



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

October 22, 2015

The Honorable Thomas A. Balmer
Chief Justice, Oregon Supreme Court
Supreme Court Building
1163 State Street
Salem, OR 97310

Re: *Frank Dixon v. Ellen F. Rosenblum*
SC S063573 (Control), S063575

Dear Chief Justice Balmer:

Petitioners Frank Dixon and Eric C. Winters have filed ballot title challenges in the above-referenced matter. Pursuant to ORS 250.067(4), the Secretary of State is required to file with the court the written comments submitted in response to the draft ballot title. Those written comments, under the cover of Elections Division Compliance Specialist Lydia Plukchi's letter, are enclosed for filing with the court. Pursuant to ORAP 11.30(7), we also have enclosed for filing with the court the draft and certified ballot titles, together with their respective cover letters.

Sincerely,

/s/ Shannon T. Reel

Shannon T. Reel
Assistant Attorney General
shannon.t.reel@doj.state.or.us

STR:aft/6881340

cc: Roy Pulvers
Eric C. Winters
Richard Taylor Whitehead/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

FRANK DIXON,

Petitioner,

v.

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

Respondent.

Supreme Court No. S063573(Control)

ERIC WINTERS,

Petitioner,

v.

ELLEN F. ROSENBLUM,

Respondent.

Supreme Court No. S063575

ANSWERING MEMORANDUM TO
PETITIONS TO REVIEW BALLOT
TITLE RE: INITIATIVE PETITION
NO. 50

Petitioner Frank Dixon and petitioner Eric Winters seek review of the Attorney General's ballot title for Initiative Petition 50 (2016) (IP 50), arguing that it does not satisfy the requirements of ORS 250.035(2). In Case No. S063573 petitioner Dixon challenges the caption, "Yes" result statement, and summary. In Case No. S063575, petitioner Dixon challenges all four parts of the ballot title. This court reviews ballot titles for "substantial compliance with the requirements of ORS 250.035." ORS 250.085(5). The Attorney General submits this answering memorandum as authorized pursuant to ORAP 11.30(6). As explained below, the Attorney General's ballot title substantially complies with ORS 250.035.

A. The Attorney General's caption substantially complies with ORS 250.035(2)(a).

The caption for the ballot title of a state measure must contain no more than 15 words and reasonably identify the “subject matter” of the measure, which is “the ‘actual major effect’ of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words).” *McCann v. Rosenblum*, 354 Or 701, 706, 320 P3d 548 (2014) (quoting *Lavey v. Kroger*, 350 Or 559, 563, 258 P3d 1194 (2011)); ORS 250.035(2)(a). To identify the “actual major effect” of a measure, the Attorney General must consider the “changes that the proposed measure would enact in the context of existing law.” *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011). The caption for IP 50 reads:

Prohibits release of specified voter information without voter's express written consent; changes election verification process

Petitioner Dixon contends that the caption is deficient in two ways. First, he argues that the word “changes” is incorrect and inadequate to describe the actual effect of IP 50, which, he argues, is to eliminate and criminalize meaningful public participation in election verification. (Dixon Pet, 3, 7). In support of his argument that “changes” is inadequate, he relies on two decisions by this court, *Girod v. Kroger*, 351 Or 389, 398, 268 P3d 562 (2011), and

McCann, 354 Or 701. In *Girod*, this court concluded that the word “change[s]” was deficient to describe the effect of a measure restricting gill net fishing on the Columbia River, because the measure effectively banned gillnetting there. In *McCann*, the caption stated (in pertinent part): “Modifies annual minimum tax for some corporations[.]” 354 Or 706. The court held that the word “modifies” failed to communicate how the proposed measure would change minimum taxes, by either raising or lowering them. *Id.* at 706-07. Relying on those decisions, Dixon argues that the word “changes” should be replaced with “restricts” or “limits.” (*Id.* at 5-9). Second, Dixon contends that the caption should be modified to make clear that the measure restricts “public participation” in the election verification process. (*Id.* at 3, 8).

Petitioner Winters separately challenges the caption, contending that it is deficient in two ways. First, he argues that the caption incorrectly states that IP 50 will change the election verification process because the measure only “alters how information contained in the voter registration database may be released to the public or to third parties,” and does not affect election processes or ballot challenges. (Winters Pet, 4-5). He argues that IP 50 does not limit public observance of election activities “impliedly or otherwise.” (*Id.* at 5).

Second, he contends that the caption should include the phrase “Private Voter

Information’ (defined)” as it was in the draft ballot title, instead of the current phrase “[p]rohibits release of specified voter information without voter’s express written consent.” He contends that the former phrase adequately apprised the voter that the labelled information has a specific meaning within IP 50. (*Id.* at 6-8). For the reasons explained below, Dixon and Winters’ objections are not well taken.

First, the use of the phrase “changes election verification process” does not render the caption inadequate. Dixon correctly notes that, contrary to Winters’ argument, the measure prohibits disclosure of “ballot status information” and therefore curtails a person’s ability to challenge a ballot due to a signature verification issue. (Dixon Pet, 4-5). Specifically, because section 3 of IP 50 prohibits disclosure of whether or not an elections office has received or processed a ballot from an identified voter during a voting period, a public body could not allow the public to observe the receiving and counting of votes from any vantage that allows signatures to be seen and read. Public participation in the election verification process would therefore be changed. Thus, the caption correctly notifies the voter of the first “major effect” of IP 50, that is, that it will change the election verification process.

In answer to Dixon’s contention, however, a challenge to a voter’s signature is not the only fact upon which a challenge as to whether a person is qualified as an elector may be based, as Winters correctly notes. Indeed, signatures do not appear on the ballots themselves. As a consequence, public participation in other aspects of the verification process would be unaffected. Thus—in contrast to the measure at issue in *Girod*—the election verification process would be somewhat limited if IP 50 were to become law, but not nearly to the extent as was true in *Girod*. Without the ability to include further explanation in the caption, using the words suggested by Dixon would potentially mislead voters with regard to the scope of the change.

Moreover, IP 50 has two major effects that must be encompassed by the ballot title, and those effects are broad compared to the effects of the measure at issue in *McCann*. As the court in *McCann* recognized, the 15-word limit for ballot title captions “will often require trade-offs between detail and breadth.”
354 Or at 707.

