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SUPREME COURT
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IN THE SUPREME COURT OF THE STATE OF OREGON

PATRICIA MILNE, CLIFF SAIN-THOMASON,
and WAYNE SIMMONS,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney General,
State of Oregon,

Respondent.

Supreme Court Case No.

061785

PETITION TO REVIEW BALLOT
TITLE CERTIFIED BY THE ATTORNEY
GENERAL

Initiative Petition 31 (2014)

NOV 05 2013

By 2516

Initiative Petition 31 (2014)
Ballot Title Certified October 24, 2013

Chief Petitioners:

Patricia Milne
Miller Farm Rd
Woodburn, OR 97071

Cliff Sain-Thomason
NE Tokay Heights
Grants Pass, OR 97526

Wayne Simmons
Orchard Heights Rd. NW
Salem, OR 97304

Kevin L. Mannix, OSB #742021
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Attorney for Petitioners

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Department of Justice
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Attorney for Respondent

PETITION

Pursuant to ORS 250.085(2) and ORAP 11.30, petitioners ask the Court to review the ballot title for Initiative Petition 31 (2014) (Ex. A). The ballot title was certified by the Attorney General on October 24, 2013 (Ex. D). Petitioners ask the Court to either modify the ballot title of the Court's own accord, or to refer the ballot title back to the Attorney General for modification.

PETITIONERS' INTEREST

Petitioners Patricia Milne, Cliff Sain-Thomason, and Wayne Simmons are Oregon electors who are the Chief Petitioners for this Initiative Petition #31, and who seek review of this ballot title in their individual capacities as electors. As Chief Petitioners on this Initiative, Petitioners have a keen interest in ensuring that this initiative has an accurate and informative ballot title. Petitioners reviewed the draft ballot title (Ex. B), and submitted comment to the Attorney General. (Ex. C). Accordingly, Petitioners have standing under ORS 250.085(2) to seek review of the certified ballot title in this matter.

ARGUMENTS AND AUTHORITIES

I. Introduction

Initiative Petition 31 would amend the Oregon Constitution to require that 50% of the net proceeds from the Oregon Lottery be deposited in a county revenue distribution fund. Ten percent of this fund would be distributed equally among all 36 counties, and 90% of this fund would be distributed to each county in the same proportion for each county as the state Lottery generates gross proceeds from such county.

The counties are authorized by Initiative Petition 31 to use such funds for any of the following public purposes: creating jobs; furthering economic development; financing public education; restoring and protecting parks, beaches, watersheds, and native fish and wildlife; and providing public safety. The Legislature is not allowed to restrict the allocation of these funds by the counties.

In terms of its substantive impact, then, Initiative Petition 31 transfers the decision-making power as to the use of 50% of net Lottery proceeds from the Legislative Assembly to the counties themselves. This is why the Chief Petitioners have called this initiative the Oregon Lottery Local Control Act.

As our discussion, below, will demonstrate in some detail, it appears that the Attorney General has become so focused on the procedural and technical minutiae of this initiative as to have lost sight as to the substance of this initiative. This initiative is about power sharing in the allocation of funds.

The actual, major changes brought about by this constitutional amendment would be:

1. 50% of the net Lottery proceeds will be distributed to the counties, instead of the Legislative Assembly.
2. Counties will be authorized to use the funds for the same purposes currently authorized, plus use of funds to provide public safety.
3. Smaller-population counties are guaranteed a minimal share: one-tenth of the county fund is distributed equally among the 36 counties. The remaining 90% of the county fund is distributed to the counties in proportion to the amount of Lottery proceeds which are generated from each county.

