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IN THE SUPREME COURT OF THE STATE OF OREGON	SC S_____
ERIC WINTERS, Petitioner, v. ELLEN ROSENBLUM, Attorney General, Respondent.	**ORAL ARGUMENT REQUESTED**

PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (INITIATIVE PETITION 2016-036)

The Attorney General certified the Ballot Title for Initiative Petition 2016-036 on June 17, 2015. The Chief Petitioner is Jill Gibson. Petitioner timely submitted comments on the Draft Ballot Title for Initiative Petition 2016-036. Eric Winters is Petitioner in this action representing himself, *pro se*.

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STANDING

Petitioner Eric Winters is an Oregon elector dissatisfied with the Certified Ballot Title for Initiative Petition 2016-035. The full text of the Ballot Title, as certified to and filed with the Secretary of State is Attached as Exhibit A.[1] Petitioners timely submitted written comments objecting to the Draft Ballot Title for Initiative Petition 2016-036 with the Secretary of State on June 2, 2015 pursuant to ORS 250.067(1) (Attached as Exhibit C).

The subject of this Petition to Review relates to new language the Attorney General inserted into the Caption, Results Statements and Summary of the Ballot Title after the end of the administrative comment period. Because the language the Petitioners object to was inserted after the expiration of the administrative comment period, Petitioners are entitled to raise these objections for the first time before this Court. *Carley v. Myers*, 340 Or. 222, 232, 132 P.3d 651, 656 (2006).

OBJECTION

The Ballot Title does not comply with the requirements of ORS 250.035(2) because: 1) its Caption fails to reasonably identify the subject matter of the measure, 2) the Result of "Yes" Vote statement fails to accurately describe the result of approving the measure, and (3) the Summary statement inaccurately portrays aspects of the measure and inappropriately speculates about its effects.

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1 The text of the proposed measure for Initiative Petition 2016-036 is attached as Exhibit B.

ARGUMENTS AND AUTHORITIES

When reviewing a certified ballot title, this Court must decide whether the Attorney General's certified ballot title is in "substantial compliance" with the statutory requirements. *Huss v. Kulongoski*, 323 Or. 266, 269, 917 P.2d 1018 (1996); *McCormick v. Kroger*, 347 Ore. 293, 300, 220 P.3d 412 (2009).

I. The Ballot Title Caption Does Not Comply with ORS § 250.035(2)(a)

ORS § 250.035(2)(a) requires a "caption of not more than 15 words that reasonably identifies the subject matter of the state measure." The Caption for Initiative Petition 2016-036 ("IP 36") certified by the Attorney General does to meet this standard for two reasons. First, it fails to identify the subject matter of the proposed state measure which is to remove legal requirements that force two parties to associate with one another. Second it improperly identifies the subject matter of the proposed measure by attributing an indirect and theoretical and "free rider" effect as its central purpose.

The Caption of the Attorney General's **Draft Ballot Title** accurately captured the central effect of IP 36:

> "Prohibits public employee unions from representing non-members or requiring non-members to pay representation costs"2

Currently, Oregon law requires a labor organization ("union") to collectively bargain on behalf of public employees within an appropriate bargaining unit ("ABU") if a voting

2 Petitioner objected in comment period to this Caption and offered three alternative captions (See Ex. C). However, the flaws original draft caption are truly minor in comparison to the caption flaws in the certified ballot title.

majority of the members of the ABU have chosen that union to serve as its exclusive representative.3 Public employees who do not choose to join the union may be nevertheless compelled by law to make "payments-in-lieu-of-dues" to the union under a "fair share agreement."4 The purpose of such an arrangement is to "defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employees." (ORS 243.650(18)). Employees may be assigned to an ABU by a third party (the Employment Relations Board or an employer) but lack any statutory authority to prevent their assignment to an ABU.5 The Employment Relations Board is empowered issue administrative rules governing the designation of an ABU.6

By the interplay of the laws described in the preceding paragraph, two parties (a union representing an ABU and non-members of a union within the ABU) may be compelled to associate with one another against their will. The union must represent every ABU member during collective bargaining and every ABU member can be compelled to pay the union for cost of related bargaining services.

