

JUN 18 2013

IN THE SUPREME COURT OF THE STATE OF OREGON

KNUTE BUEHLER and DUANE RAY FLETCHALL,)
)
 Petitioners,)
)
 v.)
)
 ELLEN ROSENBLUM, Attorney General,)
 State of Oregon,)
)
 Respondent.)

SUPREME COURT
COURT OF APPEALS
Supreme Court Case No.
61408
PETITION TO REVIEW BALLOT
TITLE CERTIFIED BY THE ATTORNEY
GENERAL
Initiative Petition 11 (2014)

Initiative Petition 11 (2014)
Ballot Title Certified June 6, 2013

Fee Paid \$355.42

JUN 18 2013

By Chk # 2397

Chief Petitioners:

Knute Buehler
Foxwood Place
Bend, OR 97701

Duane Ray Fletchall
Bison Court NE
Salem, OR 97305

Kevin L. Mannix, OSB #742021
Kevin L. Mannix, P.C.
2009 State Street
Salem, OR 97301
Telephone: (503) 364-1913
Facsimile: (503) 362-0513

Ellen F. Rosenblum, OSB #753239
Laura S. Anderson, OSB #881500
Department of Justice
1162 Court St. NE
Salem, OR 97310-4096
Telephone: (503) 378-4402
Facsimile: (503) 378-6306

Of Attorneys for Petitioners

Attorneys 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 11 (2014) (Ex. A), which ballot title was certified by the Attorney General on June 6, 2013 (Ex. D), and 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 Knute Buehler and Duane Ray Fletchall are Oregon electors who are the Chief Petitioners for this Initiative Petition # 11, 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 submitted comments (Ex. C) on the draft ballot title (Ex. B), and therefore have standing under ORS 250.085(2) to seek review on the certified ballot title in this matter.

ARGUMENTS AND AUTHORITIES

I. Introduction

Initiative Petition 11 would enact the Our Oregon Signatures Count Act (hereinafter "the Act"). (Ex. A). The primary effect of the Act is to give registered voters a statutory power which they presently do not have: a right, enforceable in the courts, to have their valid signatures counted on a petition for an initiative, a referendum, a candidate nomination, formation of a political party, or a recall.

Presently, an Oregon registered voter who signs a petition sheet which is timely submitted can have his or her signature set aside, and not counted, for many reasons having nothing to do with the voter. Examples were listed on pages one and two of our comment letter (Ex. C). The most appalling situation is this: the elections officer may simply decide that the signature is not that of the voter. If this occurs as to a Vote-By-Mail ballot, there is a clear process for notifying the voter and allowing the voter to come forward to confirm the signature. ORS 254.470(9); OAR 165-007-0030, pages 26-33. No such process exists as to a signature on a petition. Sections 5, 6, and 7 of the Act establish such a process for petitions. (Ex. A).

A second major effect of the Act relates to ballot titles. The Act establishes a new approach for any measure consisting of 100 words, or fewer, of text: the text itself is placed on the petition, and on the ballot, rather than a ballot title. (Ex. A, Sections 10, 11, 15). The current statutory scheme calls for a ballot title of not more than 205 words for non-state measures and not more than 190 words for state measures. ORS 250.035. The intent of the Act is to allow voters to read the actual text when it is significantly shorter than ballot title language. Interpretation as to the merits – and the effect – of any given measure is left to the campaign process. Whether or not the Court agrees with this approach, this is a major change.

II. Caption

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 Attorney General certified the following caption:

Changes, repeals laws governing petition signatures, ballot titles, qualified voters; authorizes lawsuits challenging disqualified signatures.

There is no doubt that the Act “changes” certain laws. But we find nothing in the Act which “repeals” laws. The Act clearly amends one specific statute (Ex. A, Section 14); it supersedes any inconsistent laws (Ex. A, Section 16); and it enacts new provisions (e.g. Ex. A, Sections 4 to 13). But nothing is repealed as such. The Act does modify the enforcement of laws to allow an innocent petition signer, who is a voter, to have his or her signature counted. But the enforcement of restrictions, as to actions by others, can continue: imposition of fines, criminal penalties, etc.

