

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 ATTORNEY GENERAL

Initiative Petition 36 (2014)

BALLOT TITLE CERTIFIED
December 20, 2013
Initiative Petition
Chief Petitioner: Arthur Towers

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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:

Amends Constitution: Prohibits laws that would restrict negotiations and agreements between employers and employees for payroll deductions

Result of “Yes” Vote: “Yes” vote prohibits laws that restrict the ability of employers and employees to negotiate for and agree to use of payroll deductions for several purposes.

Result of “No” Vote: “No” vote retains existing law, which does not expressly prohibit laws restricting employers’ / employees’ ability to negotiate for and agree to use of payroll deductions.

Summary: Amends constitution. Current law allows employees and employers to negotiate for and agree to payroll deductions for variety of purposes, including charitable, political, and union-related. Measure changes current law by expressly prohibiting laws restricting, for example: the categories of employers or employees that may use payroll deductions; the persons or entities to whom those deductions may be directed; the purposes for which deducted funds may be used; or deductions under “fair share” agreements (requiring union-represented employees, including non-union members, to pay for union representation services they receive). Measure does not require employers to make payroll deductions available to employees, does not repeal existing laws, and does not affect laws relating to collection of child or spousal support through wage withholding or deductions.

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¹ A copy of IP 36 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 36 is a constitutional initiative which would prohibit two types of laws: (1) laws that “restrict the ability of employers and their employees (either individually or through their bargaining representative) to negotiate and agree on terms governing payroll deductions and (2) laws that “restrict the ability to require all union-represented employees to pay for representation services they receive and the union is required to provide.” Regarding the second prohibition, “requir[ing] all union-represented employees to pay for representation services they receive and the union is required to provide” is also known as union security agreements, or “fair share agreements.”²

The format of IP 36 may create the impression that it only pertains to payroll deductions, and that laws prohibiting payroll deductions for union security agreements is only one “type of law prohibited by Section 1” of the initiative; however, a careful reading of the text shows that IP 36 would prohibit two different types of laws: laws that restrict the ability to negotiate and use payroll deductions and laws that restrict the ability to negotiate and enter into union security agreements.

This result should not be lost simply because the relevant language concerning union security agreements is contained in subsection 5 of Section 2 of the initiative. It’s true that IP 36 would prohibit laws which restrict the ability to use payroll deductions to collect funds from “fair share members” pursuant to a union security agreement, but that is the result of Section 1 and Section 2 (1) – (4). Even without Section 2 (5), IP 36 would protect the ability to use payroll deductions to collect funds from “fair share members.” But Section 2 (5) has nothing to do with payroll deductions; its sole purpose is to prohibit laws which restrict the ability to enter into

² ORS 243.650 (10) defines “fair-share agreement” as “an agreement between the public employer and the recognized or certified bargaining representative of public employees whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization.” This statute also refers to such agreements as “union security agreements.”

union security agreements. Indeed, unlike the other subsections of Section 2, subsection 5 does not even mention the word “payroll deduction” and it has absolutely no effect on payroll deductions. The below format illustrates this point:

Section 2. The type of laws prohibited by Section 1 include any laws that restrict

- (1) the category of employees who may use payroll deduction;
- (2) the category of employers who may make payroll deduction available;
- (3) the persons or entities to whom the payroll deduction may be directed;
- (4) the purposes for which funds from payroll deduction may be used, such as charitable, political or union-related deductions; or
- (5) the ability to require all union-represented employees to pay for representation services they receive and the union is required to provide.

(Emphasis added.)

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 Caption

A ballot title caption must reasonably identify the subject matter of the measure. ORS 250.035(2)(a). For purposes of this Court's review, the “subject matter” of a ballot title is “the actual major effect” or effects of the measure. *Lavey v. Kroger*, 350 Or 559, 563 (2011) (citing *Whitsett v. Kroger*, 348 Or 243, 247 (2010)).