The central purpose of IP 36 was to free both of these parties from these compelled associations by eliminating and modifying the statutes that bound them. Section 4 of IP 36 specifically declares that unions may only represent "Union Public Employees" and along

3 ORS 243.650(8)
4 ORS 243.650(10); ORS 250.650(18) and ORS 243.672(1)(c).
5 ORS 243.650(1).
6 ORS 243.766(1)

with Sections 6 and 7 prevent unions from assessing dues or payments-in-lieu-of-dues to non-members who are categorized as Independent Public Employees. The remaining changes to existing law proposed by IP 36 are designed to implement and define the rights of Independent Public Employees to personally negotiate their employment terms without threat of retaliation or discrimination for their status.

The Caption in the Attorney General's Certified Ballot Title neglects to mention of the central purpose of IP 36: to free unions and non-members from compelled associations. It does not inform voters that unions would barred from bargaining on behalf of non-member Independent Public Employees. It does not inform voters that Independent Public Employees could not be compelled to make payments to a union. It does not indicate the Independent Public Employees would be free to negotiate separate employment terms without union intervention. Instead, the Caption describes theoretical benefits that non-union public employees might indirectly gain from the efforts of a union that is prohibited from representing them.

The Attorney General altered the draft ballot title after comments by union officials argued that ballot titles for previous initiative filings were required to describe a "free rider effect" where the direct receipt of union representation activities would be uncompensated. Commenters cited a long history of cases that required such mention for initiative filings that prevented the assessment of dues (or payments-in-lieu-of-dues) by unions to non-members. However, none of the cited cases involved a proposal like IP 36 that bars a public employee union from bargaining on behalf of Independent Public Employees.

The argument for extending the "free rider" component in the Caption is that non-union employees who are assigned to an ABU would necessarily benefit from a union's negotiations with a public employer when the employment terms are established for union employees in the ABU. This relies on speculation about a number of unknown factors: 1) whether Independent Public Employees would bargain and commit to employment terms before or after a union collectively bargains, 2) whether Independent Public Employees would have entirely different prerogatives in their own negotiations with their employer, 3) whether Independent Public Employees would even be assigned to an ABU under the current designation rules of the Employment Relations Board (ERB) and, 4) whether or not the ERB would adopt rules on ABU designations to adapt to the statutory changes in IP 36. There may be many other factors that would affect non-members in their employment negotiations, but Attorney General should not be permitted to speculate about the indirect consequences resulting from the interplay of such factors.

The "free rider" concept should not be extended to require the mention of any speculative indirect benefit a non-member might receive if IP 36 is adopted. To do so would pervert the ballot title process by allowing the Attorney General to ignore the direct effects of a measure when describing its subject matter in favor of an indirect and speculative effect.7 The Attorney General should be directed to adopt the original

7 "In all events, the information must pertain to an identified, actual "effect" of enacting the measure; it is not permissible to "speculate about the possible effects of a proposed measure." *Girod v. Kroger*, 351 Or. 389 (Or., 2011).

Caption in the Draft Ballot Title for IP 36 listed above or one of the alternative versions submitted by Petitioner in Exhibit C. The Caption should describe how unions and non-nonmembers of unions would be directly untethered under IP 36.

II. Result of "Yes" Vote Does Not Comply with ORS § 250.035(2)(b)

The Result of "Yes" Vote Statement is flawed in the same manner as the Caption. The "Yes" Statement should describe the "result or results of enactment that would have the greatest importance to the people of Oregon." *Novick v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). The "Yes" Vote statement in the original Draft Ballot Title provided:

> **Result of "Yes" Vote:** "Yes" vote prohibits public employee unions from representing non-members, requiring contributions from non-members; prohibits less favorable employment terms for non-members. Union membership requires annual renewal.8

The Attorney General modified the Result of "Yes" Vote statement in the Certified Ballot Title to amplify "free rider" concerns in a very misleading manner. Like the Caption, it does not disclose that unions are barred from bargaining on behalf of non-members, nor does it disclose that non-members could not be required to pay a union for any union representation services. Instead, the statement implies that non-union public employees