Second, the caption correctly identifies the other “actual major effect” of IP 50: a prohibition on the release of specified voter information—birthdate, phone number, email address, and whether voter returned ballot—without the voter’s express written consent. That is, IP 50 prohibits the release of

information about voters that is currently commercially and publically available by other means and, as a result, it is doubtful that the average voter would consider that information to be “private.” *See, e.g.* ORS 802.179 (allowing the state Department of Motor Vehicles to disclose a person’s name, address, and telephone number in specified circumstances). Therefore, use of the phrase “‘Private Voter Information’ (defined)” in the caption would be inappropriate. *Tauman v. Myers*, 343 Or 299 (2007) (use of the word “charity” in a ballot title misleading and confusing because proposed measure defined the term in a manner contrary to how the word was commonly understood). Even if the phrase suggested by Winters were not potentially misleading, the phrase chosen by the Attorney General is accurate and substantially complies with ORS 250.035.

For those reasons, this court should certify the Attorney General’s caption for IP 50.

B. The Attorney General’s “Yes” and “No” vote result statements substantially comply with ORS 250.035(2)(b) and (c).

The vote result statements are required to describe the results of approving and rejecting the measure. The statements are limited to 25 words. ORS 250.035(2)(b) and (c). A “yes” vote result statement must accurately describe in simple and understandable terms the result if the proposed measure

is approved. *Mabon v. Myers*, 332 Or 633, 639, 33 P3d 988 (2001). In turn, a “no” vote result statement “should ‘address[] the substance of current law *on the subject matter of the proposed measure*’ and ‘summarize [] the current law accurately.’” *McCann*, 354 Or at 707 (quoting *Novick/Crew*, 337 Or at 577) (emphasis added in *Novick/Crew*).

The Attorney General’s “Yes” vote result statements provides:

Result of “Yes” Vote: “Yes” vote prohibits public access to certain voter information, including contact information, status of voter’s ballot; limits participation of candidates, public in election verification process.

The Attorney General’s “No” vote result statements provides:

Result of “No” Vote: “No” vote retains law allowing public, election observers, access to voter information, including ballot status, contact information unless voter demonstrated that disclosure would jeopardize safety.

Winters challenges both the “Yes” and the “No” result statements, renewing the arguments he made with respect to the caption. (Winters Pet, 8-9). For the reasons explained above, the Attorney General’s “Yes” and “No” result statements accurately identify the results if IP 50 is approved or rejected. That is, IP 50 changes the election verification process, and prohibits the release of specified voter information.

Dixon separately challenges the “Yes” result statement, arguing that the word “limits” should be replaced with the word “restricts.” (Dixon Pet, 9). The Attorney General respectfully submits that the two words are effectively synonymous in this context. Dixon also contends that the “Yes” result statement should notify voters that section 6 of IP 50 creates criminal penalties for alleged violations of the measure. (*Id.*). Dixon notes that, in the Attorney General’s letter accompanying the Certified Ballot Title, the Attorney General agreed with that argument. (*Id.* at 10). That statement was inadvertently included in the letter. The additional detail petitioner seeks to add to the caption is appropriately provided in the ballot title summary. The word limits of the “Yes” statement mean that any explanation of the penalty for noncompliance would necessarily be incomplete and very likely be misleading. The “Yes” result statement correctly identifies the two major effects of IP 50.

C. The summary substantially complies with ORS 250.035(2)(d).

ORS 250.035(2)(d) provides that a ballot title summary be “[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” The function of the summary is “to provide voters with enough information to understand what will happen if the measure is approved.” *Caruthers*, 347 Or at 670. That information may include a

description of the effect of the measure at issue on other laws, so long as the description is accurate. *Berman v. Kroger*, 347 Or 509, 514, 225 P3d 32 (2009). In all events, the information must pertain to an identified, actual “effect” of enacting the measure; it is not permissible to “speculate about the possible effects of a proposed measure.” *Pelikan/Tauman v. Myers*, 342 Or 383, 389, 153 P3d 117 (2007). The Attorney General’s summary provides:

Summary: Current state laws permit/require public officials to disclose voter registration records and, during voting period, whether a voter’s ballot was received; voters can prevent disclosure of home address, phone number, and email address by showing that disclosure would jeopardize personal safety. Measure prohibits disclosure of ballot status information and personal information without voter’s written consent; prohibition against disclosing ballot status will limit participation of candidates, public in election verification process. Elections Office must create waiver form, authenticate signature before processing waiver. Measure permits disclosure of voter participation in prior elections, disclosures to demonstrate compliance with federal law. Criminal penalties for officials violating measure, any person “who uses artifice attempting to gain unauthorized access of ballot status information for three or more voters.” Other provisions.

Winters objects to the summary on the same grounds that he objects to the other portions of the Attorney General’s ballot title. And, for the same reasons expressed above, his arguments lack merit. (Winters Pet, 9-10).

Dixon’s argument that the word “limit” should be replaced with “restrict” likewise lacks merit. (Dixon Pet, 9).

D. Conclusion

For the reasons discussed above, the Attorney General's ballot title should be certified without modification.

Respectfully submitted,

ELLEN F. ROSENBLUM #753239
Attorney General

PAUL L. SMITH #001870
Deputy Solicitor General

/s/ Shannon T. Reel

SHANNON T. REEL #053948

Assistant Attorney General
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Attorneys for Respondent
Ellen F. Rosenblum, Attorney General,
State of Oregon

Thomas Alicia F

From: SOS Irrlistnotifier <irrlstnotifier.sos@state.or.us>
Sent: Tuesday, October 06, 2015 8:22 AM
To: THOMAS Alicia F
Subject: Initiative Petition #50 Appeal
Attachments: 050cmts.pdf; 050cbt.pdf; 050dbt.pdf

OFFICE OF THE SECRETARY OF STATE

JEANNE P. ATKINS
SECRETARY OF STATE
ROBERT TAYLOR
DEPUTY SECRETARY OF STATE



ELECTIONS DIVISION

JIM WILLIAMS
DIRECTOR
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SALEM, OREGON 97310-0722
(503) 986-1518

October 2, 2015

The Hon. Ellen Rosenblum, Attorney General
Anna Joyce, Solicitor General
Dept. of Justice, Appellate Division
400 Justice Building
Salem, OR 97310

Via Email

Dear Ms. Joyce:

In accordance with ORS 250.067(4) please file the attached comments with the court as part of the record in the ballot title challenge filed by Frank Dixon and Eric Winters on Initiative Petition **2016-050**. Also attached are the draft and certified ballot titles with their respective transmittal letters.