The Oregon Constitution, Article XV, Section 4, provides for the establishment of the Oregon Lottery and dictates how proceeds are to be used. There are certain minimum requirements as to net Lottery proceeds; 18% of net Lottery proceeds must be used to fund the Education Stability Fund, and 15% of net Lottery proceeds must be used to finance a parks and natural resources fund. Oregon Constitution Article XV, Sections 4 (4)(d) and 4(8). These requirements encompass 33% of the net Lottery proceeds; the Legislative Assembly is authorized to use the remaining Lottery proceeds for the above funds but also for purposes specified in Article XV, Section 4(3), of the Oregon Constitution.

Here is a comparison of the current language, applicable to use of net Lottery proceeds, per Section 4(3) of Article XV of the Oregon Constitution, and the uses authorized for the counties, from the county revenue distribution fund of Initiative Petition 31, per the provisions of subsection (4) of the proposed constitutional amendment:

Current Language
(for Legislative decision)

1. "creating jobs"
2. "furthering economic development"

Language for County Decisions
Per Initiative

1. "creating jobs"
2. "furthering economic development"

- | | |
|---|---|
| 3. "financing public education in Oregon" | 3. "financing public education" |
| 4. "restoring and protecting Oregon's parks, beaches, watersheds, and native fish and wildlife" | 4. "restoring and protecting parks beaches, watersheds, and native fish and wildlife" |
| 5. [nothing regarding public safety] | 5. "providing public safety." |

The county provisions in the initiative delete references to "Oregon" in items three and four because subsection (1) of the proposed amendment restricts the counties to the best use of the funds "within each county." Otherwise, items one through four are identical.

The one change in the use of funds is that counties will be authorized to also use funds for the public purpose of "providing public safety." The current constitutional language contains no such authorization for the Legislative Assembly. This is a significant change.

The whole point of this initiative is to take the decision-making power away from the Legislature as to 50% of the net Lottery proceeds. But the initiative still requires that existing Lottery purposes be honored, with one exception: counties may also use funds to provide public safety.

II. Caption and Result of "Yes" and "No" Vote Statements

In the ballot title certified by the Attorney General, there is a very misleading interplay as to the first three segments.

The Attorney General's ballot title contains the following Caption, Result of "Yes" Vote, and Result of "No" Vote language:

Amends Constitution: Fifty percent of net lottery proceeds distributed to counties, reducing amount available for state appropriations.

Result of "Yes" Vote: "Yes" vote requires depositing 50% of lottery net proceeds in fund for distribution to counties; reduces amount of lottery funding available for legislative appropriations.

Result of "No" Vote: "No" vote retains using 100% of lottery net proceeds for legislative appropriations for specified public purposes, including: economic development, public education, protecting natural resources.

ORS 250.035(2) provides that a ballot title contain a caption "of not more than 15 words that reasonably identifies the subject matter of the state measure." The caption must identify the measure's subject matter in terms that will not "confuse or mislead potential petition signers and voters." *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 998 (2001). The caption cannot overstate or understate the scope of the legal changes the measure would enact. *Kain/Waller v. Myers*, 337 Or 36, 93 P3d 62 (2004).

Here, the caption itself is a half-truth. A plain reading simply says that half of the net Lottery proceeds are going to the counties, and that this reduces the amount of money for state appropriations. A plain reading of this caption would tell the reader that counties suddenly have access to 50% of the net Lottery proceeds, with no suggestion that there are any restrictions. The second phrase worsens this reading because it reinforces the idea that there are some routine state appropriations made from net Lottery proceeds and that these no longer will happen.

The ballot title's caption is the cornerstone for the other portions of the ballot title and must identify the proposed measure's subject matter in terms that will not confuse or mislead potential petition signers and voters. Additionally, the caption must not understate or overstate the scope of the legal changes that the proposed measure would enact. *Towers v. Myers*, 341 Or 487, 145 P3d 147 (2006). The Attorney General's caption violates both of these standards.

