CERTIFICATE OF FILING**

I certify that I directed the original of the PETITIONERS' REBUTTAL MEMORANDUM (Initiative Petition #31) to be hand-delivered to the Appellate Court Administrator, Appellate Court Records Section on December 5, 2013, at:

State Court Administrator  
Records Section  
Supreme Court Building  
1163 State Street  
Salem, Oregon 97310

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing PETITIONERS' REBUTTAL MEMORANDUM (Initiative Petition #31) upon the following individuals on December 5, 2013, by delivering a true, full, and exact copy thereof, by hand delivery to:

Attorney General Ellen F. Rosenblum, OSB #753239  
Assistant Attorney General Judy C. Lucas, OSB #903285  
Department of Justice  
1162 Court St. NE  
Salem, OR 97310-4096  
Telephone: (503) 378-4402  
Facsimile: (503) 378-6306  
Attorney for Respondent

And upon the following individual via hand delivery:

Kate Brown, Secretary of State  
Elections Division  
255 Capitol St. NE, Suite 501  
Salem, Oregon 97310-0722  
Fax: 1-503-373-7414

DATED this 5<sup>th</sup> day of December 2013.

KEVIN L. MANNIX, P.C.

By: Kevin L. Mannix, OSB #742021  
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2009 State Street  
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