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8 Petitioner submitted comments urging the Attorney General to adopt the following "Yes" Vote Statement: **Result of "Yes" Vote:** "Yes" vote permits public employees to represent themselves as "Independent Public Employees" without union intervention. Unions barred from charging representation fees to Independent Public Employees.

would continue to receive representation services from the union but that they could "refuse to share in costs" attributable to such union services. This description is Orwellian. As discussed above, IP 36 would prevent Independent Public Employees from being charged for the direct cost of services that the unions would be *barred* from providing. The language of the Result of "Yes" Vote statement in the Certified Ballot Title appears to have been crafted for the purpose of directly refuting the straightforward provisions of IP 36.

The Attorney General should return to the original Result of "Yes" statement in the Draft Ballot Title or adopt the suggested changes in footnote 8 that were submitted by Petitioner during the comment period.

III. The Summary Does Not Comply with ORS § 250.035(2)(d)

The Summary of a ballot title 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 function of the summary is 'to provide voters with enough information to understand what will happen if the measure is approved.'" *Girod v. Kroger*, 351 Ore. 389, 399, 268 P.3d 562 (2011) (*quoting Caruthers v. Kroger*, 347 Ore. 660, 670, 227 P.3d 723 (2010)). "That information may include a description of the effect of the measure at issue on other laws, so long as the description is accurate." *Girod*, 351 Ore. at 399 (*quoting Berman v. Kroger*, 347 Ore. 509, 514, 225 P.3d 32 (2009)). "In all events, the information must pertain to an identified, actual 'effect' of enacting the measure; it is

not permissible to 'speculate about the *possible* effects of a proposed measure.'" *Girod*, 351 Ore. at 399-400 (*quoting Pelikan/Tauman v. Myers*, 342 Ore. 383, 389, 153 P.3d 117 (2007) (emphasis in original); *see also Kain v. Myers (S49089)*, 333 Ore. 446, 450-51, 41 P.3d 416 (2002) (ballot title need not mention "conditional and conjectural" effects of proposed measure).

The Summary of the Certified Ballot Title for IP 36 is not impartial and does not summarize the major effect of the measure. Particularly, it does not "pertain to an identified, actual 'effect' of enacting the measure." *Girod*, 351 Ore. at 399-400. Beginning with the second sentence the Attorney General inserts language intended to cast doubt on whether the clear commandment in Section 8 of IP 36 means something else entirely:

"Measure states that public employee union may only represent union members in bargaining unit; non-members may represent themselves (effects are unclear)..."

That commentary does not belong in a ballot title describing IP 36. Commenters Vaandering and Darby suggested such language because the Court permitted it in *Caruthers v. Myers*, 344 Or 596 (2008). The proposed initiative in *Caruthers* was presented as an unnumbered narrative statute consisting of five sentences. It attempted to introduce uniform reforms to the relationships between public sector employees and their unions, and private sector employees and their unions. There is nothing unclear about the command in Section 4 of IP 36 that "A labor organization may only represent the Union Public Employees in an appropriate bargaining unit." IP 36 unequivocally addresses the

relationships between Independent Public Employees, Union Public Employees and Unions and carefully modifies statutory definitions throughout ORS Chapter 243 to ensure the changes are implemented fairly. None of the comments cited by the Attorney General explain how it is unclear whether unions are prohibited from representing Independent Public Employees if IP 36 goes into effect. Rather the commenters focus on arguments that the import of this change may be indirectly blunted by an assortment of factors that cannot be readily quantified. Arguments that unions may end up indirectly helping Independent Public Employees is beside the point, and attempting to describe that possibility involves speculation and the use of language that is far more likely to misinform a voter than to provide clear and accurate information.