The Attorney General’s caption is confusing and misleading in its second part: the phrase “authorizes lawsuits challenging disqualified signatures.” A regular voter – not an attorney – may readily misinterpret this to mean that the Act allows a third party to bring a lawsuit to assert that an accepted signature should have been disqualified.

The Act only allows a voter (or Chief Petitioner) to bring legal action to force qualification of a signature (Ex. A, Section 7).

An accurate description can be found in the ballot title for Initiative Petition 12, from the 2012 election cycle. That initiative only dealt with the "enforceable right" as to counting a signature. This Court required a modified caption. *Rasmussen v. Kroger*, 350 Or 271, 253 P3d 1037 (2011). The modified caption submitted to this Court became final, and read: "Amends Constitution: Prohibits laws excluding qualified voters' signatures on initiative/referendum petitions; allows lawsuits compelling counting signature(s)."

While the first part of the above caption is not fully applicable here, the second part provides an understandable, inclusive solution: "allows lawsuits compelling counting signature(s)."

We do believe the Attorney General properly attempted to include voter qualification (reactivation) as a subject. (Ex. A, Section 12). So, we do not object to that element of the caption.

Accordingly, we recommend that the caption for Initiative Petition 11 be changed to read:

Changes laws governing petition process, ballot titles, reactivating Voters; allows lawsuits compelling counting voter signature(s).

III. Result of "Yes" and "No" Vote Statement

The Attorney General certified the following language:

Result of "Yes" Vote: "Yes" vote changes, repeals laws governing petition signature qualification, verification, counting; public notice required if voter's signature rejected; requires printing entire text of short measures.

Result of "No" Vote: "No" vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter; all measures receive ballot titles.

These statements must be "simple and understandable." ORS 250.035(2)(b) and (c). They are neither.

First, for the reasons presented in our discussion of the caption, we object to the use of the word "repeals."

Second, there is no mention in the "Yes" section of where the "entire text" of short measures should be printed.

Third, there is no mention of the authorization of court action – a primary element of the Act – in the "Yes" section.

Fourth, the focus in the "No" section on "disqualification of signatures unlawfully obtained" is not understandable – it is incorrect, and it is misleading because it is under-inclusive. Further, the additional phrasing "not matching voter records, signed by inactive/unregistered voter" does not cure the under-inclusive problem, and makes it worse: there is nothing in the Act which allows a person who is not a registered voter to have his/her signature counted. The "No" section, by proclaiming a "No" vote retains laws allowing disqualification of "unregistered" voters, suggests that a "Yes" vote prevents disqualification of an unregistered person's signature. This is not so.

The reference to "signatures unlawfully obtained" suggests (to the average reader) that the signer did something wrong. The average reader will not parse the language and understand that it is the circulator, or someone else, who erred. In addition, many voters' signatures are set aside for reasons which have nothing to do with "unlawful" activity: if a circulator fails to properly fill out a certification, the voters' signatures on that sheet are set aside; if the petition sheet is the wrong color, those voters' signatures are set aside. E.g. OAR 165-14-0030(16) and (17). The circulator did not "unlawfully" obtain the signatures. The circulator simply failed to comply with petition form or certification procedures.

The Result of "Yes" Vote section should be modified to read:

Result of "Yes" Vote: "Yes" vote requires notice of rejection of petition signature; voter may require acceptance of valid signature; requires printing text of short measure on petition, ballot.

With the above modification, the Attorney General's original draft result of "No" vote language (Ex. B) to which we did not object (Ex. C), is properly inclusive and not confusing. It can be reinstated:

Result of "No" Vote: "No" vote retains existing laws that regulate collecting, counting and verifying petition signatures to determine if measure qualifies for ballot; retains existing ballot title requirements.

