

ELLEN F. ROSENBLUM
Attorney General

MARY H. WILLIAMS
Deputy Attorney General



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

July 26, 2013

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

Re: *Gail Rasmussen and Bethanne Darby v. Ellen Rosenblum, Attorney General, State of Oregon*
SC S061470

Dear Chief Justice Balmer:

Petitioners Gail Rasmussen and Bethanne Darby have filed a ballot title challenge in the above-referenced matter. Pursuant to ORS 250.067(4), the Secretary of State is required to file with the court the written comments submitted in response to the draft ballot title. Those written comments, under the cover of Elections Division Program Representative Lydia Plukchi's letter, are enclosed for filing with the court. Pursuant to ORAP 11.30(7), we also have enclosed for filing with the court the draft and certified ballot titles, together with their respective cover letters.

Sincerely,

/s/ Rolf C. Moan

Rolf C. Moan
Assistant Attorney General
rolf.moan@doj.state.or.us

RCM:chc/4458248

cc: Aruna A. Masih/without encl.
Marie Bowers/without encl.
Robert Zielinski Jr./without encl.
Gerald C. Freeman/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

GAIL RASMUSSEN and BETHANNE
DARBY,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney General,
State of Oregon,

Respondent.

Supreme Court No. S061470

RESPONDENT'S ANSWERING
MEMORANDUM TO PETITION TO
REVIEW BALLOT TITLE RE: INITIATIVE
PETITION NO. 12
(SUPREME COURT)

This case involves prospective initiative petition number 12 (2014).

Petitioners have challenged the caption, result statements, and summary in the Attorney General's certified ballot title. ORS 250.085(3) requires this court to "review the title for substantial compliance with the requirements of ORS 250.035." Because the certified ballot title substantially complies with those requirements, the court should approve it without modification.

A. This court's statements about the ballot title for Initiative Petition No. 18 (2012) do not dictate the result here.

Petitioners note that this court addressed a somewhat similar proposed measure—Initiative Petition No. 18 (2012)—in *Rasmussen v. Kroger*, 351 Or 358, 266 P3d 87 (2012), and in *Rasmussen v. Kroger*, 351 Or 542, 270 P3d 250 (2012). They suggest that the court's rulings with respect to that measure should control here. But because the proposed measure in this case differs significantly from IP 18 (2012), the decisions that petitioners cite cannot dictate the result in this case.

Most importantly, IP 18 (2012) prohibited “*any* tax imposed on the estate of *any* decedent.” (Att-2; emphasis added). IP 18 (2012) thus would have nullified Oregon’s existing estate tax (which applies to estates valued at \$1 million or more) altogether. By contrast, the proposed measure in this case would nullify the estate tax only in circumstances in which the estate passes “from one family member to another family.” *See* §3 (“[a]ll family giving is exempt from taxation”); § 6 (defining “family giving” as the giving of property without compensation “from one family member to another family member”). The measure at issue thus would not affect current law with respect to estates of \$1 million or more that pass to someone other than a family member. As a result, accurate descriptions of the proposed measure’s effect on existing estate law necessarily require—compared to accurate descriptions of IP 18 (2012)’s effect—a greater number of words.

The proposed measure is more complicated than IP 18 (2012) in another respect as well. IP 18 (2012), aside from prohibiting taxation on property that is transferred “as a result of the death of a person,” did not otherwise prohibit taxation with respect to property that one family member transfers to another family member. (Att-2). In contrast, the proposed measure provides that “[a]ll family giving is exempt from taxation.” § 3. The measure defines “family giving” as “to give without compensation any form of property * * * from one family member to another family member or from one family member to a trust for the benefit of another family

member,” and it defines “property” as including “any legal or equitable interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property.” §§ 6, 5. In sum, IP 18 (2012) can be described as a significantly simpler measure than the measure at issue. For that reason also, this court’s conclusions with respect to the ballot title for IP 18 (2012) cannot compel any particular conclusions here.