The third sentence in the summary is equally speculative: "Measure prohibits requiring non-members to pay union representation costs, *including costs of negotiating agreements setting wages/benefits received by non-members*; changes membership and renewal procedures." (emphasis added). The emphasized clause presents a theoretical circumstance as if it will occur. The measure also prohibits requiring non-members to pay for union representation costs generated while bargaining away employment terms preferred by Independent Public Employees. It is a mistake to assume that non-members automatically benefit from union negotiations. As discussed above, the employment terms of Independent Public Employees will be influenced by a number of factors. The adoption of IP 36 will likely influence the administrative laws governing ABU designation and collective bargaining as well as changes to common practices. Changes in the law

often create ripple effects that alter existing relationships and expectations. There is no reason to assume that the relationships affected by IP 36 will not evolve as a result of its implementation. Neither is there a basis for definitively concluding that the wages and benefits of Independent Public Employees will be automatically pegged to the collective bargaining agreements of union members.

The Attorney General should remove speculative inferences from the second and third sentences of the summary and describe those changes to the law that IP 36 uncontrovertibly demands.

Conclusion

IP 36 has one "major effect"—to prevent the compelled association between unions and those public employees who do not choose to join them. The Certified Ballot Title obstinately refuses to recognize this effect and thereby fail to meet the standards of ORS 250.035(2). The Ballot Title should be modified in the manners described in the foregoing paragraphs. DATED this 1st day of July, 2015.

Respectfully Submitted,

Eric Winters

Eric Winters, OSB #983790
Attorney for Petitioner, *pro se*

CERTIFICATE OF FILING AND SERVICE

I certify that on July 1, 2015, I filed this **Petition to Review Ballot Title Certified by the Attorney General** by electronic filing with the State Court Administrator at this address: https://appellate-efile.ojd.state.or.us/filing/

I also certify that on July 1, 2015, I served the forgoing **Petition to Review Ballot Title Certified by the Attorney General** upon:

Respondent

Hon. Jeanne Adkins
Secretary of State
Elections Division
255 Capitol Street NE, Suite 501
Salem, OR 97310-0722

by sending a copy thereof, contained in a sealed envelope, addressed to said attorneys, with correct postage attached thereon via first class mail, and to:

Respondent Attorney General by email

Mathew J. Lysne, Senior Asst. Attorney General

Matthew.j.lysne@doj.state.or.us

and

Respondent Chief Petitioner by email

Jill Gibson – jill@gibsonlawfirm.org

DATED this 1st day of July, 2015,

Eric Winters

Eric C. Winters, Attorney for Petitioners

Certified by Attorney General on June 17, 2015.

BALLOT TITLE

Non-union public employees may benefit from union bargaining without sharing representation costs; modifies representation obligations

Result of "Yes" Vote: "Yes" vote allows non-union public employees in union-represented bargaining unit to refuse to share in costs of representation union provides; modifies union's representation obligations.

Result of "No" Vote: "No" vote retains current law allowing collective bargaining agreements requiring non-member, union-represented public employees to share in costs of representation union legally must provide.

Summary: Current law allows public employees to bargain collectively through a labor organization/union as their exclusive representative; prohibits requiring union membership as a condition of public employment; requires union to represent (in negotiations and contract enforcement) all public employees in bargaining unit; allows collective bargaining agreements requiring non-members in bargaining unit to share the costs of the legally required union representation. Measure states that public employee union may only represent union members in bargaining unit; non-members may represent themselves (effects are unclear). Measure prohibits requiring non-members to pay union representation costs, including costs of negotiating agreements setting wages/benefits received by non-members; changes membership and renewal procedures. Measure applies to new/renewed/extended contracts entered into after the effective date of the measure. Other provisions.

Ex A

Be It Enacted by the people of the state of Oregon:

SECTION 1. The people of Oregon find that:

(1) A person shall have freedom of speech regarding their employment.

(2) A person shall have freedom of association regarding their employment.

(3) A person shall have the right to communicate with their employer regarding the terms and conditions of their employment.

(4) A person who exercises their right to represent themselves regarding their employment conditions shall be protected from workplace discrimination.

SECTION 2. Sections 3 and 8 of this 2016 Act are added to and made part of ORS 243.650 to 243.782.

SECTION 3. (1) Independent Public Employees, as defined in ORS 243.650 (11), have freedom of speech regarding the terms and conditions of their employment. Independent Public Employees may represent themselves regarding their salary, benefits, hours, sick leave, vacation, and other terms of employment with their employer or their employer's representative without the intervention of a labor organization.