Sincerely,

Lydia Plukchi
Compliance Specialist

ELLEN F. ROSENBLUM
Attorney General



FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

August 19, 2015

RECEIVED
2015 AUG 19 PM 3 54
SECRETARY OF STATE

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

Re: Proposed Initiative Petition — Prohibits Release of "Private Voter Information"
(Defined) Without Express Written Consent of the Voter; Exceptions
DOJ File #BT-50-15; Elections Division #2016-50

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 prohibiting the release of Private Voter Information without the express written consent of the voter, with exceptions.

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.

Sincerely,

Alicia Thomas
Legal Secretary

AFT/6740495

Enclosure

Richard Taylor Whitehead
18199 SW Sandra Lane
Aloha, OR 97003

Lee Vasche
lee@sgco.us
By Email Only

DRAFT BALLOT TITLE

Prohibits release of “Private Voter Information” (defined) without express written consent of the voter; exceptions

Result of “Yes” Vote: “Yes” vote prohibits public officials from releasing voter’s birthdate, phone number, email address, or ballot status information without voter’s express written consent, with specified exceptions.

Result of “No” Vote: “No” vote retains current law allowing the public to learn a voter’s birthdate, phone number, and whether the voter’s ballot has been received or processed.

Summary: Current state law permits and sometimes requires public officials to disclose to the public voter registration records and, during a voting period, whether an identified voter’s ballot was received. Measure prohibits public officials from disclosing voter’s “Private Voter Information”—defined as voter’s birthdate, phone number, email address, or whether voter returned ballot—without voter’s express written consent. Elections Office must create waiver form, authenticate voter’s signature before processing waiver. Voter can learn whether own ballot received. Measure permits disclosure of voter registration data that includes voter participation in prior elections, and disclosures complying with federal law. Officials violating measure, and any person “who uses artifice attempting to gain unauthorized access of ballot status information for three or more voters,” subject to criminal liability. Other provisions.

SECRETARY OF STATE

2015 AUG 19 PM 3 54

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September 2, 2015

Via E-mail (irrlistnotifier.sos@state.or.us)

Oregon Secretary of State
Elections Division
255 Capitol Street NE, Suite 501
Salem, OR 97310

RECEIVED
2015 SEP 2 PM 2 41
SECRETARY OF STATE

Re: Comments on Draft Ballot Title for Initiative Petition # 50 (2016)

Dear Secretary Atkins:

I am writing on behalf of Frank Dixon, State Party Chair, Democratic Party of Oregon, and an elector in Oregon. This is to register the following comments to the Attorney General's proposed Ballot Title for Initiative Petition #50 submitted for the 2016 General Election.

Mr. Dixon respectfully submits that the draft ballot title does not meet the requirements of ORS 250.035(2) with respect to the caption (§(2)(a)); "yes" statement (§(2)(b)); "no" statement (§(2)(c)); and summary (§(2)(d)), for the reasons set forth below. Mr. Dixon requests that the Attorney General certify a ballot title that addresses these comments and corrects the ballot title so that it complies with the statutory requirements.

Caption

In order for the caption to comply with the statutory requirement that it must identify the "subject matter" of the measure, the caption must not confuse or mislead and it must convey the measure's actual major effect in the context of existing law. *E.g., Lavey v. Kroger*, 350 Or 559, 563 (2011).

The primary defect in the caption, which is repeated in the summary, is the use of the term "Private Voter Information," which is a term that not only is inaccurate and extremely misleading, but is invented by the proposed measure and basically contains a slogan created for a campaign to pass the measure. All of these characteristics of the term are strictly forbidden in a ballot title. *E.g., Earls v. Myers*, 330 Or 171, 176 (2000) (proponents "are not entitled to engineer a favorable ballot title by incorporating politically inflated terms or phrases in the text of a measure in order to advance its passage.").

The dictionary relied on by the Oregon Supreme Court to understand how a term is understood by the average voter defines “private” as the actual antithesis of the term as used in the proposed measure. Almost all of the information that the measure denominates as “Private” actually is commercially available and is available by law in Oregon through the public records law, ORS 192.410 *et seq.*, and through the DMV, per ORS 802.175(11), which is linked into the voter registration process and which is unaffected by this measure. *See Webster’s Third New Int’l Dictionary 1804* (unabridged ed. 2002) (defining “private” to mean “intended for or restricted to the use of a particular person or group or class of persons; not freely available to the public.”).

Putting the word “defined” in parentheses after the made-up term in the ballot title also is an improper workaround for the fundamental problem here, as the Oregon Supreme Court has recognized in a similar context. *See Tauman v. Myers*, 343 Or 299 (2007) (use of the word “charity” was misleading and confusing because the proposed measure defined the term in a manner contrary to how the word was commonly understood). Indeed, as noted above, most of the information that the proponents would purport to define as “private” currently is *public* and would remain so even if the measure passed.

A second critical defect in the caption is that it is dramatically underinclusive, since the major effect of the law would be to utterly transform the election observer and verification process, turning the election verification process from one of current government transparency into one cloaked in secrecy. That is because under current law, the fact that a voter has submitted a ballot and whether or not the clerk deems the signature on file to have been a match with the signature on the ballot envelope (which in virtually all instances leads to the ballot being counted if the signature matches or is corrected by the voter to match) is an essential part of the election verification process. ORS 254.482, ORS 254.415(3), ORS 254.431(1). Public officials also must provide information after election day and before the final certification regarding voters whose ballots have been challenged for, *inter alia*, signature issues. ORS 254.431.

A caption for this measure cannot be accurate, and thus is defective, if it is underinclusive in a matter as fundamental as this one. *See Towers v. Myers*, 341 Or 357, 361-62 (2006) (when the ballot title chooses to list some of the effects it can be materially underinclusive and thereby inaccurate and not in compliance with the statutory requirements for the caption).

Results Statements

ORS 250.035(2)(b) and (c) require “simple and understandable statement[s] ... that describe[] the result if the state measure is” passed or rejected. Like with the caption, it cannot be misleading or confusing and the “yes” statement must describe the most significant effects in order for the voter to understand the policy choice the measure presents. *E.g., Rasmussen v. Rosenblum*, 354 Or 344, 348 (2013).

The same points as above apply here. The results statements also create an incorrect inference about the state of present law with respect to the nature of this information and its continuing non-private nature *even if the measure were to pass*. Indeed, to the extent the “yes” statement says that

it would prohibit public officials from releasing this information without express written consent, that is flatly untrue since most of the same information can be released by public officials via DMV, as one example. Similarly with the “no” statement, current law allows the public to learn most of this information regardless of whether it comes from the voter database.