To determine the subject matter of a proposed initiative measure, this Court first considers the text and context of the measure, then examines the changes, if any, that the proposed measure would enact in the context of existing law, and finally, examine the words of the caption to determine whether they reasonably identify the proposed measure's subject matter. The inquiry is made, in part, to ensure that the ballot title does not misstate, even by implication, the law that the proposal would enact. *Rogers v. Myers*, 344 Or 219, 179 P3d 627 (2008). The Attorney General's task in writing the caption is to highlight the actual major effect of the measure. *Brady v. Kroger*, 347 Or 331, 221 P3d 151 (2009).

The Result of "Yes" and "No" Vote statements must be "simple and understandable." ORS 250.035(2)(b) and (c). In fact, in the context of the misleading caption, the misleading nature of these statements is compounded.

So, what does the certified ballot title tell the voter, in terms of the caption, Result of "Yes" Vote, and Result of "No" Vote? Here is the plain reading: 50% of the Lottery net proceeds are going to be distributed to the counties, with no description of the purposes for which the funds must be used; the implication is that traditional Lottery funding is going to be dissipated because that is made through legislative appropriations.

Worse, the Result of "No" Vote language points out that, with a "No" vote, 100% of Lottery net proceeds will be continued for specified public purposes, which are described. This creates the completely wrong impression that, while the current Constitution has specific purposes for the use of Lottery funds, somehow passage of this constitutional amendment will eliminate that purpose.

In essence, the message is: if you vote yes on this measure, half of the Lottery proceeds are going to the counties to use as they wish. If you vote no on this measure, the specified public purposes currently in the Constitution will be protected, and the Legislature will be able to continue to fund those purposes.

The substance of the proposed constitutional amendment is left out: counties will be distributing Lottery proceeds for the same purposes presently authorized, with the additional authorization that the counties may use funds for public safety.

This initiative is not about procedural and technical matters; it is a power shift as to the distribution of Lottery proceeds, but the purposes for which those funds may be used remain the same, with the one exception of the new authorization of funding for public safety. The language from the Attorney General completely misses this.

We offer the following alternative language as to the caption, Result of "Yes" Vote, and Result of "No" Vote, which meet the statutory standards and which properly informs votes about the substance of this initiative, without being over-inclusive or under-inclusive:

Amends Constitution: County Commissioners, instead of Legislature, authorized to decide allocation of fifty percent (50%) of lottery income.

RESULT OF YES VOTE

"Yes" vote authorizes Commissioners of all counties, rather than Legislature, to allocate fifty percent (50%) of lottery income for public safety and currently established lottery purposes, including: economic development, public education, protecting natural resources.

RESULT OF NO VOTE

"No" vote retains using 100% of lottery net proceeds for legislative appropriations for specified public purposes, including: economic development, public education, protecting natural resources.

III. The Summary

The Summary adopted by the Attorney General suffers from essentially the same deficiency as the earlier parts of the ballot title: it becomes focused on the method of distribution rather than the substance of the initiative. The Attorney General's summary reads as follows:

SUMMARY: Oregon Constitution currently provides that the Legislature appropriate lottery income for economic development, job creation, at least 15% for parks and habitat restoration, at least 18% for education. Measure continues Legislature's authority as to these appropriations. Measure requires that 50% of lottery income be appropriated to fund for counties in which commissioners of each county make allocations to economic development, job creation, parks, habitat restoration, and education, plus commissioners are authorized to allocate their portion of funds for new category: public safety. County fund divided by formula: 10% evenly divided among all 36 counties; 90% divided based on proportion of lottery income which comes from each county.

The second half of this summary is problematic because it confusingly focuses on procedure rather than substance. Voters will be entangled in a discussion of net proceeds being deposited in a county revenue distribution fund and distributed to counties. There is a savings clause in the sense that the summary does state: "the counties shall use funds for currently specified purposes, plus public safety." But this should be explained at the beginning, especially since the summary is very precise about describing the purposes for which the legislature may appropriate lottery proceeds.