IV. The Summary

There is one phrase in the middle of the certified summary which is blatantly argumentative and so under-inclusive as to violate the statutory requirement that the summary be an "impartial statement." ORS 250.035 (2)(d). This is the objectionable language: "Measure prohibits laws disqualifying voter's valid signature even if gatherer/circulator obtains it illegally..."

First, it is wrong to say the Act "prohibits laws." It does not. As to laws dealing with forgery, fraud, or the orderly process in the circulation of a petition, such laws "shall not be enforced in any manner so as to prevent the signature of a registered voter, who has committed no violation of law, from being included in the determination whether the petition contains the required number of signatures of voters." (Ex. A, Section 3). (emphasis supplied).

So: No laws are precluded. Enforcement is only restricted, if a real, registered voter has done no wrong and has signed a real petition. The circulator may have obtained the signature legally, and subsequently, made a mistake, such as failing to fully fill in the circulator section at the bottom of a petition sheet. The circulator – or the Chief Petitioners – can be subject to sanctions for errors or misconduct, but the innocent voter/signer is not penalized by having a real signature on a real petition set aside.

The under-inclusive elements of the above-quoted phrase are especially harmful by use of the language "even if a gatherer/circulator obtains it illegally." Did the circulator bribe the voter? – Whoops, that is not covered in the Act. As such, a voter is not innocent. The phrase almost amounts to a shout: We are allowing illegal activity here! Yet, we are not – sanctions still exist for the perpetrator of illegal action. Also, not all circulator errors amount to obtaining a signature "illegally." Their error may have occurred after the voter signed. The language is under-inclusive and inflammatory. An impartial phrase should replace the bad language; we recommend the following: "Measure limits enforcing petition restrictions so valid voter's signature on petition is not disqualified..."

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 18th day of June 2013.

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

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

Our Oregon Signatures Count Act

The People of the State of Oregon adopt the following statute:

Section 1. This 2014 Act shall be known as the Our Oregon Signatures Count Act. It is the intention of this Act to protect and strengthen Oregon's long and proud history of encouraging and respecting the participation of the people in the election process.

Section 2. Each registered voter who signs a petition shall have an individual, enforceable right to have his or her signature counted on the petition, provided the petition has been timely filed with the election official assigned to process such petition.

Section 3. Laws and regulations may be enacted and enforced to prevent forgery or fraud, and to maintain an orderly process in the circulation of a petition. However, such laws and regulations shall not be enforced in any manner so as to prevent the petition signature of a registered voter, who has committed no violation of law, from being included in the determination whether the petition contains the required number of signatures of voters.

Section 4. Notwithstanding ORS 250.042, the Secretary of State and elections officers may not disqualify a signature on a petition based on the failure of a circulator to comply with a law governing the circulation of petitions unless the secretary or elections officer determines that the circulator's failure was the result of a knowing and willful violation of law.

Section 5. The Secretary of State and elections officers may not disqualify the signature of a registered voter on a petition unless the secretary or elections officer notifies the voter of the proposed disqualification as provided in section 6 of this 2014 Act and the voter does not timely notify the secretary or elections officer that the signature is the signature of the voter.

Section 6. If the Secretary of State or an elections officer proposes to disqualify a signature of a registered voter on a petition, the secretary or elections officer shall post the name of the voter on the web site of the secretary or elections officer for a period of 10 business days with a notice that the secretary or elections officer will disqualify the signature if the voter does not notify the secretary or elections officer of the validity of the signature within 10 business days of the posting of the signature. If the voter notifies the secretary or elections officer that the signature is valid, the secretary or elections officer shall count the signature.