The caption does not meet this statutory requirement because it excludes one of the subject matters of the measure: union security agreements. The failure to mention this subject matter renders the caption underinclusive and inaccurate. As discussed above, Section 2 (1) - (4) of IP 36 would provide constitutional protections to all types of negotiated payroll deductions – including payroll deductions to make payments required by a union security agreement. But Section 2 (5) does something different; it provides explicit protections for union security agreements, regardless of whether payroll deductions are used or not. Because IP 36 has two major effects, both effects must be mentioned in the caption to the limit of the available words. *Whitsett*, 348 Or at 247.

We propose the following caption:

Amends Constitution: Prohibits laws that restrict employment negotiations regarding use of payroll deductions and union security agreements

D. The Result of “Yes” Vote

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

The “Yes” statement does not meet this requirement for the same reason as discussed above – because it does not notify voters that the measure would protect the ability to require all union-represented employees to pay for representation. To address this defect, we suggest the following statement:

Result of “Yes” Vote: “Yes” vote prohibits laws that restrict the ability of employers and employees to negotiate for and agree to use payroll deductions and union security agreements.

E. The 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 for the same reason the caption and “Yes” statement are deficient – failure to mention union security agreements. To cure these defects, we suggest the following “No” statement:

Result of "No" Vote: “No” vote retains existing law; which does not expressly prohibit laws restricting ability to negotiate payroll deductions and union security agreements.

F. 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 ballot title does not comply with these standards for the reasons stated – the failure to inform voters that the constitutional initiative would prohibit laws restricting the use of union security agreements. Petitioner did not raise this argument in his comments because the draft ballot title summary included this information by stating, “Measure amends constitution to prohibit laws that would restrict . . . the ability to require union-represented employees, including noon-union members, to pay for representation services.” However, the certified summary omits this sentence and does not replace it with comparable language informing voters that union security agreements would receive constitutional protections under IP 36.

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 36) 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 36) upon the following individuals on January 7, 2014, by delivering a true, full and exact copy thereof via U.S. Mail to:

Matthew J. Preusch
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

Arthur Towers
813 SW Alder Street, Suite 800A
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 amend the Constitution as follows:

Section 1. No law shall restrict the ability of employers and their employees (either individually or through their bargaining representative) to negotiate and agree upon terms governing payroll deductions.

Section 2. The type of laws prohibited by Section 1 include any laws that restrict (1) the category of employees who may use payroll deduction; (2) the category of employers who may make payroll deduction available; (3) the persons or entities to whom the payroll deduction may be directed; (4) the purposes for which funds from payroll deduction may be used, such as charitable, political or union-related deductions; or (5) the ability to require all union-represented employees to pay for representation services they receive and the union is required to provide.

Section 3. Nothing in this amendment requires any employer to make payroll deduction available to employees.

Section 4. Nothing in this amendment repeals or affects any laws in effect as of January 1, 2014.

Section 5. Nothing in this amendment affects any laws relating to the payment or collection of child support, spousal support or other garnishments through wage withholding or payroll deduction.

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KATE BROWN
SECRETARY OF THE STATE

DRAFT BALLOT TITLE

Amends Constitution: Prohibits laws that restrict negotiations between employers and employees for the use of payroll deductions

Result of “Yes” Vote: “Yes” vote amends the constitution to prohibit laws that restrict employers’ and employees’ ability to negotiate for the use of payroll deductions for any purpose.

Result of “No” Vote: “No” vote rejects constitutional amendment; retains existing law; no prohibitions on laws restricting ability to negotiate for the use of payroll deductions.

Summary: Amends constitution. Current law allows employees and employers to negotiate to use payroll deductions for financial contributions. The constitution does not expressly prohibit laws that restrict those negotiations. Measure amends constitution to prohibit laws that would restrict the categories of employers or employees that may use payroll deductions; the persons or entities to whom those deductions may be directed; purposes for which deducted funds may be used, including charitable, political, or union-related; or the ability to require union-represented employees, including non-union members, to pay for representation services. Measure does not require employers to make payroll deductions available to employees, does not repeal existing laws, and does not affect laws relating to collection of child or spousal support through wage withholding or deductions.