In addition, the result statements fail to include a major result if the measure were to pass, which is to criminalize the release of this information by public officials (notwithstanding that they would have a statutory duty to release the information via the DMV, for example). The measure would transform Oregon from having an electoral system that is the envy of the nation for its transparency and verifiability into one where we would be sending our public officials to jail for serving that same valuable public function.

Finally, the “no” statement does not track the language of the “yes” statement using the same terms to the extent practical, contrary to ORS 250.035(2)(c). The “yes” statement refers to the prohibition on public officials releasing the information, which is how the measure is framed. By contrast, the “no” statement refers to “current law allowing the public to learn...” That rather should be framed in the same terms as the “yes” statement, which is to refer to the fact that public officials can release this information rather than that the public can learn this information.

Summary

ORS 250.035(2)(d) requires the summary to contain a “concise and impartial statement ... summarizing the state measure and its major effect.” The same points raised above apply here as well.

In addition, the summary should advise the voters either that the proposed measure would violate federal law or that the proposed measure may violate federal law. Here, 52 U.S.C. 20507(h), the National Voter Registration Act (“NVRA”) Public Disclosure Provision, requires states to permit inspection and copying (disclosure) of “all records” that concern the implementation of a program or activity, conducted for the purpose of ensuring the accuracy and currency of the official list of eligible voters. The public signature verification process and challenge ballot process under current Oregon law are precisely the type of programs or activities as those contemplated by the NVRA Public Disclosure Provision. And inasmuch as the proposed measure would criminalize the disclosure of the information for signature verification, the proposed measure is thereby in direct conflict with federal law. A ballot title must inform voters when the legal effect of a measure is unclear. *See Carruthers v. Myers*, 344 Or 596, 603-04 (2008); *see also Wolf v. Myers*, 343 Or 494, 504 (2007) (the ballot title properly “may” do so).

Oregon Secretary of State
September 2, 2015
Page 4

Thank you for your consideration.

Very truly yours,

HOLLAND & KNIGHT LLP

Eric C. Winters
30710 SW Magnolia Ave.
Wilsonville, OR 97070

September 2, 2015

The Honorable Jeanne Adkins
Secretary of State of Oregon
Attn: Elections Division
255 Capital Street NE, Suite 501
Salem, OR 97310

Re: Comments on Draft Ballot Title for #2016-050

Dear Ms. Adkins:

I submit these comments pursuant to ORS 250.067 as an Oregon elector who is not satisfied with the draft ballot title filed by the Attorney General. I request that the Result of "No" Vote statement be revised as follows to meet the requirements of ORS 250.035.

The "Result of 'No' Vote" statements should be "written, so that, to the extent practicable, the language of the two statements is parallel." ORS 250.035(3). As currently drafted, the "Result of 'No' Vote" statement does not indicate that current law allows the public release of a voter's email address from the voter registration database. When read in context with the "Result of 'Yes' Vote" statement (which indicates that email addresses would be protected from release under the measure) its absence from the categories of "Private Voter Information" incorrectly suggests that voters' birthdates are currently withheld from public release.

The following "Result of 'No' Vote" statement corrects this:

Result of "No" Vote: "No" vote retains current law allowing public disclosure of a voter's birthdate, phone number, email address and whether the voter's ballot was received or processed.

Thank you for considering these comments.

September 2, 2015

VIA EMAIL

Jeanne Atkins
Secretary of State
Elections Division
255 Capital Street NE, Suite 501
Salem, OR 97310

Re: Initiative Petition No. 50 for the General Election of November 8, 2016

Dear Secretary Atkins:

I represent Ben Unger regarding the ballot title for Initiative Petition No. 50 for the General Election of November 8, 2016 (the "Initiative"). Mr. Unger is an elector in the State of Oregon and the Executive Director of Our Oregon. This letter is written in response to your office's public notice, dated August 19, 2015, which invites comments on the draft ballot title for the Initiative.

Mr. Unger respectfully submits that the caption, results statements and summary for the draft ballot title do not meet the requirements of ORS 250.035(2). Mr. Unger requests that Attorney General certify a ballot title that corrects those deficiencies and substantially complies with the statutory requirements.

The Initiative's proponents have named the Initiative the "Voter Privacy Act." The Initiative purports to limit access to information about registered voters. However, the Initiative's reach is both narrower and much broader than its proponents' self-serving moniker and the Initiative's policy statement (which is not substantive law) suggest.

I. An Overview of Initiative Petition No. 50

The Initiative would prevent transparency in elections and election processes.

The Initiative has seven sections. Section 1 is a policy statement and provides that the remaining provisions of the Initiative will be codified as part of ORS chapter 247.

Section 2 provides that "Private Voter Information" may not be released to the public or made available for the "private" use of third parties "without the written express consent of the voter." Section 2 requires the "State Elections Office" to create a "Voter Privacy Waiver Form" that allows voters to "selectively permit" the release of "any or all categories of their Private Voter Information" after the voter's signature is verified from the "Voter Registration Database."

Section 3 is a definitions section. Section 3 defines “Private Voter Information” as information in “the voter registration database” that includes the date and month of a voter’s birth, the voter’s phone number, email address and “ballot status information.” “Ballot status information” is defined as information indicating whether or not an elections office has received or processed a ballot during the period when the ballot is mailed “and the corresponding deadline to vote.”

Section 4 provides that the Initiative “shall not be construed” to prevent a voter from obtaining his or her “ballot status information” during an election. Specifically, section 4 provides that a voter can obtain his or her own “ballot status information” in person or by telephone. Section 4 further provides that “[e]lection officials” may set up an online access system that allows voters to view their own “ballot status information” as long as that system prevents unauthorized release of “Private Voter Information” to third parties and “bulk queries or multiple serial inquiries” from third parties for “Private Voter Information.”

Section 5 provides that the Initiative does not prevent the release of “voter registration data” that includes voter participation information in prior elections or the transfer of “voter registration data” to a federal governmental agency to show compliance with federal law.

Section 6 mandates that “[a]ll government custodians of voter registration information” must comply with the Initiative within 120 days of its passage. The Initiative provides that any public official who thereafter intentionally releases Private Voter Information in violation of the Initiative is guilty of a Class A misdemeanor, and any person “who uses artifice attempting to gain” access to ballot status information for three or more voters is guilty of a Class A misdemeanor and subject to a fine of \$500 or \$25 per voter, whichever is greater.