Section 7. If the Secretary of State or an elections officer disqualifies a signature from a petition, the registered voter or a chief petitioner of the petition may bring an action in circuit court to require the counting of the voter's signature on the petition. In any action under this section, the secretary or elections officer bears the burden of proving that the signature should not be counted. The court shall award attorney fees and costs to a voter or chief petitioner who prevails in an action under this section. The courts of this state shall give precedence to actions under this section to the extent necessary to ensure that the secretary or elections officer counts the signature within time limits prescribed by the constitution or by law. If a final decision has not been reached by the courts within such time limits, the voter's signature shall be counted for purposes of determining whether the petition contained sufficient voter signatures.

Section 8. If a voter's signature was selected for verification as part of a signature sample as authorized by statute, and the voter's signature is required to be counted as provided by this Act or by order of any court of competent jurisdiction, the voter's signature shall be re-inserted into the results of the sample.

Section 9. For purposes of this 2014 Act:

- (a) "Petition" means an initiative, referendum, candidate nomination, formation of a political party, or recall petition;
- (b) "Count" or "Counted" means to include the registered voter's signature in the final tally as to whether the petition contains the required number of voter signatures.
- (c) "Signature" means a person's name, or a mark used by a person, to indicate that the person has signed a petition.

Section 10. Except as required by the constitution of this state, laws governing ballot titles for petitions and ballot measures do not apply to petitions and ballot measures by citizen initiative that contain 100 words or fewer of text (excluding the enacting or amendatory clause).

Section 11. Any ballot measure by citizen initiative that contains 100 words or fewer of text (excluding the enacting or amendatory clause) shall have the full text of the measure presented on the ballot immediately after the measure number and the enacting or amendatory clause. The full text of the proposed measure shall be printed on any petition sheet instead of any ballot title.

Section 12. If a registered voter signs a petition, and the voter is deemed to be an inactive registered voter, the act of placing his or her signature on a petition shall constitute the immediate re-activation of the voter's registration at the address indicated by the voter on the petition, and the voter's signature shall be counted on that petition.

Section 13. On the date a voter registration form is signed by an otherwise eligible person, the person's signature shall be deemed active and registered for the purpose of signing any petition.

Section 14. ORS 250.052(6) is amended so the following language in italics is deleted:

(6) In addition to the templates prepared under subsections (1) to (5) of this section, for each state initiative, referendum or recall petition, the secretary shall prepare an official electronic template of a signature sheet for the petition. A template prepared under this subsection shall allow space for the signature of one elector. An elector may [*print a copy of the electronic signature sheet for a petition,*] sign the sheet and deliver the signed sheet to a chief petitioner or an agent designated by a chief petitioner. Electronic templates described in this subsection are subject to the requirements of ORS 250.045, other than ORS 250.045 (6), (9) and (10).

Section 15. It is the intent of the People that respect be shown to voters as to their signatures on petitions, and that the full text of reasonably short ballot measures be presented to voters on the ballot itself, so voters can readily see the actual full text.

Section 16. This 2014 Act supersedes any Oregon law which is inconsistent with this Act.

Section 17. This 2014 Act is effective January 1, 2015.

RECEIVED
2013 MAR 29 PM 3 53
KATE BROWN
SECRETARY OF THE STATE

EXHIBIT A
page 2

KATE BROWN
SECRETARY OF STATE



STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

For Immediate Release:
May 7, 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 May 7, 2013, for initiative petition #11, proposing a statutory amendment, for the General Election of November 4, 2014.

The draft ballot title is as follows:

**Changes procedures for disqualifying petition signature of registered voter,
challenging disqualification, describing certain ballot measures**

Result of "Yes" Vote: "Yes" vote changes procedures for disqualifying petition signature, challenging signature disqualification of registered voter; requires printing entire text of short ballot measure on petition, ballot.

Result of "No" Vote: "No" vote retains existing laws that regulate collecting, counting and verifying petition signatures to determine if measure qualifies for ballot; retains existing ballot title requirements.