(2) Independent Public Employees are entitled to fair compensation and fair benefits based upon the employee's education, experience, training, skills, and performance.

(3) Public Employers are prohibited from discriminating against Independent Public Employees who exercise their right to represent themselves.

SECTION 4. ORS 243.650 is amended to read:

243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

(1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board or voluntarily recognized by the public employer to be appropriate for collective bargaining. However, an appropriate bargaining unit may not include both academically licensed and unlicensed or nonacademically licensed school employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation does not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees. **A labor organization may only represent the Union Public Employees in an appropriate bargaining unit.**

(2) "Board" means the Employment Relations Board.

(3) "Certification" means official recognition by the board that a labor organization is the exclusive representative for all the **Union Public Employees** [*employees*] in the appropriate bargaining unit.

(4) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its **Union Public Employees** [*employees*] to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining, to meet and confer in good faith in

Ex B-1

accordance with law with respect to any dispute concerning the interpretation or application of a collective bargaining agreement, and to execute written contracts incorporating agreements that have been reached on behalf of the public employer and the **Union Public Employees** [*employees*] in the bargaining unit covered by such negotiations. The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession. This subsection may not be construed to prohibit a public employer and a certified or recognized representative of its employees from discussing or executing written agreements regarding matters other than mandatory subjects of bargaining that are not prohibited by law as long as there is mutual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

(5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute are required by law to submit their differences to a third party for a final and binding decision.

(6) "Confidential employee" means one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

(7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment.

(b) "Employment relations" does not include subjects determined to be permissive, nonmandatory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

(c) After June 6, 1995, "employment relations" does not include subjects that the Employment Relations Board determines to have a greater impact on management's prerogative than on employee wages, hours, or other terms and conditions of employment.

(d) "Employment relations" does not include subjects that have an insubstantial or de minimis effect on public employee wages, hours, and other terms and conditions of employment.

(e) For school district bargaining, "employment relations" excludes class size, the school or educational calendar, standards of performance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking, gum chewing and similar matters of personal conduct, the standards and procedures for student discipline, the time between student classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS 329.704, requirements for expressing milk under ORS 653.077, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(f) For employee bargaining involving employees covered by ORS 243.736, "employment relations" includes safety issues that have an impact on the on-the-job safety of the employees or staffing levels that have a significant impact on the on-the-job safety of the employees.

(g) For all other employee bargaining except school district bargaining and except as provided in paragraph (f) of this subsection, "employment relations" excludes staffing levels and safety issues (except those staffing levels and safety issues that have a direct and substantial effect on the on-the-job safety of public employees), scheduling of services provided to the public, determination of the minimum qualifications necessary for any position, criteria for evaluation or performance appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar matters of personal conduct at work, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(8) "Exclusive representative" means the labor organization that, as a result of certification by the board or recognition by the employer, has the right to be the collective bargaining agent of all **Union Public Employees** [*employees*] in an appropriate bargaining unit.

(9) "Fact-finding" means identification of the major issues in a particular labor dispute by one or more impartial individuals who review the positions of the parties, resolve factual differences and make recommendations for settlement of the dispute.

[*(10) "Fair-share agreement" means 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 except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more of the employees in an appropriate bargaining unit covered by such union security agreement declaring they desire that the agreement be rescinded, the board shall take a secret ballot of the employees in the unit and certify the results thereof to the recognized or certified bargaining representative and to the public employer. Unless a majority of the votes cast in an election favor the union security agreement, the board shall certify deauthorization of the agreement. A petition for deauthorization of a union security agreement must be filed not more than 90 calendar days after the collective bargaining agreement is executed. Only one such election may be conducted in any appropriate bargaining unit during the term of a collective bargaining agreement between a public employer and the recognized or certified bargaining representative.*]

(10) [*(11)*] "Final offer" means the proposed contract language and cost summary submitted to the mediator within seven days of the declaration of impasse.

(11) "Independent Public Employee" means a public employee who has not chosen to join or annually renew membership in a labor organization.