Even if the summary language is generally deemed acceptable, the phrase "ten percent divided equally between counties," should read "ten percent divided equally among counties." While colloquial English today often uses "between" to refer to groupings of more than two, classic English, referring to three or more, should use the term "among."

But the real problem with the formula language is the second phrase, which is "remainder distributed based on each county's lottery sales." This is a vague description. Precision is important here because the initiative is precise: 90% of the funds are distributed "to all counties in the same proportion for each county as the state lottery generates gross proceeds from such county." Initiative Petition 31, subsection (3)(b). At the least, the Attorney General's language should be changed to read "remainder distributed to each county based on the proportion of lottery proceeds from each county."

The Attorney General includes the following sentence in the middle of the description in the summary: "Reduces net lottery proceeds available for appropriation by legislature." This language is not required, as this initiative is not a tax reduction measure, and there is no net reduction in funds. Voters may be confused by this description and get the sense that somehow lottery proceeds themselves will be reduced. Even if this phraseology is acceptable, its placement is confusing; it should be presented at the end of the summary, not in the middle of the description of the operation of the county distribution system.

We propose the following alternative summary which is comprehensive, reasonably simple, and understandable. It avoids the misleading language of the Attorney General's summary:

SUMMARY

Oregon Constitution currently provides that the Legislature appropriate lottery income for economic development, job creation, at least 15% for parks and habitat restoration, at least 18% for education. Measure continues Legislature's authority as to these appropriations. Measure requires that 50% of remaining lottery income be appropriated to fund for counties in which commissioners of each county make allocations to economic development, job creation, parks, habitat restoration, and education, plus commissioners are authorized to allocate county portion of funds for new category: public safety. County fund divided by formula: 10% evenly divided among all 36 counties; 90% divided based on proportion of lottery income which comes from each county.

CONCLUSION

For the reasons stated above, the certified Ballot Title fails to substantially comply with the statute. The Court should modify the ballot title of its own accord or refer the ballot title back to the Attorney General for modification.

DATED this 5th day of November 2013.

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

By: Kevin L. Mannix
OSB #742021
Attorney for Petitioners

OREGON LOTTERY LOCAL CONTROL ACT

The People of Oregon hereby amend Article XV of the Oregon Constitution by adding the following section to be inserted before Section 5:

- (1) The People declare that it is desirable for counties to receive a share of State Lottery proceeds so county governments may determine the best use of such funds for public purposes within each county.
- (2) Effective July 1, 2015, 50% of the net proceeds from the State Lottery shall be deposited in a county revenue distribution fund to be created by the Legislative Assembly. Earnings on moneys in the county revenue distribution fund shall be retained in the fund and distributed for the public purposes described in this section. The Legislative Assembly may appropriate other moneys or revenue to the county revenue distribution fund.
- (3) The county revenue distribution fund shall be distributed to counties as follows:
 - a. Ten percent of the moneys must be allocated and distributed to all counties in an equal amount for each county; and
 - b. Ninety percent of the moneys must be allocated and distributed to all counties in the same proportion for each county as the State Lottery generates gross proceeds from such county.
- (4) The counties shall use funds received from the county revenue distribution fund for any of the following public purposes: creating jobs; furthering economic development; financing public education; restoring and protecting parks, beaches, watersheds and native fish and wildlife; and providing public safety.
- (5) Each county may distribute funds to other units of government such as cities, towns, or school districts, operating within the county, provided the funds are used for purposes listed in paragraph (4) of this section.
- (6) The Legislative Assembly shall enact legislation to implement the distribution of moneys under paragraphs (2) and (3) of this section, but may not establish substantive limitations on the distribution of those moneys or additional restrictions on the use of those moneys.
- (7) This Amendment is self-executing and shall be effective upon passage.

KATE BROWN
SECRETARY OF STATE



GINA ZEJDLIK
INTERIM DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

For Immediate Release:
September 25, 2013

Contact: Lydia Plukchi
Elections Division
(503) 986-1518

The Office of the Secretary of State received a draft ballot title from the Attorney General on September 25, 2013, for Initiative petition #31, proposing a constitutional amendment, for the General Election of November 4, 2014.