B. The caption substantially complies with ORS 250.035(2)(a).

ORS 250.035(2)(a) requires a ballot title to contain a “caption of not more than 15 words that reasonably identifies the subject matter of the state measure.” The certified ballot title’s caption reads:

Exempts from state, local taxation “family giving” (defined) of any “property” (defined), including by inheritance

Petitioners argue that the caption, to substantially comply with ORS 250.035(2)(a), must note that the proposed measure would nullify the existing inheritance tax that applies when estates valued at \$1 million or more pass from one family member to another. But to accurately convey that information within the 15-word limit would require that information about other significant portions of the proposed measure—namely, the measure’s declaration that “[a]ll family giving is exempt from taxation” (§ 3; emphasis added)—be omitted.

Petitioners suggest that the following proposed caption would be appropriate:

“Nullifies inheritance tax on \$1 million estates to family; prohibits taxing family

property transfers.” Yet both clauses in that proposed caption are not quite accurate, and would mislead voters.

The first clause—“[n]ullifies inheritance tax on \$1 million estates to family”—could be read as suggesting that, under current law, only estates valued at precisely \$1 million are taxed. In fact, estates valued at \$1 million *or more* are taxed. In addition, the use of the phrase “estates to family” creates ambiguity. The phrase presumably refers to estates “passed” or “given” to family members, but the omission of a key word may confuse voters.

The second clause—“prohibits taxing family property transfers”—also is inaccurate. The phrase suggests that the proposed measure would preclude taxing property transferred from one family member to another regardless of the circumstances, such that no tax could be imposed on the family member who transfers the property *even if* the property was transferred in exchange for money or other compensation. In fact, the proposed measure exempts such a transfer from taxation only if it is made “without compensation.” §§ 3, 6.

Petitioners also argue that “the certified caption’s use of the term ‘family giving’ implies incorrectly that there currently exists a state gift tax.” In fact, the certified caption—by using the phrase “[e]xempts from state, local taxation ‘family giving’ (defined) * * * including by inheritance”—accurately reflects that certain types of family giving (namely, estates that pass to family members) *are* subject to

taxation under current law. Moreover, the certified caption simply uses the text of the proposed measure itself. Section 3 of the measure provides that “[a]ll family giving is exempt from taxation,” and section 6 defines the phrase “family giving.” The certified caption mirrors the measure’s text, while accurately alerting voters that the measure provides its own definition of “family giving.”

C. The “yes” result statement substantially complies with ORS 250.035(2)(b).

ORS 250.035(2)(b) requires the “yes” result statement to “describe[] the result if the state measure is approved.” The certified “yes” result statement reads:

“Yes” vote exempts “family giving” (defined) of “property” (defined)—including inheritance received from a “family member” (defined)—from state or local taxation; reduces state revenue.

Petitioners argue that the statement is deficient because it fails to alert voters that the measure (1) would “nullify the existing inheritance tax on estates of \$1 million” and (2) would “prohibit taxation of income producing family property transfers.” They propose a “yes” result statement reading,

“Yes” vote nullifies, prohibits existing inheritance tax on estates of \$1 million or more, other death-related or family property transfers; reduces state revenue.

(Petition 7 and Ex C, p. 4). Yet in attempting—within the word limit—to identify estates that currently are subject to an estate tax, petitioners’ proposal overstates the impact of the measure on current law. Their proposal also provides inaccurate information about the measure’s impact when property is transferred between family members.

First, petitioners' proposal suggests that the measure would prohibit inheritance tax on *all* estates valued at \$1 million or more. In fact, the measure would not affect taxes that currently apply when an estate of \$1 million or more is passed to a non-family member. In other words, the petitioners' proposal describes the effect on the existing estate tax in overly broad (and hence misleading) terms.

Second, petitioners' proposal—by informing voters that the proposed measure “prohibits existing *inheritance tax* on * * * family property transfers” (emphasis added)—fails to convey that the measure exempts “family giving” from *all* taxation, and not just from the existing inheritance tax. *See* § 3 (“All family giving is exempt from taxation.”). In that sense, the petitioners' proposal suggests that the measure's scope is narrower than it really is.