Summary: Currently, initiative petitions qualify for placement on the ballot based on the number of qualified registered voters' signatures; constitutional provisions, statutes and rules regulate signature collection, verification and counting to prevent fraud, forgery and improper signature-gathering. Measure prohibits laws excluding from signature count (defined) a qualified voter's signature on petition (defined), even if signature was obtained unlawfully; allows for future anti-forgery, anti-fraud laws in petition circulation; requires notice of proposed signature disqualification and opportunity to validate; provides re-activation of inactive voter's registration automatically when voter signs a petition; requires that if initiative measure is 100 words or less, entire text of measure will be printed on petition and ballot; allows qualified voter/chief petitioner to sue to require counting qualified voter's signature. Other provisions.

EXHIBIT B
page 1

Chief Petitioner(s): Duane Ray Fletchall, Bison Ct. NE, Salem, OR 97305 and Knute Buehler, 1122
Foxwood Place, Bend, OR 97701.

Copies of the text of this initiative are available at Suite 501, 255 Capital St NE for \$.25. Written requests for copies with your remittance of \$1.00 prepaid, should be addressed to: Elections Division, 255 Capital St NE Ste 501, Salem, OR 97310.

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 May 21, 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 May 21, 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 87,213. These signatures shall be filed in this office not later than July 3, 2014.

ELLEN F. ROSENBLUM
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

May 7, 2013

Stephen N. Trout
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition — Changes Procedures For Disqualifying Petition Signature of Registered Voter, Challenging Disqualification, Describing Certain Ballot Measures
DOJ File #BT-11-13; Elections Division #11

Dear Mr. Trout:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to changing the procedures for disqualifying petition signatures, for challenging disqualification, and for describing certain ballot measures.

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.

Legal Secretary

LSA:mlk/4191963

Enclosure

Lynn Rosik, General Counsel Division

Duane Fletchall
Bison Court NE
Salem, Oregon 97305

Knute Buehler
1122 Foxwood Place
Bend, Oregon 97701

RECEIVED
2013 MAY 7 PM 3 22
KATE BROWN
SECRETARY OF THE STATE

EXHIBIT B
page 3

DRAFT BALLOT TITLE

**Changes procedures for disqualifying petition signature of registered voter,
challenging disqualification, describing certain ballot measures**

Result of "Yes" Vote: "Yes" vote changes procedures for disqualifying petition signature, challenging signature disqualification of registered voter; requires printing entire text of short ballot measure on petition, ballot.

Result of "No" Vote: "No" vote retains existing laws that regulate collecting, counting and verifying petition signatures to determine if measure qualifies for ballot; retains existing ballot title requirements.

Summary: Currently, initiative petitions qualify for placement on the ballot based on the number of qualified registered voters' signatures; constitutional provisions, statutes and rules regulate signature collection, verification and counting to prevent fraud, forgery and improper signature-gathering. Measure prohibits laws excluding from signature count (defined) a qualified voter's signature on petition (defined), even if signature was obtained unlawfully; allows for future anti-forgery, anti-fraud laws in petition circulation; requires notice of proposed signature disqualification and opportunity to validate; provides re-activation of inactive voter's registration automatically when voter signs a petition; requires that if initiative measure is 100 words or less, entire text of measure will be printed on petition and ballot; allows qualified voter/chief petitioner to sue to require counting qualified voter's signature. Other provisions.

RECEIVED
2013 MAY 7 PM 3 22
KATE BROWN
SECRETARY OF THE STATE

EXHIBIT B
page 4



2009 State Street
Salem, Oregon 97301-4349
Phone (503) 364-1913
Fax (503) 362-0513

RECEIVED

2013 MAY 21 PM 2 18

KATE BROWN
SECRETARY OF THE STATE

May 21, 2013

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

RE: Ballot Title, Initiative Petition 11

Ladies & Gentlemen:

This letter presents comments in regard to the draft Ballot Title prepared by the Attorney General for Initiative Petition 11 (Our Oregon Signatures Count Act). I present these comments on behalf of myself, as an Oregon elector, and as an attorney on behalf of Duane Ray Fletchall, and Knute Buehler, Oregon electors and the two Chief Petitioners on this initiative.