(12) "Labor dispute" means any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment relations, regardless of whether the disputants stand in the proximate relation of employer and employee.

(13) "Labor organization" means any organization that has as one of its purposes representing employees in their employment relations with public employers.

(14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior to the date scheduled for an interest arbitration hearing.

(15) "Legislative body" means the Legislative Assembly, the city council, the county commission and any other board or commission empowered to levy taxes.

(16) "Managerial employee" means an employee of the State of Oregon or the Oregon University System who possesses authority to formulate and carry out management decisions or who represents management's interest by taking or effectively recommending discretionary actions that control or implement employer policy, and who has discretion in the performance of these management responsibilities beyond the routine discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection, "managerial employee" does not include faculty members at a community college, college or university.

(17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute between the public employer and the exclusive representative regarding employment relations.

[*(18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an*

appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employees. The payment must be equivalent to regular union dues and assessments, if any, or must be an amount agreed upon by the public employer and the exclusive representative of the employees.]

(18) [*(19)*] "Public employee" means an employee of a public employer but does not include elected officials, persons appointed to serve on boards or commissions, incarcerated persons working under section 41, Article I of the Oregon Constitution, or persons who are confidential employees, supervisory employees or managerial employees.

(19) [*(20)*] "Public employer" means the State of Oregon, and the following political subdivisions: Cities, counties, community colleges, school districts, special districts, mass transit districts, metropolitan service districts, public service corporations or municipal corporations and public and quasi-public corporations.

(20) [*(21)*] "Public employer representative" includes any individual or individuals specifically designated by the public employer to act in its interests in all matters dealing with employee representation, collective bargaining and related issues.

(21) [*(22)*] "Strike" means a public employee's refusal in concerted action with others to report for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his or her absence in whole or in part from the full, faithful or proper performance of his or her duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment.

(22) [*(23)*] "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment. Failure to assert supervisory status in any Employment Relations Board proceeding or in negotiations for any collective bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, a nurse, charge nurse or similar nursing position may not be deemed to be supervisory unless that position has traditionally been classified as supervisory.

(23) [*(24)*] "Unfair labor practice" means the commission of an act designated an unfair labor practice in ORS 243.672.

(24) "Union Public Employee" means a public employee, in a collective bargaining unit represented by a labor organization, who has chosen to join and annually renew membership in the labor organization.

(25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute mutually agree to submit their differences to a third party for a final and binding decision.

SECTION 5. ORS 243.656 is amended to read:

243.656 Policy statement. The Legislative Assembly finds and declares that:

(1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;

(2) Recognition by public employers of the right of public employees to organize and full acceptance of the principle and procedure of collective negotiation between public employers and public employee organizations can alleviate various forms of strife and unrest. Experience in

the private and public sectors of our economy has proved that unresolved disputes in the public service are injurious to the public, the governmental agencies, and public employees;

(3) Experience in private and public employment has also proved that protection by law of the right of employees to organize and negotiate collectively safeguards employees and the public from injury, impairment and interruptions of necessary services, and removes certain recognized sources of strife and unrest, by encouraging practices fundamental to the peaceful adjustment of disputes arising out of differences as to wages, hours, terms and other working conditions, and by establishing greater equality of bargaining power between public employers and public employees;

(4) The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations and functions of government; and

(5) It is the purpose of ORS 243.650 to 243.782 to **protect public employees' rights of freedom of speech and freedom of association regarding employment relations. It is also the purpose of ORS 243.650 to 243.782 to prohibit discrimination against public employees who choose to represent themselves in employment relations. It is also the purpose of ORS 243.650 to 243.782 to** obligate public employers, public employees **who wish to be represented by a labor organization,** and their representatives to enter into collective negotiations with willingness to resolve grievances and disputes relating to employment relations and to enter into written and signed contracts evidencing agreements resulting from such negotiations. It is also the purpose of ORS 243.650 to 243.782 to promote the improvement of employer-employee relations within the various public employers by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, and to be represented by such organizations in their employment relations with public employers.