Section 7 is a severability clause.

II. The Draft Ballot Title

A. The Caption

ORS 250.035(2)(a) provides that a ballot title must contain a “caption of not more than 15 words that reasonably identifies the subject matter of the state measure.” The caption must “state or describe the proposed measure’s subject matter accurately, and in terms that will not confuse or mislead potential petition signers and voters.” *Lavey v. Kroger*, 350 Or 559, 563 (2011) (citations omitted; internal quotation marks omitted). The “subject matter” of an initiative is its “actual major effect.” *Lavey*, 350 Or at 563 (citation omitted; internal quotation marks omitted). The “actual major effect” is the change or changes “the proposed measure would enact in the context of existing law.” *Rasmussen v. Kroger*, 350 Or 281, 285 (2011). “The caption is the cornerstone for the other portions of the ballot title.” *Greene v. Kulongoski*, 322 Or 169, 175 (1995). As the “headline,” the caption “provides the context for the reader’s consideration of the other information in the ballot title.” *Greene*, 322 Or at 175.

The draft caption provides:

Prohibits release of “Private Voter Information” (defined) without express written consent of the voter; exceptions

Mr. Unger respectfully submits that the caption is flawed, for at least three reasons. First, the phrase “Private Voter Information” as used in the Initiative, is misleading and should not be included in the caption, or elsewhere in the ballot title. It is well-settled that “[p]roponents of a measure are not entitled to engineer a favorable ballot title by incorporating politically inflated terms or phrases in the text of a measure in order to advance its passage.” *Earls v. Myers*, 330 Or 171, 176 (2000). *See also Marr v. Thornton*, 237 Or 503, 504 (1964) (ballot title cannot contain a “slogan” or politically motivated language that could “amount to an argument for the measure” or is “likely create prejudice”). A ballot title cannot use a word or term from the text of an initiative, if the initiative “uses the term with a very different and uncommon meaning.” *Witt v. Kulongoski*, 319 Or 7, 15 (1994). Rather, the Attorney General must “go beyond the words of the measure” when “an initiative measure either intentionally or unintentionally * * * use[s] words in the measure that obfuscate the subject, chief purpose, summary, or major effect of the measure.” *Bernard v. Keisling*, 317 Or 591, 596 (1993).

“Private” means “intended for or restricted to the use of a particular person or group or class of persons: not freely available to the public.” *Webster’s Third New Int’l Dictionary* 1804 (unabridged ed 2002). “Private” does not describe information that is, or can be, publicly available. “Private” is a misnomer when used to refer to information available pursuant to a public records request.

Under current law, information about a registered voter, and whether that voter has cast a ballot, is a public record subject to disclosure under Oregon’s public records law. *See generally* ORS 192.410, *et seq.* (Oregon’s public records law). Any person in Oregon may request that his or her home address, personal telephone number and email address not be disclosed as a public record. ORS 192.445. Any Oregon voter also specifically may request that information from his or her voter registration card, including residence address, not be disclosed as a public record. ORS 247.965; OAR 165-005-0130.

“Private Voter Information” is defined in the Initiative as information in the “voter registration database” that includes the voter’s phone number, the voter’s email address, and whether or not the voter’s ballot has been received. Because this information generally is subject to a public records disclosure under current law, is cannot be considered, or accurately defined as, “private” information.

Moreover, the bulk of the information the Initiative designates as “Private Voter Information” would not become “private” even if the Initiative were to pass. For example, the Department of Motor Vehicles will disclose to third parties, upon request, a person’s: driver license, permit or identification number; name; address; and, telephone number. ORS 802.179. That information may be rented or sold “for bulk distribution or surveys, marketing materials and solicitations” as long as the Department of Motor Vehicles provides individuals with an

opportunity to request that their information not be disclosed. ORS 802.179(11). The Initiative does not change that existing law.

Tauman v. Myers, 343 Or 299 (2007) is controlling here. At issue in *Tauman*, was the ballot title for Initiative Petition No. 85 (2008). IP 85 (2008) would have limited recovery of economic and noneconomic damages from any “charity.” The measure defined “charity” more broadly than the word is used or understood. The certified ballot title used the phrase “charity (defined)” in the caption and results statements. The elector who challenged the ballot title argued that simply placing “defined” after “charity” was insufficient, because the word “charity” as used in the Initiative was both confusing and misleading. The Court agreed. As the Court explained:

“In common parlance, a ‘charity’ is ‘an organization or institution engaged in the free assistance of the poor, the suffering, or the distressed.’ *Webster’s Third New Int’l Dictionary* 378 (unabridged ed 2002). By contrast, the proposed measure would include in its definition of a ‘charity’ numerous nonprofit organizations engaged in a variety of other endeavors, including ‘recreational’ and ‘fraternal activities.’ That definition is broad enough potentially to include a symphony association, the Boy Scouts, a private college, and some fraternities, none of which is commonly understood to be a charity. Because the proposed measure defines the term ‘charity’ more broadly than the term commonly is understood, the caption’s use of the term has the potential to leave petition signers and voters with a false impression of the proposed measure’s subject matter. A reasonable person reading the caption likely would understand, mistakenly, that the proposed measure would affect only those organizations that aid the poor, the suffering, and the distressed when, in fact, the proposed measure could affect a variety of other tax-exempt organizations as well. This court has required that the caption be modified in similar circumstances. *See Sager v. Myers*, 328 Or 528, 531-33, 982 P2d 1104 (1999) (court modified caption when the proposed measure defined terms in an ‘uncommon, if not unique,’ way); *Chase v. Myers*, 328 Or 518, 521-23, 982 P2d 1099 (1999) (same); *Witt v. Kulongoski*, 319 Or 7, 14-17, 872 P2d 14 (1994) (court modified caption when the proposed measure gave a term ‘a very different and uncommon meaning’); *see also Bernard v. Keisling*, 317 Or 591, 596, 858 P2d 1309 (1993) (court will not hesitate to look beyond words of measure if those words obfuscate measure’s subject).