Overall, the Ballot Title is supposed to give voters a balanced sense of what this citizen initiative will do. The word limitations set by statute for each part of the Ballot Title, as a practical matter, often preclude a complete description of what the initiative will do. This often requires a focus on the major elements.

So, I begin these comments, as one of the architects of this citizen initiative, with an outline of the major elements of change presented by the Our Oregon Signatures Count Act (the Act).

First and foremost, the Act gives registered voters a statutory power which they presently do not have: a right, enforceable in the courts, to have their signatures counted on initiative, referendum, and recall petitions.

Currently, anyone can sign a petition form (and yes, sometimes non-voters erroneously do so). But when a registered voter signs such a petition, one would hope that the voter's signature would be respected – and counted – when the petition is timely presented to the appropriate elections official.

This is, sadly, sometimes more of a hope rather than a reality. An Oregon registered voter who signs a petition sheet which is timely submitted can have his or her signature set aside, and not counted, for many reasons having little or nothing to do with the voter. Here are some examples from the 2008-2010-2012 general election cycles:

1. The color of the petition sheet (light blue) had not yet been approved by the Elections Division at the time certain voters signed the light blue sheets.

2. The circulator who signed at the bottom did not use the proper date format (month-day-year) but instead used the European/military date format (day-month-year)
3. Part of the petition sheet was torn off.
4. The signature may have been recognized but the voter used a new address.
5. The voter was a registered voter but had not voted recently so the voter was not an active registered voter. An inactive registered voter who signs a Vote-By-Mail ballot is automatically reactivated (and his/her vote is counted) but an inactive registered voter who signs a petition is ignored and treated as if non-registered.

But the most frustrating part of this process occurs when elections officials simply refuse to recognize the signature of a registered voter, with proper/current address, who has signed a petition. These decisions are made on the spot, without use of handwriting experts, based on a comparison of the petition signature with signatures on samples (such as the voter registration card) available, by computer, to elections officials.

So, what happens when a voter's signature is set aside? Observers, present at the request of the Chief Petitioners, or representing initiative opponents, can question a decision to accept/deny a signature. But other than an informal give-and take at the time of petition review, the voter himself/herself has no right to be heard. Court decisions give wide discretion to the authority of elections officials to accept/refuse voter signatures. Within recent years, even an affidavit from a voter, identifying a signature as his/hers, has been rejected.

This occurs because no statute provides a court process or legal authority for voters or Chief Petitioners to press for acceptance of voter signatures on petitions.

This is unlike the statutes which apply to elections themselves. When a voter signs a Vote-By-Mail envelope and sends it in, that signature is evaluated for acceptance. If it is accepted, all is well and the enclosed ballot is counted. If it is rejected, the elections official must hold the ballot and write to the voter, to ask the voter to confirm he/she signed the envelope. If the voter confirms this, the ballot is accepted and counted (unless a rare case of forgery/fraud ensues).

This is no similar process for voter signatures on petitions. Yet the rejection of a single voter signature on a petition has a significant multiplier effect: only a limited sample of signatures are selected for verification, so rejection of a single signature in the verification process can be the equivalent of as many as 400 "bad" signatures on a statewide petition.

Practically speaking, there is no time for a letter to be sent to each voter whose signature is rejected, and this involves added expense. So this initiative simply requires a web posting of the signature-rejection information, with 10 business days for a voter to assert the signature should be accepted. Of course, few voters are going to search out this information; but Chief Petitioners will pay attention and will have a chance to contact a supportive voter and get him/her to confirm the signature.

This gets us to the burden of proving a signature. If the voter asserts he/she has signed the petition, and confirms the rejected signature, why should any elections official object?