SECTION 6. ORS 243.666 is amended to read:

243.666. (1) A labor organization certified by the Employment Relations Board or recognized by the public employer is the exclusive representative of **Union Public Employees** [*the employees of a public employer*] for the purposes of collective bargaining with respect to employment relations. [*Nevertheless any agreements entered into involving union security including an all-union agreement or agency shop agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise be required to pay dues. The employee shall furnish written proof to the employer of the employee that this has been done.*]

(2) Notwithstanding the provisions of subsection (1) of this section, an individual **Union Public Employee** [*employee*] or group of **such** employees at any time may present grievances to their employer and have such grievances adjusted, without the intervention of the labor organization, if:

(a) The adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect; and

(b) The labor organization has been given opportunity to be present at the adjustment.

(3) Nothing in this section prevents a public employer from recognizing a labor organization which represents at least a majority of **Union Public Employees** [*employees*] as the exclusive

representative of the employees of a public employer when the board has not designated the appropriate bargaining unit or when the board has not certified an exclusive representative in accordance with ORS 243.686.

(4) An exclusive representative shall provide all public employees in the appropriate bargaining unit with an annual written notice that:

(a) accurately, fairly, and concisely describes the rights of Independent Public Employees and Union Public Employees;

(b) advises that Independent Public Employees are protected from workplace discrimination; and

(c) provides on the first page of the notice a clearly marked space for public employees to indicate in writing their choice to be an Independent Public Employee or Union Public Employee.

(5) An exclusive representative has authority to represent a public employee only upon receipt of the employee's annual written notice that the employee chooses to join or annually renew membership in a labor organization and be a Union Public Employee.

(6) An exclusive representative may receive dues and fees from Union Public Employees. An exclusive representative may not request, receive, charge, or collect dues, fees, or other payments from Independent Public Employees.

SECTION 7. ORS 243.672 is amended to read:

243.672. (1) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization. **Imposing discriminatory terms or conditions of employment upon Independent Public Employees is prohibited.** [*Nothing in this section is intended to prohibit the entering into of a fair-share agreement between a public employer and the exclusive bargaining representative of its employees. If a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing prohibits the deduction of the payment-in-lieu-of-dues from the salaries or wages of the employees.*]

(d) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.

(e) Refuse to bargain collectively in good faith with the exclusive representative.

(f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(g) Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.

(h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(i) Violate ORS 243.670 (2).

(2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a public employee or for a labor organization or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under ORS 243.650 to 243.782.

(b) Refuse to bargain collectively in good faith with the public employer if the labor organization is an exclusive representative.

(c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(d) Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.

(e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(f) For any labor organization to engage in unconventional strike activity not protected for private sector employees under the National Labor Relations Act on June 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

(g) For a labor organization or its agents to picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any individual who is a member of the governing body of a public employer, with respect to a dispute over a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member's business or to cease handling, transporting or dealing in goods or services produced at the governing body's business. For purposes of this paragraph, a member of the Legislative Assembly is a member of the governing body of a public employer when the collective bargaining negotiation or dispute is between the State of Oregon and a labor organization. The Governor and other statewide elected officials are not considered members of a governing body for purposes of this paragraph. Nothing in this paragraph may be interpreted or applied in a manner that violates the right of free speech and assembly as protected by the Constitution of the United States or the Constitution of the State of Oregon.

(3) An injured party may file a written complaint with the Employment Relations Board not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor practice complaint filed, a fee of $300 is imposed. For each answer to an unfair labor practice complaint filed with the board, a fee of $300 is imposed. The board may allow any other person to intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee of $300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing party in any case in which the complaint or answer is found to have been frivolous or filed in bad faith. The board shall deposit fees received under this section to the credit of the Employment Relations Board Administrative Account.

SECTION 8. Public Employers have no greater or lesser obligations to negotiate with Independent Public Employees, as defined in ORS 243.650 (11), than those obligations public employers owe to public employees in a unit without an exclusive bargaining representative.

SECTION 9. The Independent Public Employee Protection Act shall not apply to any collective bargaining agreement or contract between an employer and a labor organization

entered into before the effective date of the Act but shall apply to a renewal, extension, or modification of any kind of a contract or agreement or to a new contract or agreement entered into after the effective date the Act.