“The Attorney General maintains that no modification is necessary here because the caption places the word ‘defined’ in parentheses after the term ‘charity.’ We reach a different conclusion. Although ‘this court has approved the use of specially defined terms in quotation marks, followed by the word “defined” in parentheses, to signal that the proposed measure specially defines [a] term and uses it in that specially defined sense,’ *Carley/Towers v. Myers*, 340 Or 222, 229, 132 P3d 651 (2006), this court has never held that the use of such signals is always sufficient to ensure compliance with statutory standards. Rather, the court has approved those signals when, for example, the meaning of the disputed term

was ambiguous and the proposed measure defined the term in a manner generally consistent with an accepted meaning of the term. *See, e.g., Carley/Towers*, 340 Or at 232-33, 132 P3d 651 (illustrating proposition); *Wilkeson v. Myers*, 329 Or 540, 544-45, 992 P2d 456 (1999) (same); *Huss v. Kulongoski*, 323 Or 266, 917 P2d 1018 (1996) (same). Here, by contrast, the proposed measure gives the term ‘charity’ a unique definition that is significantly broader than its common definition. Under those circumstances, the signals described in *Carley/Towers* do little to cure the confusion caused by the caption’s use of the term. Following *Sager*, *Chase*, and *Witt*, we conclude that the caption in this case is impermissibly confusing despite the presence of the word ‘defined’ after the word ‘charity.’ Accordingly, we refer the caption to the Attorney General for modification.”

Tauman, 343 Or at 302-304.

The proponents of the Initiative at issue here have been even more duplicitous in their drafting than the proponents of the initiative at issue in *Tauman*. The drafters of this Initiative have defined as “private” information that currently is *not* “private” and would not become “private” if the Initiative were to pass. “Private Voter Information” is a phrase used by the drafters specifically to “engineer a favorable ballot title.” *Earls*, 330 Or at 176. The phrase “Private Voter Information” in the caption and throughout the ballot title “obfuscate[s] the subject, chief purpose, summary, or major effect of the measure.” *Bernard*, 317 Or at 596. It cannot appear in the caption, or elsewhere in the ballot title.

The caption is flawed for the additional reason that is underinclusive, because it fails to inform voters that the Initiative would prohibit public access and review of ballot certification and verification. “When the Attorney General chooses to describe the subject matter of a proposed measure by listing some of its effects, [s]he runs the risk that the caption will be underinclusive and thus inaccurate.” *Towers v. Myers*, 341 Or 357, 361 (2006). *See also McCann v. Rosenblum*, 354 Or 701, 706 (2014) (“[w]hen the Attorney General chooses to describe a measure by listing the changes that the proposed measure would enact, some changes may be of ‘sufficient significance’ that they must be included in the description”). A caption that is underinclusive, because it does not notify readers of all the major effects of an initiative, is statutorily noncompliant. *Towers*, 341 Or at 362. Each major effect of an initiative should be conveyed in the caption.

The Initiative prohibits public access to “Ballot Status Information.” Initiative, § 2. “Ballot status information” is defined as “information indicating whether or not an elections office has received or processed a ballot from an identified voter during the period between the mailing of that ballot and the corresponding deadline to vote.” *Id.* In other words, the Initiative prohibits any member of the public from observing or certifying whether a voter’s ballot has been properly received and processed by an elections office. That is a dramatic change in Oregon law and voters are entitled to be informed of that change.

Under current law, processing of returned ballots may begin seven days before election day. ORS 254.478. County clerks must allow public access (which can be reasonably limited)

to observe “the receiving and counting of votes.” ORS 254.482. *See also* Oregon Secretary of State’s Vote By Mail Procedures Manual at 17 (“Members of the public may observe all ballot processes except confidential election processes * * *”). Members of the public also are entitled challenge a returned ballot. ORS 254.415. A ballot may be challenged any time before it is removed from its return envelope. ORS 254.415(3). “Challenged ballots” may include ballots where the voter’s signature on the ballot does not match the voter’s signature on file. ORS 254.431(1). Because the Initiative prohibits public disclosure of “ballot status information,” public access under ORS 254.482 and public challenges under ORS 254.415 would be severely restricted or limited.

Public access to and review of election processes is an essential aspect of free and fair elections. Ballot acceptance and verification specifically is subject to public review. Indeed, transparency in Oregon elections is *dependent* on public oversight of ballot verification. If members of the public cannot review the acts of election officials and pursue ballot challenges, Oregon’s democratic process would be undermined.¹ Voters must be informed of this dramatic change the Initiative would make to current law.

A caption that complies with the statutory requirements would not include the phrase “Private Voter Information” and would notify voters that the Initiative restricts public access to observe ballot verification.

B. The Results Statements

ORS 250.035(2)(b) and (c) require that the ballot title contain “simple and understandable statement[s] of not more than 25 words that describe[] the result if the state measure is” passed or rejected. The yes statement “should describe the most significant and immediate effects of the ballot initiative for the general public.” *McCann*, 354 Or at 707 (internal quotation marks omitted; citation omitted). The yes statement must “provide the voter with sufficient substantive information to understand the policy choice proposed by the measure’s operative terms.” *Rasmussen v. Rosenblum*, 354 Or 344, 348 (2013). A result of yes statement is not statutorily compliant if it is inaccurate, confusing or misleading. “To substantially comply with [ORS 250.035(2)(b)], an *accurate* description of the change that will be caused by the measure is key.” *Lavey*, 350 Or at 564 (emphasis in original). *See also* *Dixon v. Rosenblum*, 355 Or 364, 374 (2014) (referring certified ballot title to Attorney General for modification because result of no statement was “confusing, if not misleading”). The results statements cannot create even an “erroneous inference” of current law or the impact the Initiative would have on current law. *McCormick v. Kroger*, 347 Or 293, 300 (2009).

¹*See, e.g.,* Rebecca Green, *Rethinking Transparency in U.S. Elections*, 75 Ohio State LJ 779, 780-781 (2014) (“Since the founding of this country, those who run elections have understood that democratic legitimacy depends on public confidence in the conduct of elections. Today, from federal transparency requirements for voter registration forms, to poll watcher and recount observer statutes, to voting machine audit requirements, our system routinely acknowledges transparency as a core value in ensuring the legitimacy of electoral outcomes.”) (Citations omitted).

The draft results statements provide:

“Yes” vote prohibits public officials from releasing voter’s birthdate, phone number, email address, or ballot status information without voter’s express written consent, with specified exceptions.

“No” vote retains current law allowing the public to learn a voter’s birthdate, phone number and whether the voter’s ballot has been received or processed.

The results statements are flawed for reasons set forth above. The result of yes statement is flawed for the additional reason that it does not inform voters that the Initiative creates new criminal penalties for alleged violations. That is a significant result if the Initiative passes, and voters should be so informed.