The certified “yes” result statement, in contrast, accurately informs voters that the proposed measure generally exempts “[a]ll ‘family giving’ from * * * taxation,” and exempts from taxation any “inheritance received from a ‘family member.’” *See* § 3 (“[a]ll family giving is exempt from taxation”); § 7 (measure “precludes taxation of any inheritance received by a family member from another family member”).

Further, the certified statement accurately alerts voters that the measure provides particular definitions for “family giving” and “family member,” and that the proposed measure, if passed, will reduce state revenue. Petitioners do not suggest that the certified “yes” result statement is inaccurate. To require insertion of petitioners'

proposed wording would require the omission of other information that accurately conveys the measure's scope to voters, and that thereby helps to describe the measure's "result."

D. The "no" result statement substantially complies with ORS 250.035(2)(c).

ORS 250.035(2)(c) requires the "no" result statement to "describe[] the result if the state measure is rejected." The certified "no" result statement reads:

"No" vote retains law taxing certain estates and making those to whom estate property passes—even if related to decedent—liable for unpaid estate tax.

Petitioners argue that the "no" result statement should alert voters that, if the measure is rejected, the result would be to "retain[] tax on all income-producing property transfers between family members." (Petition 7 and Ex C, p 4). As a description of current law, however, the proposed phrase is not accurate. Under current law, property "transfers" (income-producing or otherwise) are not, *per se*, subject to taxation. For example, if a taxpayer receives an income-producing property as a gift, the gift (or transfer) itself is not taxed; in contrast, net income that the property subsequently produces would be taxable. Petitioners' proposal does not accurately reflect those principles.¹ An accurate description, moreover, almost certainly would exceed the 25-word limit for the "no" result statement.

¹ Petitioners assert that the proposed phrase is one that "this court, in *Rasmussen*, 351 Or at 544, "has already certified as an accurate statement of the

Moreover, petitioners’ proposal relies on a premise about the proposed measure’s meaning that is itself suspect. Petitioners’ premise is that the measure, if passed, “would exempt from taxation * * * all income produced from property transferred between a broad category of ‘family members,’ including potentially rental income and capital gains.” (Petition 2). The problem with that premise—as reflected in petitioners’ use of the word “potentially”—is that it is far from clear that the proposed measure would have the posited effect. The proposed measure would preclude any tax “on property” transferred between family members. *See* § 3 (providing that government “shall not impose any tax on property to the extent that the property is transferred as family giving”). But nothing in the measure expressly constrains or limits taxation on income that is produced by, or derived from, the transferred property; under the proposed measure, income from rental income, for example, may be no less taxable than it is under current law.

As written, the certified “no” result statement appropriately focuses on the one result that *indisputably* will follow if the measure is rejected. That is, it accurately informs voters that, if the proposed measure is rejected, Oregon’s

current law.” (Petition 7). The Attorney General notes, however, that whether that phrase accurately described current law was not an issue that was litigated or discussed in either that decision or in *Rasmussen*, 351 Or 358.

existing estate tax laws will be retained, and it accurately informs voters that the current estate tax applies even when an estate passes to family members.

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

ORS 250.035(2)(d) requires a ballot title to contain a “concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” The certified summary reads:

Current law imposes one-time tax on estate of person who dies when value of estate—as determined by federal law—is \$1 million or more; if estate does not pay tax, those to whom estate property passes are liable; does not otherwise tax property received as gifts or inheritance. Measure precludes state, local tax on property—defined as including any legal or equitable interest in anything of value—given from one “family member” (defined) to another family member; includes property passed by will, inheritance, or other operation of law; exempts all “family giving” (defined) from taxation. Measure does not prohibit or restrict ordinary property taxes imposed based on ownership of an interest in property. Measure reduces state revenues; provides no replacement. Other provisions.

Petitioners argue that the ballot title should “notify the voter that income-producing property transfers between family members are taxed under current law,” and they propose the following phrase: “Current law * * * taxes income producing property transfer regardless of parties’ relationship.” (Petition 8 and Ex C at 5). But, for the same reasons recounted above, that description of current law is not accurate. In short, current law does not tax property “transfers” *per se*.