Eric Winters
30710 SW Magnolia Avenue
Wilsonville, Oregon 97070

June 2, 2015

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

Re: Comments on Draft Ballot Title for #2016-036

Dear Ms. Adkins:

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

The Caption provided in the draft ballot title reads:

Prohibits public employee unions from representing non-members or requiring non-members to pay representation costs

The proposed Caption is flawed because if does not reasonably identify the subject matter of the proposed measure. The central subject of the proposed measure relates to public employees that choose to negotiate their own employment terms but are barred from exclusively doing so under current law. The primary effect of this proposed measure is to extend a franchise to these public employees by recognizing them as "Independent Public Employees", however, the Caption focuses on its corollary effect on unions. If one were drafting a ballot title for women's suffrage would it have focused on the new franchise made available to women, or would it have focused on the diluted strength of male voters?

The Caption should focus first on the new rights gained by public employees that choose to not join a union. Here is a suggested **alternative Caption:**

Permits public employees who do not join union to represent themselves without paying the union

Ex C-1

The term "Independent Public Employee" is an accurate description of a public employee who chooses not to be represented by a union and could be included in the caption using quotations to indicate it's meaning. Here is a **second alternative caption** that incorporates this phrase to explain the primary effect of the measure:

> **Permits "Independent Public Employees" (defined) to negotiate employment terms without union intervention or required payments.**

If the drafter considers the effect on public employee unions to be the primary subject of this proposed measure, a **third alternative caption** is offered that more accurately describes the effects of the proposed measure:

> **Prevents public employee unions from representing non-member "Independent Public Employees" and charging them for services.**

The "Result of 'Yes' Vote" and "Result of 'No' Vote" statements by the Attorney General should follow a similar tack to clearly notify the voters of the primary subject of the proposed measure. The "Result of 'Yes' Vote" statement as drafted by the Attorney General also ignores the primary result of passing the proposed measure in favor of describing corollary effects on public employee unions.

Further, the "Result of 'Yes' Vote" statement overstates the impact on non-members by saying that it "prohibits less favorable employment terms for non-members." This is not accurate. The proposed measure would prevent public employers from imposing discriminatory terms or conditions upon Independent Public Employees, but it would permit the parties to negotiate terms on their own. For example, there is nothing in the proposed measure that would prevent an Independent Public Employee from negotiating for a "less favorable employment term" with regard to paid vacation days in exchange for a more favorable term for more flexible working hours. Instead, the proposed measure would prohibit the employer from imposing unfavorable terms in a discriminatory fashion against Independent Public Employees.

I offer the following "Result of 'Yes' Vote" statement:

> **"Yes" vote permits public employees to represent themselves as "Independent Public Employees" without union intervention. Unions barred from charging representation fees to Independent Public Employees.**

The "Result of 'No' Vote" statement suffers from similar problems as those discussed above and would be clearer and less subject to improper inferences as follows:

"No" vote retains laws requiring public employee unions to represent non-members and permitting charges to non-members for union services. Annual membership renewals are not required.

The Summary begins with a misleading statement. Current law does not permit non-member "public employees to bargain collectively through a labor organization/union of their choosing as their exclusive representative." A majority of union members get to choose the exclusive representative for all employees within an appropriate bargaining unit (union or not). The first sentence of the Summary should be altered to clarify the current law as follows:

Summary: Current law requires union members and non-members within an appropriate bargaining unit (ABU) of public employees to collectively negotiate employment terms when a majority of the ABU appoints a labor organization/union for that purpose; a labor organization/union cannot decline to represent non-members within an ABU; non-members can be required to pay the labor organization/union for the cost of union services provided to ABU members. Measure allows non-member public employees within an ABU to represent themselves in in employment negotiations; prohibits public employee unions from representing non-members; prohibits requiring non-members to pay for costs associated with representing ABU members; union members must renew membership in writing annually. Measure applies to new, renewed, or extended contracts entered into after the effective date of the measure. Other provisions.

Thank you for considering these comments.

Ex C-3