The result of no statement creates an erroneous impression of current law. As was set forth above, under current law, registered voters may limit disclosure of certain personal informational under certain circumstances. However, an elector reading the result of no statement would reasonably reach the conclusion that there are no extant limits on disclosure of information. (Mr. Unger respectfully submits that this inadequate description of current law also is carried forward into the draft summary).

As with the caption, a result of yes statement that complies with the statutory requirements would not include the phrase “Private Voter Information” and would notify voters that the Initiative would restrict public access to observe ballot verification. It also would inform voters that the Initiative creates criminal penalties. A result of no statement that complies with statutory requirements would inform voters that current law already permits voters to prevent disclosure of personal information and allows public access to ensure the integrity of election processes.

C. The Summary

ORS 250.035(2)(d) requires that the ballot title contain a “concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” The summary is flawed for the reasons set forth above.

Thank you for your consideration of these comments. Please notify me when a certified ballot title is issued.

Steven C. Berman

SCB;jjs
cc: client



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

September 18, 2015

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SECRETARY OF STATE

Jim Williams
Director, Elections Division
Office of the Secretary of State
255 Capitol St. NE, Suite 501
Salem, OR 97310

Re: Proposed Initiative Petition — Prohibits Release of Specified Voter Information Without Voter's Express Written Consent; Changes Election Verification Process
DOJ File #BT-50-15; Elections Division #2016-050

Dear Mr. Williams:

We received comments on the Attorney General's draft ballot title for Initiative Petition 50 (2016) (BT-50-15) from Frank Dixon (through counsel, Roy Pulvers), Ben Unger (through counsel, Steven Berman), and Eric Winters. The commenters object to the parts of the draft ballot title as follows:

Mr. Dixon objects to all parts of the draft ballot title;

Mr. Winters objects to the "no" vote result statement; and

Mr. Unger objects to all parts of the draft ballot title.

In this letter, we discuss why we made or did not make changes to each part of the ballot title in light of the submitted comments.

A. The caption

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

Prohibits release of "Private Voter Information" (defined) without express written consent of the voter; exceptions

We address the comments and objections below.

1. Comments from Mr. Dixon

Mr. Dixon first writes that the draft caption is deficient because it uses the phrase “Private Voter Information,” which, he contends, is inaccurate and misleading, and should not be included. He cites *Tauman v. Myers*, 343 Or 299 (2007), which held that the use of the word “charity” in a ballot title was misleading and confusing because the proposed measure defined the term in a manner contrary to how the word was commonly understood. Mr. Dixon argues that the average voter would not consider private the information defined by the measure as “private,” that is, a voter’s birthdate, phone number, email address, and ballot status information. He notes that most of the information is actually commercially and publically available by other means. Second, Mr. Dixon writes that the caption is under inclusive, because it fails to notify voters that the measure would modify several laws relating to the election verification process. (Pulvers Letter, 2).

2. Comments from Mr. Unger

Mr. Unger objects to the draft caption for the same reasons as Mr. Dixon: first, Mr. Unger contends that, under *Tauman v. Myers*, the draft caption improperly uses the phrase “Private Voter Information.” Mr. Unger notes that a voter’s phone number, email address, and whether a voter’s ballot has been received is generally subject to public records disclosure, and therefore “cannot be considered, or accurately defined as, ‘private information.’” (Berman Letter, 3). He also argues that, even if the measure passes, a person’s name, address, and telephone number would not become “private” because that information may be disclosed by the Department of Motor Vehicles (DMV). (Berman Letter, 3-4).

Second, Mr. Unger objects that the draft caption is under inclusive, because it fails to notify voters that the measure would modify several laws relating to the election verification process, including the ability of members of the public to observe the receiving and counting of votes, ORS 254.482, and to challenge a returned ballot. ORS 254.415. (Berman Letter, 4).

3. Our response to the comments

After consideration of the comments concerning the draft caption, we agree that the caption should be revised.

First, we agree that, under *Tauman v. Myers*, the draft caption improperly uses the phrase “Private Voter Information,” because the average voter would not consider the information encompassed by the measure “private,” and that same information is currently publically obtainable in other ways. For example, ORS 802.179 allows the DMV to disclose a person’s name, address, and telephone number in numerous circumstances.

Second, we agree that the draft caption is under inclusive. As noted above, the “subject matter” of a petition is “the ‘actual major effect’ of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words).” *Lavey v. Kroger*, 350 Or

559, 563, 258 P3d 1194 (2011). To identify the “actual major effect” of a measure, the Attorney General must consider the “changes that the proposed measure would enact in the context of existing law.” *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011). Here, the first actual major effect of the measure is to prohibit public officials from releasing a voter’s birthdate, phone number, email address, or ballot status information without the voter’s express written consent. The second actual major effect of the measure is to modify laws relating to the election verification process. For example, ORS 254.415(1) provides that the county clerk, an elections official, or any elector “shall challenge the ballot of any person offering to vote whom the clerk, official or elector knows or suspects not to be qualified as an elector.” ORS 254.431 provides that a ballot may be challenged because it is returned in an unsigned return identification envelope or because the signature of an elector on the envelope does not match the elector’s signature in the voter registration record. Because the measure would prohibit public disclosure of “ballot status information,” the ability to challenge a ballot would be severely curtailed.

In light of all the comments concerning the draft caption, we modify the caption to read as follows:

Prohibits release of specified voter information without voter’s express written consent; changes election verification process

B. The “yes” and “no” vote result statements

We next consider the draft “yes” and “no” vote result statements. A ballot title must include “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is approved.” ORS 250.035(2)(b). The “yes” vote result statement should identify “the most significant and immediate” effects of the measure. *Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). The draft “yes” vote result statement provides:

Result of “Yes” Vote: “Yes” vote prohibits public officials from releasing voter’s birthdate, phone number, email address, or ballot status information without voter’s express written consent, with specified exceptions.

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

Result of “No” Vote: “No” vote retains current law allowing the public to learn a voter’s birthdate, phone number, and whether the voter’s ballot has been received or processed.

We address the comments and objections below.