The draft ballot title is as follows:

**Amends Constitution: Fifty percent of net lottery proceeds distributed to counties,
reducing lottery funding by fifty percent**

Result of "Yes" Vote: "Yes" vote requires depositing 50% of lottery net proceeds in fund, distributing to counties; reduces by 50% lottery funding for currently mandated purposes.

Result of "No" Vote: "No" vote retains current list of constitutionally mandated purposes for spending state lottery net proceeds; keeps lottery funding for those mandated purposes at current levels.

Summary: Amends Constitution. Constitution currently mandates 100% of state lottery net proceeds be used to create jobs; further economic development; finance a public education stability fund and a school capital matching fund; finance a parks and natural resources fund to be used for specified purposes, including restoration and protection of parks, beaches, watersheds, and native fish/wildlife. Measure requires 50% of lottery net proceeds be deposited in "county revenue distribution fund" and distributed to counties: ten percent divided equally between counties, remainder distributed based on each county's lottery sales. Counties may use funds for creating jobs; economic development; public education; parks, beaches, watersheds, native fish/wildlife; providing public safety. Reduces by 50% the net lottery proceeds available for current mandated purposes. Other provisions.



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

September 25, 2013

Gina Zejdlik
Acting Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition — Amends Constitution: Fifty Percent Of Net Lottery
Proceeds Distributed To Counties, Reducing Lottery Funding By Fifty Percent
DOJ File #BT-31-13; Elections Division #31

Dear Ms. Zejdlik:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to amending the constitution to fifty percent of net lottery proceeds distributed to counties, reducing lottery funding by fifty percent.

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.

Cameron Craft
Legal Secretary

chc/4612225

Enclosure

Cliff Sain-Thomason
NE Tokay Heights
Grants Pass, OR. 97526

Patricia Milne
Miller Farm Rd.
Woodburn, OR 97071

Wayne Simmons
Orchard Heights Rd. NW
Salem, OR 97304

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KATE BROWN
SECRETARY OF THE STATE

Chief Petitioner(s): Cliff Sain-Thomason, NE Tokay Heights, Grants Pass, OR 97526, Milne Patricia, Miller Farm Rd, Woodburn, OR 97071 and Wayne Simmons, Orchard Heights Rd NW, Salem, OR 97304.

Copies of the text of this initiative are available at www.oregonvotes.gov.

There now follows a comment period of 10 business days during which any member of the public may submit written comments which address the specific legal standards a ballot title must meet to the Secretary of State's office. This period ends October 9, 2013. Comments must be addressed to: Elections Division, 255 Capital St NE Ste 501, Salem, OR 97310; fax (503) 373-7414.

The Secretary of State will deliver all written comments to the Attorney General. If comments are received, the Attorney General shall issue the certified ballot title not later than the 10th business day after receiving the comments from the Secretary of State. If no comments are received, the Attorney General shall issue the certified ballot title not later than the 10th business day after the deadline for submitting comments.

In addition, during this ballot title comment period, the Secretary of State will also seek statements from interested persons regarding whether or not a proposed initiative petition complies with procedural constitutional requirements for submission of proposed initiative petitions. The Secretary will consider the information provided in the statements received from interested persons. If you wish to comment, this period ends October 9, 2013. Comments must be addressed to: Elections Division, 255 Capitol St NE, Suite 501, Salem, OR 97310; fax (503) 373-7414.

Any elector who is dissatisfied with the ballot title certified by the Attorney General, and who timely submitted written comments which addressed the specific legal standards a ballot title must meet, may petition the Oregon Supreme Court seeking a different title. This appeal must be filed not later than the 10th business day after the Attorney General certifies a ballot title to the Secretary of State.