The Act essentially empowers the voter to insist that his/her signature be recognized and counted – and provides for court proceedings to enforce this right. This is a major change and needs to be the key element of the caption and remainder of the Ballot Title.

The second major change in the Act relates to Ballot Titles themselves. Oregon law recognizes that many initiatives are lengthy, and are too long to place the text on the ballot itself. So, Oregon has a process for a 190-word Ballot Title, to efficiently and effectively inform voters about the measure to be voted upon. But what about a measure which contains 100 words or fewer? Why use a government-issued Ballot Title (sorry about that – no offense!) which is 190 words long when the measure itself is 100 words or fewer? Right now the voter must go to the Voters' Pamphlet to read the text of the measure. Under this system, if we were to propose the First Amendment to the U.S. Constitution, to be added to the Oregon constitution, voters would read the Attorney General (or Supreme Court) interpretation in the Ballot Title – but would have to seek the short text itself in the Voters' Pamphlet. (I know we have our own broader, Freedom of Expression clause; I am just using this as a rhetorical example).

With this in mind we can turn to the draft Ballot Title.

The draft Caption reads as follows:

Changes procedures for disqualifying petition signature of registered voter, challenging disqualification, describing certain ballot measures.

This draft misses the heart of the Act, and makes it appear that we are simply changing “procedures for disqualifying” petition signatures of registered voters. This is substantially under-inclusive. There is no hint that voters will be empowered to insist that their signatures be counted, and that specific court proceedings are authorized for enforcement – which do not presently exist, as discussed above. A caption which touches upon the heart of this Act, and then touches upon the fact that other changes occur, should read as follows:

Voters may bring court action to enforce acceptance of their petition signatures; other petition changes.

Alternatively, a good caption would read:

Voters may require acceptance of their petition signatures; ballot must present text of certain measures.

The result of a “Yes” Vote draft reads:

Result of “Yes” Vote: “Yes” vote changes procedures for disqualifying petition signature, challenging signature disqualification of registered voter; requires printing entire text of short ballot measure on petition, ballot.

This is again under-inclusive and so bland as to be potentially misleading. Again, the changed "procedures" reflect a complete turn-about in the burden of proof, so to speak, as to rejection of voter signatures. When the voter chooses to object, the elections official bears the burden of disproving a signature, in a court proceeding, where currently the voter can only beg for consideration. A clearer, more inclusive version should read:

Result of "Yes" Vote: "Yes" vote requires notice of rejection of petition signature; voter may require acceptance of valid signature; requires printing text of short ballot measure on ballot.

The original draft also includes reference to printing the text of a short ballot measure on "petition." This is true, but at present the rules do allow both a ballot title and text (when it can fit) for a shorter measure to be printed on a petition sheet. So, this change is not as significant and we recommend words be allocated to the more significant elements.

The Result of "No" Vote draft reads:

Result of "No" Vote: "No" vote retains existing laws that regulate collecting, counting and verifying petition signatures to determine if measure qualifies for ballot; retains existing ballot title requirements.

We have no proposed changes to this.

As to the Summary, we recognize the challenge of trying to summarize the impact of this initiative in 125 words. We generally agree that the Summary meets statutory standards. But one part has a misleading negative slant in its narrow focus. It is this phrase, in the middle of the Summary:

"Measure prohibits laws excluding from signature count (defined) a qualified voter's signature on petition (defined), even if signature was obtained unlawfully;"

The reference to a signature which was "obtained unlawfully" focuses on illegality, and to the ordinary reader, suggests the voter did something wrong. The signature itself was not "obtained unlawfully." The voter properly signed a proper petition form which was timely turned in. The circulator may have done something which violated a rule, but that act has nothing to do with whether:

- a) The voter exists;
- b) The voter is registered;
- c) The voter actually signed a real petition; and
- d) The petition was turned in by the constitutional deadline.