1. Comments from Mr. Dixon

Mr. Dixon reiterates his objections to the caption, above, and asserts that they apply to the draft result statements. (Pulvers Letter, 2-3). He also suggests that the draft “yes” result statement creates an incorrect inference that the measure would prohibit officials from releasing the described information without express written consent, when that information may still be released under other laws unaffected by the measure, such as ORS 802.179, described above. (Pulvers Letter, 2-3). He suggests that the result statements should be modified to inform voters that the measure would criminalize the release of this information by public officials, even if they have a statutory duty to do so under other laws. (Pulvers Letter, 3). Finally, he argues that the “no” result statement should track the language of the “yes” result statement to inform voters that public voters can *release* the information, rather than that the public can *learn* this information. (Pulvers Letter, 3).

2. Comments from Mr. Winters

Mr. Winters objects to the draft “no” result statement, and argues that it should inform voters that current law allows the public release of a voter’s email address from the voter registration database. (Winters Letter, 1).

3. Comments from Mr. Unger

Mr. Unger reiterates his objections to the caption, above, and asserts that they apply to the draft result statements. (Berman Letter, 7). He also argues that the draft “yes” result statement fails to inform voters that it creates new criminal penalties for alleged violations. (Berman Letter, 7). He also suggests that the “no” result statement should inform voters that current law already permits voters to prevent disclosure of person information and allows public access to ensure the integrity of the election process. (Berman Letter, 7).

4. Our response to the comments

After consideration of the comments concerning the draft caption, we agree that the draft “yes” and “no” vote result statements should be revised.

First, as stated above, we agree that the “yes” result statement should inform voters that the measure would modify laws relating to the election verification process. *See Novick/Crew*, 337 Or at 574 (The “yes” vote result statement should identify “the most significant and immediate” effects of the measure). We have also added the word “candidates” to eliminate the possibility that a voter might believe that candidates would continue to have the ability to participate in the election verification process where the general public would not. *See, e.g.*, ORS 254.482 (defining persons authorized to watch the receiving and counting of votes); ORS 254.235(2) and ORS 254.525 (providing that political party and candidate representatives are entitled to observe testing of voting machines and vote tally systems conducted before and after an election is conducted).

Second, we agree that the “yes” result statement should inform voters that the measure would create new criminal penalties for alleged violations.

Third, in light of the modifications to the result statements, we have eliminated the issue highlighted by Mr. Winters.

Fourth, we agree that the “no” result statement should inform voters that, under current law, they may limit disclosure of certain personal information.

In light of our response above, we modify the “yes” and “no” vote result statements to read as follows:

Result of “Yes” Vote: “Yes” vote prohibits public access to certain voter information, including contact information, status of voter’s ballot; limits participation of candidates, public in election verification process.

Result of “No” Vote: “No” vote retains law allowing public, election observers, access to voter information, including ballot status, contact information unless voter demonstrated that disclosure would jeopardize safety.

C. The summary

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

Summary: Current state law permits and sometimes requires public officials to disclose to the public voter registration records and, during a voting period, whether an identified voter’s ballot was received. Measure prohibits public officials from disclosing voter’s “Private Voter Information”—defined as voter’s birthdate, phone number, email address, or whether voter returned ballot—without voter’s express written consent. Elections Office must create waiver form, authenticate voter’s signature before processing waiver. Voter can learn whether own ballot received. Measure permits disclosure of voter registration data that includes voter participation in prior elections, and disclosures complying with federal law. Officials violating measure, and any person “who uses artifice attempting to gain unauthorized access of ballot status information for three or more voters,” subject to criminal liability. Other provisions.

We address the comments and objections below.

1. Comments from Mr. Dixon and Mr. Unger

Mr. Dixon and Mr. Unger reiterate their objections to the caption and result statements, above, and assert that they apply to the summary (Pulvers Letter, 3; Berman Letter, 7). Mr. Dixon also suggests that the summary should inform voters that the measure would or might violate federal law, and therefore that the legal effect of the measure is unclear. (Pulvers Letter, 3).

2. Our response to the comments

After consideration of the comments concerning the summary, we agree that it should be modified, for the same reasons described above. In addition, we agree that the legal effect of the measure as to federal law is unclear. Therefore, we modify the summary to note that the measure states that "[t]his Act shall not prevent the transfer of voter registration data to an agency of the federal government to demonstrate compliance with federal election regulations."

We therefore modify the summary to read as follows:

Summary: Current state laws permit/require public officials to disclose voter registration records and, during voting period, whether a voter's ballot was received; voters can prevent disclosure of home address, phone number, and email address by showing that disclosure would jeopardize personal safety. Measure prohibits disclosure of ballot status information and personal information without voter's written consent; prohibition against disclosing ballot status will limit participation of candidates, public in election verification process. Elections Office must create waiver form, authenticate signature before processing waiver. Measure permits disclosure of voter participation in prior elections, disclosures to demonstrate compliance with federal law. Criminal penalties for officials violating measure, any person "who uses artifice attempting to gain unauthorized access of ballot status information for three or more voters." Other provisions.

D. Conclusion

We certify the attached ballot title.

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BALLOT TITLE

Prohibits release of specified voter information without voter's express written consent; changes election verification process

Result of "Yes" Vote: "Yes" vote prohibits public access to certain voter information, including contact information, status of voter's ballot; limits participation of candidates, public in election verification process.

Result of "No" Vote: "No" vote retains law allowing public, election observers, access to voter information, including ballot status, contact information unless voter demonstrated that disclosure would jeopardize safety.

Summary: Current state laws permit/require public officials to disclose voter registration records and, during voting period, whether a voter's ballot was received; voters can prevent disclosure of home address, phone number, and email address by showing that disclosure would jeopardize personal safety. Measure prohibits disclosure of ballot status information and personal information without voter's written consent; prohibition against disclosing ballot status will limit participation of candidates, public in election verification process. Elections Office must create waiver form, authenticate signature before processing waiver. Measure permits disclosure of voter participation in prior elections, disclosures to demonstrate compliance with federal law. Criminal penalties for officials violating measure, any person "who uses artifice attempting to gain unauthorized access of ballot status information for three or more voters." Other provisions.

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SECRETARY OF STATE

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on October 22, 2015, I directed the original Answering Memorandum To Petitions to Review Ballot Title Re: Initiative Petition No. 50 to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Roy Pulvers, attorney petitioner Frank Dixon, and upon Eric C. Winters, attorney for petitioner, by using the court's electronic filing system.

I further certify that on October 22, 2015, I directed the Answering Memorandum to Petitions to Review Ballot Title Re: Initiative Petition No. 50 to be served upon Richard Taylor Whitehead, chief petitioner, by mailing a copy, with postage prepaid, in an envelope addressed to:

Richard Taylor Whitehead
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/s/ Shannon T. Reel

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