The required number of signatures for placement on the 2014 General Election ballot is 116,284. These signatures shall be filed in this office not later than July 3, 2014.

DRAFT BALLOT TITLE

**Amends Constitution: Fifty percent of net lottery proceeds distributed to counties,
reducing lottery funding by fifty percent**

Result of "Yes" Vote: "Yes" vote requires depositing 50% of lottery net proceeds in fund, distributing to counties; reduces by 50% lottery funding for currently mandated purposes.

Result of "No" Vote: "No" vote retains current list of constitutionally mandated purposes for spending state lottery net proceeds; keeps lottery funding for those mandated purposes at current levels.

Summary: Amends Constitution. Constitution currently mandates 100% of state lottery net proceeds be used to create jobs; further economic development; finance a public education stability fund and a school capital matching fund; finance a parks and natural resources fund to be used for specified purposes, including restoration and protection of parks, beaches, watersheds, and native fish/wildlife. Measure requires 50% of lottery net proceeds be deposited in "county revenue distribution fund" and distributed to counties; ten percent divided equally between counties, remainder distributed based on each county's lottery sales. Counties may use funds for creating jobs; economic development; public education; parks, beaches, watersheds, native fish/wildlife; providing public safety. Reduces by 50% the net lottery proceeds available for current mandated purposes. Other provisions.

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October 9, 2013

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

RE: BALLOT TITLE, INITIATIVE PETITION 31

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KATE BROWN
SECRETARY OF THE STATE

Ladies and Gentlemen:

This letter presents comments in regard to the draft ballot title prepared by the Attorney General for Initiative Petition 31 (Oregon Lottery Local Control Act). I present these comments on behalf of myself, as an Oregon elector, and as an attorney on behalf of Cliff Sain-Thomason, Patricia Milne, and Wayne Simmons, Oregon electors and the three Chief Petitioners on this initiative.

OVERVIEW

The Oregon Lottery system is established pursuant to Article XV, Section 4, of the Oregon Constitution. Under this system, the State Lottery Commission establishes and operates a state lottery. The net proceeds from the state lottery are used for purposes specified in Section 4a of the Constitution: "creating jobs, furthering economic development, financing public education, or restoring and protecting Oregon's parks, beaches, watersheds, and native fish and wildlife." Under Article XV, Section 4, part 4, subsection (d), the following language appears: "The state lottery shall operate as a self-supporting, revenue-raising agency of state government..." The net proceeds of the lottery are turned over to a fund established by the Legislative Assembly from which the Legislative Assembly makes appropriations for the allowed purposes.

The Constitution presently requires that at least 18% of the net proceeds from the state lottery be placed in an education stability fund; it also provides that 15% of the net proceeds from the state lottery be deposited in a parks and natural resources fund. Otherwise, the state lottery proceeds may be appropriated by the legislature for the authorized purposes. The 18% allocated to education is a minimum, and the 15% allocated to parks and natural resources is a minimum.

Initiative Petition 31 will amend the Oregon Constitution so that 50% of the net proceeds from the state lottery shall be deposited in a county revenue distribution fund. This fund is distributed equally among all 36 counties, and 90% of the money is allocated and

distributed to each of the counties in the same proportion for each county as the state lottery generates gross proceeds from such county.

The counties are then authorized to use funds for any of the following public purposes: creating jobs; furthering economic development; financing public education; restoring and protecting parks, beaches, watersheds, and native fish and wildlife; and providing public safety. The legislature is not allowed to restrict the allocation of these funds by the counties.

Overall, then, Initiative Petition 31 presents a constitutional amendment which transfers the decision-making power as to the use of 50% of net lottery proceeds. This power is transferred from the Legislative Assembly to the counties themselves. This is why we have called the initiative the Oregon Lottery Local Control Act.

It is with this overview in mind and the actual text of the initiative measure in front of us that we offer the following comments in regard to the draft ballot title prepared by the Attorney General on September 25, 2013.