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KATE BROWN
SECRETARY OF THE STATE



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

RECEIVED
2013 DEC 5 PM 1 36
KATE BROWN
SECRETARY OF THE STATE

Re: Public Comment on Initiative Petition #36 (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 #36 (2014). The Attorney General has proposed the following ballot title for IP #36:

Amends Constitution: Prohibits laws that restrict negotiations between employers and employees for the use of payroll deductions

Result of "Yes" Vote: "Yes" vote amends the constitution to prohibit laws that restrict employers' and employees' ability to negotiate for the use of payroll deductions for any purpose.

Result of "No" Vote: "No" vote rejects constitutional amendment; retains existing law; no prohibitions on laws restricting ability to negotiate for the use of payroll deductions.

Summary: Amends constitution. Current law allows employees and employers to negotiate to use payroll deductions for financial contributions. The constitution does not expressly prohibit laws that restrict those negotiations. Measure amends constitution to prohibit laws that would restrict the categories of employers or employees that may use payroll deductions; the persons or entities to whom those deductions may be directed; purposes for which deducted funds may be used, including charitable, political, or union-related; or the ability to require union-represented employees, including non-union members, to pay for representation services. Measure does not require employers to make payroll deductions available to employees, does not repeal existing laws, and does not affect laws relating to collection of child or spousal support through wage withholding or deductions.

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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 recently 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 excludes one of the subject matters of the measure: union security agreements, also known as "fair share agreements."¹ IP 36 would provide constitutional protections not only to payroll deductions (Section 2 (1) – (4)), but also to union security agreements (Section 2 (5)). Therefore, the caption is underinclusive, and, thus, inaccurate, because it only identifies payroll deductions as a subject matter of the measure and omits the other subject matter – union security agreements.

Because the draft ballot title does not comply with statutory requirements, we propose the following caption:

Amends Constitution: Prohibits laws that restrict employment negotiations regarding use of payroll deductions and union security agreements

Or

Amends Constitution: Prohibits laws that restrict employment negotiations regarding use of payroll deductions and fair share agreements

II. RESULT OF "YES" VOTE

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

¹ ORS 243.650 (10) defines "fair-share agreement" as "an agreement between the public employer and the recognized or certified bargaining representative of public employees whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization." This statute also refers to such agreements as "union security agreements."

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The draft "yes" statement does not meet this requirement for the same reason as discussed above – because it does not notify voters that the measure would protect negotiations regarding union security agreements. To address this defect, we suggest the following statement:

Result of "Yes" Vote: "Yes" vote amends constitution to prohibit laws that restrict employers' and employees' ability to negotiate for the use of payroll deductions and union security agreements.

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 for the same reason the caption and "Yes" statement are deficient – failure to mention union security agreements. To cure this defect, we suggest the following "No" statement:

Result of "No" Vote: "No" vote rejects constitutional amendment; retains existing law; no prohibitions on laws restricting ability to negotiate payroll deductions and union security agreements.

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 second sentence in the summary - "The constitution does not expressly prohibit laws that restrict those negotiations." - causes the draft summary to not comply with statutory standards. As an initial matter, this sentence is confusing because it uses three negative words: "not," "prohibit," and "restrict." The use of three negative words in close proximity to each other causes voter confusion and should be avoided. *Greene v. Kulongoski*, 322 Or 169, 177, 903 P2d 366 (1995) (the risk of voter confusion by use of three negative terms requires modification of caption); *Mabon v. Keisling*, 317 Or 406, 416, 856 P2d 1023 (1993) (rejecting use of triple negative in summary).