The errant phrase should be corrected to read:

"Measure prohibits restrictions excluding from signature count a qualified voter's signature on timely petition, when someone else makes procedural error."

The reference, in the draft, which says "Measure prohibits laws..." is especially offensive and incorrect. Section 3 of the Act provides that "...laws and regulations shall not be enforced in any manner so as to prevent the signature of a registered voter, who has committed no violation of law, from being included in determination" of the signature count.

The real preclusion here is on "enforcement in any manner" so as to prevent counting the petition signature of a registered voter. It does not prohibit laws themselves. There can be penalties for violations, such as civil fines. But, there cannot be a death penalty for real signatures of real voters. The innocent signer is not punished for errors of others.

Our replacement phrase, quoted above, better reflects this. Since it is necessary to synthesize things to stay within the word limit, we used the short term "restrictions." It is more inclusive as to the coverage, as it gets to the "enforcement" point.

Thank you for your consideration.

Sincerely,

Kevin L. Mannix,
Attorney at Law
For myself, and Representing Duane Ray Fletchall and Knute Buehler

KATE BROWN
SECRETARY OF STATE



STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

For Immediate Release:
June 6, 2013

Contact: Summer Davis
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on June 6, 2013, for initiative petition #11, proposing a statutory 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:

Changes, repeals laws governing petition signatures, ballot titles, qualified voters; authorizes lawsuits challenging disqualified signatures

Result of "Yes" Vote: "Yes" vote changes, repeals laws governing petition signature qualification, verification, counting; public notice required if voter's signature rejected; requires printing entire text of short measures.

Result of "No" Vote: "No" vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter; all measures receive ballot titles.

Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure prohibits laws disqualifying voter's valid signature even if gatherer/circulator obtains it illegally; reactivates "inactive" voter registration for all purposes automatically upon signing petition, counts signature. Requires public electronic posting of voter name if signature disqualified; signature counts if voter validates. Authorizes lawsuit to contest signature disqualification, attorney fees to voter/chief petitioner. Eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

EXHIBIT D
page 1

Chief Petitioner(s): Duane Ray Fletchall, Bison Ct. NE, Salem, OR 97305 and Knute Buehler, 1122
Foxwood Place, Bend, OR 97701.

Copies of the text of this initiative are available at Suite 501, 255 Capital St NE, for \$.50. Written requests for copies with your remittance of \$1.00 prepaid, should be addressed to: Elections Division, 255 Capitol St NE, Ste 501, Salem, OR 97310.

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 June 20, 2013. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2014 General Election ballot is 87,213. These signatures shall be filed in this office not later than July 3, 2014.

#

BALLOT TITLE

**Changes, repeals laws governing petition signatures, ballot titles, qualified voters;
authorizes lawsuits challenging disqualified signatures**

Result of "Yes" Vote: "Yes" vote changes, repeals laws governing petition signature qualification, verification, counting; public notice required if voter's signature rejected; requires printing entire text of short measures.

Result of "No" Vote: "No" vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter; all measures receive ballot titles.

Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure prohibits laws disqualifying voter's valid signature even if gatherer/circulator obtains it illegally; reactivates "inactive" voter registration for all purposes automatically upon signing petition, counts signature. Requires public electronic posting of voter name if signature disqualified; signature counts if voter validates. Authorizes lawsuit to contest signature disqualification, attorney fees to voter/chief petitioner. Eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

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 #11) to be hand-delivered to the Appellate Court Administrator, Appellate Court Records Section on June 18, 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 #11) upon the following individuals on June 18, 2013, by delivering a true, full and exact copy thereof by hand delivery to:

Ellen F. Rosenblum, OSB #753239
Laura S. Anderson, OSB #881500
Department of Justice
1162 Court St. NE
Salem, OR 97310-4096
Telephone: (503) 378-4402
Facsimile: (503) 378-6306
Attorneys 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 18th day of June 2013.

KEVIN L. MANNIX, P.C.

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