Here as well, the additional premise behind petitioners’ argument is that “IP 12 is broad enough to potentially exempt from taxation * * * all income produced from property transferred between family members, including rental income and capital

gains.” (Petition 2). As noted, however, it is not clear that the proposed measure would preclude taxation on all “income produced” by property that is transferred between family members. For that reason also, the ballot title—in order to accurately summarize the measure and “its major effect”—need not include the proposed modification.

F. Conclusion

The Attorney General’s ballot title substantially complies with statutory requirements. This court should certify it without modification.

Respectfully submitted,

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/s/ Rolf C. Moan

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OFFICE OF THE SECRETARY OF STATE

KATE BROWN
SECRETARY OF STATE

ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

March 28, 2011

To All Interested Parties:

Secretary of State Kate Brown is responsible for the pre-election review of proposed initiative petitions for compliance with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. This review will be completed before approving the form of the cover and signature sheets for the purpose of circulating the proposed initiative petition to gather signatures.

The Secretary of State is seeking public input on whether proposed initiative petition (#18), satisfies the procedural constitutional requirements for circulation as a proposed initiative petition. Petition #18 was filed in our office on March 25, 2011, by Gerald Freeman, Wayne Brady and Robert Zielinski, for the General Election of November 6, 2012.

On the reverse side of this letter is a copy of the text of this proposed initiative petition. If you are interested in providing comments on whether the proposed initiative petition meets the procedural constitutional requirements, please write to the secretary at the Elections Division. Your comments, if any, must be received by the Elections Division no later than April 18, 2011, in order for them to be considered in the review.

KATE BROWN
Secretary of State

BY:

Lydia Plukchi
Compliance Specialist

The People enact the following statute:

Section 1. This Act shall be known as the Stop Oregon Death Taxes Act.

Section 2. The people make the following findings: all Oregonians contribute to Oregon jobs and support the Oregon economy when they work and when they employ other Oregonians. Oregonians already pay income taxes, property taxes, and other taxes throughout their lives. Death Taxes are a form of double taxation for Oregonians. Death Taxes hit families when they are at their weakest – upon the death of a family member. Death Taxes are not currently imposed by most states and hurt Oregon's competitive position compared to states which have no Death Taxes. Death Taxes are a very small part of state income but have a major negative effect on jobs and the economy. Death Taxes are especially harmful to small businesses, family farms, and family ranches.

Section 3. The state and all political subdivisions of the state are prohibited from subjecting any person to any Death Tax.

Section 4. A Death Tax is:

- a. Any tax imposed on the estate of any decedent, or
- b. Any inheritance tax, or
- c. Any tax imposed on the transfer of property, or any interest therein, to any person, where the transfer is a result of the death of a person, or
- d. Any tax imposed on the transfer of property, or any interest therein, from one family member to another family member, where the family relationship between the transferor and the transferee is within the third degree of consanguinity.

Section 5. For purposes of this Act, "property" includes, but is not limited to, real property, personal property, and intangible property.

Section 6. This Act does not prohibit the state from collecting income taxes payable by an estate while the estate is administered.

Section 7. This Act does not prohibit the state from cooperating in the processing and collection of Death Taxes imposed by another state or territory of the United States as to a person who, at the time of the person's death, may be subject to Death Taxes in such other state or territory. This Act does not prohibit the state from cooperating in the processing and collection of Death Taxes imposed by the federal government.

Section 8. This Act does not prohibit the imposition of fees as to transactions which may occur following the death of a person, such as fees for processing death certificates or for probate proceedings, provided that the fees do not exceed the cost of the goods or services provided as a result of the death of the person.

Section 9. This Act supersedes any Oregon law which imposes any form of Death Tax. Any Death Tax due, under any Oregon law in existence prior to the effective date of this Act, as to a person who died before this Act became effective, remains collectible under the terms of such preexisting law.

Section 10. This Act is effective January 1, 2013.