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The second problem with this sentence is that it inaccurately describes current law. The sentence states, or at the very least implies, that the Oregon Constitution does not prohibit restrictions on employment negotiations regarding payroll deductions. In other words, this sentence implies that the Oregon Constitution allows restrictions on these employment negotiations. This is not the law in Oregon. These types of employment negotiations are already protected by the broad free speech protections contained the Oregon Constitution. In *State v. Ciancanelli*, 339 Or 282, 121 P.3d 613, 629 (2005), the Oregon Supreme Court concluded that "the people who framed and adopted Article I, section 8, as part of the original Oregon Constitution intended to prohibit broadly any laws directed at restraining verbal or nonverbal expression of ideas of any kind." *Id.* Given this sweeping interpretation of Article I, section 8, it is inaccurate to state or imply that the Oregon Constitution allows restrictions regarding payroll deduction negotiations.

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

Summary: Amends constitution. Current law allows employees and employers to negotiate to use payroll deductions for financial contributions. The Oregon Constitution protects those negotiations. Measure amends constitution to specifically prohibit laws that would restrict the categories of employers or employees that may use payroll deductions; the persons or entities to whom those deductions may be directed; purposes for which deducted funds may be used, including charitable, political, or union-related; or the ability to require union-represented employees, including non-union members, to pay for representation services. Measure does not require employers to make payroll deductions available to employees, does not repeal existing laws, and does not affect laws relating to collection of child or spousal support through wage withholding or deductions.

V. PROCEDURAL CONSTITUTIONAL REQUIREMENTS

IP 36 would amend the Constitution in two ways. First, it would prohibit laws that restrict employment negotiations regarding payroll deductions. Second, it would prohibit laws that restrict employment negotiations regarding union security agreements. Because the measure embraces two subjects, it contains two constitutional amendments and, thus, violates the separate-vote requirement set out in Article XVII, section 1 of the Oregon Constitution. Furthermore, these two changes are not closely related enough to comply with the separate-vote requirement.

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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KATE BROWN
SECRETARY OF THE STATE



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

December 20, 2013

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

RECEIVED
2013 DEC 20 PM 3:22
KATE BROWN
SECRETARY OF THE STATE

Re: Proposed Initiative Petition — Amends Constitution: Prohibits Laws That Would Restrict Negotiations and Agreements Between Employers and Employees for Payroll Deductions
DOJ File #BT-36-13; Elections Division #36

Dear Mr. Williams:

We have received the comments submitted in response to the draft ballot title for Initiative Petition 36 (2014). Steven C. Berman, on behalf of Arthur Towers; Margaret Olney, on behalf of Joseph Baessler and BethAnne Darby; Jill Gibson Odell, on behalf of Dan Harmon; and Bill Sizemore, on his own behalf, submitted comments. 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).

A. The Draft Caption

The draft caption provides:

Amends Constitution: Prohibits laws that restrict negotiations between employers and employees for the use of payroll deductions

Currently, the Oregon constitution does not expressly prohibit laws that would restrict the ability of employers and employees to negotiate for and agree to payroll deductions. The subject matter of the initiative—its major effect—is to expressly prohibit such laws. Payroll deduction agreements that the amendment would protect include those for charitable or political purposes, as well as those for payroll deductions under “fair share” union security agreements that require non-union employees to pay for union representation services that they receive.

Commenters Baessler and Darby

Commenters Baessler and Darby identify two potential problems with the caption. First, they suggest that the caption should be stated in the affirmative because the subject matter of the measure is the protection of the ability of employers and employees to agree to payroll deductions. Second, they argue that the use of “negotiations” in the caption without “agreements” is inaccurate and confusing because IP 36 protects both negotiations and agreements.

We agree with the commenters’ second suggestion. Arguably at least, using only “negotiations” in the caption is accurate because, ideally, agreements follow negotiations. That is their purpose. But because Section 1 of IP 36 references both negotiations and agreements, the caption should as well, and we have changed it to reflect that. We disagree, however, with commenters’ first suggestion. IP 36’s prohibition is stated in the negative: “No law shall restrict the ability” Given that, it would be misleading to state, as the commenters suggest, that the measure “[a]uthorizes employers and their employees to agree on terms” Employers and employees may already do so; no authorization is required. IP 36 is a forward-looking prophylactic, not a grant of rights.