THE CAPTION

The Caption is incorrect. The net lottery proceeds continue to be distributed to the Legislative Assembly, just as such proceeds are distributed in regard to the 18% which must be allocated to education purposes and the 15% which must be allocated to parks and natural resources. The language "reducing lottery funding by 50%" is absolutely incorrect. There is no reduction in lottery revenue, and there is no change in the lottery revenue to the Legislative Assembly. What is changed is that the decision-making power as to 50% of the net lottery proceeds is transferred from the Legislative Assembly to the counties. What is also not changed is that the counties are authorized to use lottery proceeds for the same purposes. There is one addition: counties may also use the funds for public safety, which is not an authorized use as to the Legislative Assembly.

RESULT OF YES VOTE

This is, again, incorrect. This measure does not reduce by 50% lottery funding for "currently mandated purposes." The currently mandated purposes are incorporated within the purposes for which counties may use the funds. There is one additional authorized purpose which is public safety.

Not one dime of revenue is taken away from the funds delivered to the Legislative Assembly. Not one dime of funding is taken away from the 18% mandated for education or the 15% for parks and natural resources. This 33% of the net proceeds shall be allocated by the legislature which still gets to decide on the allocation of an additional 17% of net proceeds. The remaining 50% of net proceeds are distributed to the counties for allocation as to the same purposes as applied to the Legislative

Assembly, but also include an authorization to fund public safety. There is no reduction in lottery funding for currently mandated purposes.

RESULT OF NO VOTE

This provision is misleading in that it focuses on the "current list of constitutionally mandated purposes." The focus should be on the transfer of power to allocate such funds. The Result of No Vote should point out simply that the Legislative Assembly will continue to allocate all lottery income within the established categories, and there will be no provision for public safety use of lottery proceeds.

SUMMARY

The explanation provided in the Summary suffers from all of the problems described in the Caption, Result of Yes Vote, and Result of No Vote. At the end, the following statement is absolutely incorrect: "Reduces by 50% the net lottery proceeds currently available for mandated purposes." The counties have the same obligation as the Legislative Assembly, but are given the leeway to provide for public safety, which the Legislative Assembly cannot do.

I have prepared an alternative ballot title, which contains a comprehensive revision, which meets the statutory requirements and which fairly reflects the contents and meaning of this initiative. This is attached, and I ask that it be incorporated into this commentary letter.

Thank you for your consideration.

Sincerely,

Kevin L. Mannix
Oregon Elector
Attorney at Law
Representing Cliff Sain-Thomason, Patricia Milne, and Wayne Simmons

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**BALLOT TITLE
RECOMMENDED BY CHIEF PETITIONERS
INITIATIVE PETITION 31**

CAPTION

Amends Constitution: County Commissioners, instead of Legislature, authorized to decide allocation of fifty percent (50%) of lottery income.

RESULT OF YES VOTE

"Yes" vote authorizes Commissioners of all counties, rather than Legislature, to allocate fifty percent (50%) of lottery income for currently established lottery purposes, plus public safety.

RESULT OF NO VOTE

"No" vote maintains Legislature's authority to allocate all lottery income, within established categories; public safety use not authorized, and county commissioners do not allocate funds.

SUMMARY

Oregon Constitution currently provides that the Legislature appropriate lottery income for economic development, job creation, at least 15% for parks and habitat restoration, at least 18% for education. Measure continues Legislature's authority as to these appropriations. Measure requires that 50% of remaining lottery income be appropriated to fund for counties in which commissioners of each county make allocations to economic development, job creation, parks, habitat restoration, and education, plus commissioners are authorized to allocate their portion of funds for new category: public safety. County fund divided by formula: 10% evenly divided among all 36 counties; 90% divided based on proportion of lottery income which comes from each county.