Commenter Harmon

Commenter Harmon objects to the caption because it does not refer to union security agreements, rendering the caption under-inclusive and therefore inaccurate. We agree that IP 36 would prohibit laws that restrict agreements for payroll deductions under union security agreements, but because those are only one type of agreement that the measure protects and because those agreements are referenced in the summary, it is not necessary to reference them in the caption. The major effect of IP 36 is to prohibit restrictions on payroll deduction agreements for a wide variety of purposes. To emphasize one of those purposes—union security agreements—and omit others, such as charitable purposes, would mislead voters.

Commenter Towers

Commenter Towers states that the caption is under inclusive for two reasons: caption mentions negotiations but not agreements, and it states the measure’s effect in the negative even though it protects existing rights.

We agree with the commenter’s first contention and disagree with his second for the reasons stated in response to commenters Baessler and Darby’s comments above.

Commenter Sizemore

Commenter Sizemore objects to the draft ballot title’s caption because it does not mention that Section 2 of the initiative would restrict laws that limit union security agreements. Commenter Sizemore says that this portion of Section 2 is “not about payroll deductions.” The

commenter also says that the caption should explain a purported contradiction in Section 3 of the initiative.

We agree that one aspect of Section 2 does relate to the ability of unions to collect payments from non-union employees; however, we disagree that it does not pertain to payroll deductions. Section 1 clearly prohibits one broad category of laws: those that restrict the ability of employers and employees to negotiate for and agree to payroll deduction terms. Section 2 is a non-exclusive list of the types of laws that Section 1 prohibits, all of which must necessarily relate to payroll deductions. Payroll deductions under union security agreements are just one example of payroll deductions that laws may not restrict under the measure, though an important one. But those payroll deductions under so-called "fair-share" agreements are not distinct from the other kinds of payroll deductions protected under the proposed measure, and the caption, which refers to laws governing "the use of payroll deductions," is broad enough to encompass the payroll deductions under union security agreements. For that reason, and for the reasons stated in response to commenter Harmon's comments, the caption should not be changed to reference union security agreements.

We disagree that Section 3 is an "oddity," as the commenter suggests. It is not a contradiction to, on one hand, restrict laws that *prohibit* payroll deductions and, on the other hand, to not *require* payroll deductions. Section 1 accomplishes the former, and Section 3 says the latter.

For those reasons, we certify the following ballot title caption:

Amends Constitution: Prohibits laws that would restrict negotiations and agreements between employers and employees for payroll deductions

B. The Result Statements

The draft "yes" result statement provides:

Result of "Yes" Vote: "Yes" vote amends the constitution to prohibit laws that restrict employers' and employees' ability to negotiate for the use of payroll deductions for any purpose.

The draft "no" result statement provides:

Result of "No" Vote: "No" vote rejects constitutional amendment; retains existing law; no prohibitions on laws restricting ability to negotiate for the use of payroll deductions.

Commenters Baessler and Darby

Commenters Baessler and Darby identify three potential problems with the "yes" statement. First, they suggest that the statement, like the caption, impermissibly focuses on

negotiations while failing to mention agreements. Second, they argue it is unnecessary to restate that the measure would amend the constitution. Third, the commenters contend that the statement is inaccurate when it says that payroll deductions may be used for "any purpose" when Section 5 of IP 36 expressly states that the measure would not impact laws relating to child support, spousal support, or other payroll garnishments or deductions.

We agree with the commenters' first suggestion for the reasons stated concerning the caption above. We agree with the commenters' second suggestion, and we have omitted reference to amending the constitution in the certified statement. Finally, we also agree with the commenters' third suggestion. For that reason, we have omitted "any purpose" from the certified "yes" result statement.

Commenters Baessler and Darby also suggest that the "no" result statement is inadequate because the phrase "rejects constitutional amendment" is "impermissibly biased" and because the statement includes a double negative. We disagree that the phrase is biased; it is an unvarnished statement of fact. We agree, however, that the statement could be better stated and have revised it accordingly.

Commenter Harmon

Commenter Harmon states that the draft "yes" result statement is deficient for the same reason as the caption: "[I]t does not notify voters that the measure would protect negotiations regarding union security agreements." We disagree with the commenter for the reasons discussed above.

Commenter Harmon objects to the "no" result statement for the same reason, and we disagree for the same reasons.

Commenter Towers

Commenter Towers objects to the "yes" result statement for a similar reason as commenters Baessler and Darby: the use of "any purpose" is overbroad and inaccurate. We agree for the reasons discussed above, and we have omitted that phrase from the certified "yes" result statement.

Commenter Towers suggests that the "no" vote is inaccurate because it fails to explain that the Oregon and federal constitutions impliedly protect the ability of employers and employees to negotiate for and agree to payroll deductions. We agree, at least in part, and for that reason we have added the word "express" to the "no" result statement.

Commenter Sizemore

Commenter Sizemore suggests that the "yes" result statement should describe some of the possible results of enacting this proposal into law, such as requiring employees to support through payroll deductions causes that they disagree with or are opposed to for moral or religious

reasons. We disagree. The certified “yes” statement below tells voters that employers and employees may use these deductions for a variety of purposes. That is sufficiently broad to cover all the kinds of payroll deductions mentioned in the measure, and we reject the commenter’s suggestion to describe the speculative “far reaching and radical results.”

Commenter Sizemore makes the same comment concerning Section 3 for the result statements as he does for the caption above. We disagree for the same reasons explained above.

We certify the following results statements:

Result of “Yes” Vote: “Yes” vote prohibits laws that restrict the ability of employers and employees to negotiate for and agree to use of payroll deductions for several purposes.

Result of “No” vote: “No” vote retains existing law, which does not expressly prohibit laws restricting employers’/employees’ ability to negotiate for and agree to use of payroll deductions.

C. The Summary

The draft summary provides:

Summary: Amends constitution. Current law allows employees and employers to negotiate to use payroll deductions for financial contributions. The constitution does not expressly prohibit laws that restrict those negotiations. Measure amends constitution to prohibit laws that would restrict the categories of employers or employees that may use payroll deductions; the persons or entities to whom those deductions may be directed; purposes for which deducted funds may be used, including charitable, political, or union-related; or the ability to require union-represented employees, including non-union members, to pay for representation services. Measure does not require employers to make payroll deductions available to employees, does not repeal existing laws, and does not affect laws relating to collection of child or spousal support through wage withholding or deductions.

Commenters Baessler and Darby

Commenters Baessler and Darby object to the summary on four grounds.

First, the commenters renew their suggestion that the summary should say “agreements” as well as “negotiations.” We agree for the reasons discussed above.

Second, the commenters fault the summary because it suggests that IP 36 only prohibits specific categories of laws. We agree that voters could conclude that the list in the summary is exclusive, which would be incorrect because Section 2 uses the word “include.” For that reason, we have added “for example” to the summary.

Third, commenters Baessler and Darby also fault the summary because “voters will undoubtedly come away with the belief that such restrictions are currently constitutional.” We disagree. The draft summary uses the word “expressly” and accurately states the law. Nonetheless, to avoid potential confusion, we have revised the summary to make clear that this measure would expressly prohibit such restrictions.

Finally, commenters Baessler and Darby consider the summary “inaccurate and unclear because it does not completely describe the permissible union security agreements and their purpose.” Although we believe it unnecessary, at best, to “completely” describe union security agreements and their purpose in the ballot title, we have added the words “they receive” to address the commenters’ concerns.

Commenter Harmon

Commenter Harmon objects to the use of three negative words in the second sentence of the summary due to its potential to confuse voters. We agree and have amended the summary in accordance below.