KATE BROWN
SECRETARY OF STATE



GINA ZEJDLIK
INTERIM DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

For Immediate Release:
October 25, 2013

Contact: Lydia Plukchi
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on October 24, 2013, for initiative petition #31, proposing a constitutional amendment, for the General Election of November 4, 2014.

In addition, Secretary of State Kate Brown determined that the proposed initiative petition was in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions.

The certified ballot title is as follows:

**Amends Constitution: Fifty percent of net lottery proceeds distributed to counties,
reducing amount available for state appropriations**

Result of "Yes" Vote: "Yes" vote requires depositing 50% of lottery net proceeds in fund for distribution to counties; reduces amount of lottery funding available for legislative appropriations.

Result of "No" Vote: "No" vote retains using 100% of lottery net proceeds for legislative appropriations for specified public purposes, including: economic development, public education, protecting natural resources.

Summary: Amends Constitution. Constitution currently mandates 100% of state lottery net proceeds be used to create jobs; further economic development; finance a public education stability fund and a school capital matching fund; finance a parks and natural resources fund to be used for specified purposes, including restoration and protection of parks, beaches, watersheds, and native fish/wildlife. Measure requires 50% of lottery net proceeds be deposited in "county revenue distribution fund" and distributed to counties: ten percent divided equally between counties, remainder distributed based on each county's lottery sales. Reduces net lottery proceeds available for appropriation by legislature. Counties shall use funds for currently specified purposes, plus public safety. Counties may distribute funds to other governmental units within county for such purposes. Other provisions.

**Chief Petitioner(s): Cliff Sain-Thomason, NE Tokay Heights, Grants Pass, OR 97526, Patricia Milne,
Miller Farm Rd, Woodburn, OR 97071 and Wayne Simmons, Orchard Heights Rd NW, Salem, OR 97304.**

Copies of the text of this Initiative are available at www.oregonvotes.gov.

There now follows an appeal period of 10 business days. Any elector dissatisfied with the ballot title certified by the Attorney General, who also submitted in a timely manner written comments which addressed the specific legal standards a ballot title must meet, may petition the Supreme Court for a different title. The appeal period ends at 5:00 p.m. on November 7, 2013. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2014 General Election ballot is 116,284. These signatures shall be filed in this office not later than July 3, 2014.

#

BALLOT TITLE

Amends Constitution: Fifty percent of net lottery proceeds distributed to counties, reducing amount available for state appropriations

Result of "Yes" Vote: "Yes" vote requires depositing 50% of lottery net proceeds in fund for distribution to counties; reduces amount of lottery funding available for legislative appropriations.

Result of "No" Vote: "No" vote retains using 100% of lottery net proceeds for legislative appropriations for specified public purposes, including: economic development, public education, protecting natural resources.

Summary: Amends Constitution. Constitution currently mandates 100% of state lottery net proceeds be used to create jobs; further economic development; finance a public education stability fund and a school capital matching fund; finance a parks and natural resources fund to be used for specified purposes, including restoration and protection of parks, beaches, watersheds, and native fish/wildlife. Measure requires 50% of lottery net proceeds be deposited in "county revenue distribution fund" and distributed to counties: ten percent divided equally between counties, remainder distributed based on each county's lottery sales. Reduces net lottery proceeds available for appropriation by legislature. Counties shall use funds for currently specified purposes, plus public safety. Counties may distribute funds to other governmental units within county for such purposes. Other provisions.

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KATE BROWN
SECRETARY OF THE STATE

CERTIFICATE OF FILING

I certify that I directed the original and nine copies of the PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition #31) to be hand-delivered to the Appellate Court Administrator, Appellate Court Records Section on November 5, 2013, at:

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

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition #31) upon the following individual on November 5, 2013, by delivering a true, full, and exact copy thereof, by hand delivery to:

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

And upon the following individual via hand delivery:

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

DATED this 5th day of November 2013.

KEVIN L. MANNIX, P.C.

By: Kevin L. Mannix, OSB #742021
Attorney for Petitioners