Commenter Harmon also objects to the summary’s characterization of current law because it “states, or at the very least implies, that the Oregon constitution does not prohibit restrictions on employment negotiations regarding payroll deductions.” We agree that the summary implies that the constitution does not currently prohibit restrictions on payroll deduction negotiations or agreements, but we disagree with the commenter’s proposed changes. While the commenter is correct that the Supreme Court’s broad view of free speech rights under Article 1, section 8, arguably prohibits the same sort of laws that IP 36 would prohibit, it remains true that the constitution contains no express prohibition. Nor has the Supreme Court announced that it contains an implicit prohibition. Nonetheless, as discussed above in response to commenters Baessler and Darby’s comments, we have revised the summary in response to the commenters’ concerns.

Commenter Towers

Commenter Towers objects to the summary on two grounds. First, the commenter objects to the use of the word “express” for similar reasons as commenter Harmon and commenters Baessler and Darby. We disagree for the reasons discussed above. Second, commenter Towers states that “the phrase ‘or the ability to require union-represented employees, including non-union members, to pay for representation costs’ is excessive, unnecessary and inaccurate.”¹ We do not agree..

Commenter Sizemore

For the summary, commenter Sizemore renews his suggestion that the statement should describe some of the possible results of enacting this proposal into law, such as requiring

¹ The commenter misquotes the draft summary, which says “services,” not “costs.”

employers to support through payroll deductions causes that they disagree with or are opposed to for moral or religious reasons. The commenter also renews his suggestion that the ballot title should more fully describe the impact of subsection 5 of Section 2; *i.e.*, payroll deductions under union security agreements.

We disagree that the summary must include descriptions the hypothetical possibilities that the commenter suggests. The summary states that payroll deductions may be used for charitable, political, or union-related purposes pursuant to a negotiated agreement. That sufficiently describes the broad range of entities that could receive payroll deduction funds under the protected employee-employer negotiated agreements. We also disagree with the commenter's suggestion that the summary does not adequately address union security agreements. Both the draft summary and the certified summary below adequately state that the measure would prohibit laws that restrict, among other payroll deductions, those made pursuant to "the ability to require union-represented employees, including non-union members, to pay for representation services." The addition of "union" and "that they receive" in response to commenter Towers suggestions provides additional explanation.

We certify the following summary:

Summary: Amends constitution. Current law allows employees and employers to negotiate for and agree to payroll deductions for a variety of purposes, including charitable, political, and union-related. Measure changes current law by expressly prohibiting laws restricting, for example: the categories of employers or employees that may use payroll deductions; the persons or entities to whom those deductions may be directed; the purposes for which deducted funds may be used; or deductions under "fair share" agreements (requiring union-represented employees, including non-union members, to pay for union representation services they receive). Measure does not require employers to make payroll deductions available to employees, does not repeal existing laws, and does not affect laws relating to collection of child or spousal support through wage withholding or deductions.

As modified, we certify the ballot title.



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Enclosure...

December 20, 2013

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BALLOT TITLE

Amends Constitution: Prohibits laws that would restrict negotiations and agreements between employers and employees for payroll deductions

Result of "Yes" Vote: "Yes" vote prohibits laws that restrict the ability of employers and employees to negotiate for and agree to use of payroll deductions for several purposes.

Result of "No" Vote: "No" vote retains existing law, which does not expressly prohibit laws restricting employers'/employees' ability to negotiate for and agree to use of payroll deductions.

Summary: Amends constitution. Current law allows employees and employers to negotiate for and agree to payroll deductions for variety of purposes, including charitable, political, and union-related. Measure changes current law by expressly prohibiting laws restricting, for example: the categories of employers or employees that may use payroll deductions; the persons or entities to whom those deductions may be directed; the purposes for which deducted funds may be used; or deductions under "fair share" agreements (requiring union-represented employees, including non-union members, to pay for union representation services they receive). Measure does not require employers to make payroll deductions available to employees, does not repeal existing laws, and does not affect laws relating to collection of child or spousal support through wage withholding or deductions.

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KATE BROWN
SECRETARY OF THE STATE