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OFFICE OF THE SECRETARY OF STATE

KATE BROWN
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ELECTIONS DIVISION

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July 8, 2013

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

Re: Aruna A. Masih v. Ellen Rosenblum, Attorney General, State of Oregon
Petition to Review Ballot Title

Dear Ms. Joyce:

Pursuant to ORS 250.067(4), we transmit to you for filing with the court as part of the record in the above referenced matter, the written comments filed in this office pursuant to ORS 250.067(1), regarding initiative petition #12. We also enclose the draft and certified ballot titles with their respective transmittal letters.

Sincerely,

Lydia Plukem
Compliance Specialist

enclosures

RECEIVED
JUL 8 2013

APPELLATE DIVISION
SALEM, OR 97301



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

June 20, 2013

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

RECEIVED
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KATE BROWN
SECRETARY OF THE STATE

Re: Proposed Initiative Petition — Exempts From State, Local Taxation "Family Giving"
(defined) Of Any "Property" (defined), Including By Inheritance
DOJ File #BT-12-13; Elections Division #12

Dear Mr. Trout:

We have reviewed the comments submitted on the draft ballot title for the above-referenced initiative petition. We provide the enclosed certified ballot title. We have not modified any part of the draft ballot title.

This letter summarizes the comments we received, our responses to those comments, and the reasons we declined to make the proposed changes. ORAP 11.30(7) requires this letter to be included in the record in the event that the Oregon Supreme Court reviews the ballot title.

A. The caption

The draft ballot title's caption read:

Exempts from state, local taxation "family giving" (defined) of any "property" (defined), including by inheritance

Commenters Gail Rasmussen and BethAnne Darby (represented by Aruna Masih) proposed a caption that would read, "Nullifies existing inheritance tax on estates of \$1 million, prohibits taxing family property transfers." That wording, they asserted, would provide voters with more particular information—compared to the information in the draft caption—describing how the proposed measure would alter existing law.

Yet the first part of the proposed alternative—"[n]ullifies existing inheritance tax on estates of \$1 million"—potentially would mislead voters. The proposed wording suggests that, under the proposed measure, no estate valued at \$1 million would be subject to an inheritance tax. In fact, the proposed measure would nullify the existing inheritance tax on estates valued at \$1 million or more only with respect to property in an estate that passes from one family member to another. (See Proposed Measure, § 7, precluding taxation "on any property * * * passed from

a family member to another family member” and “of any inheritance received by a family member from another family member”). That is, the proposed measure would not nullify the existing inheritance tax on estates of \$1 million or more if property in the estate is to be passed to a non-family member. Because the proposed alternative wording would describe the proposed measure’s impact overly broadly, we have declined to adopt that proposal.

We also have declined to adopt the suggestion that the caption state, “prohibits taxing family property transfers.” As written, the draft caption—by declaring that the proposed measure “[e]xempts from state, local taxation ‘family giving’ (defined) of any ‘property’ (defined)” —already conveys that same information.

Kevin Mannix—writing on his own behalf, and on behalf of Chief Petitioners Marie Bowers, Robert Zielinski, Jr., and Gerald Freeman—proposed a caption reading, “Gifts by family member (defined) to another family member are exempt from state, local taxation.” That proposed caption, however, provides less information to voters than does the draft caption. Unlike the draft caption, the proposed alternative caption fails to convey that property passed by inheritance from one family member would constitute a “gift” or “family giving” that—under the proposed measure—would be exempt from taxation. (See Proposed Measure, § 7, stating that measure “precludes taxation of any inheritance received by a family member from another family member”). Consequently, we have declined to adopt the proposed alternative wording.

B. The “yes” result statement

The draft ballot title’s “yes” result statement read:

“Yes” vote exempts “family giving” (defined) of “property” (defined)—including inheritance received from a “family member” (defined)—from state or local taxation; reduces state revenue.

Commenters Rasmussen and Darby made essentially the same recommendation for the “yes” result statement that they made for the caption. They proposed an alternative “yes” result statement reading, “‘Yes’ vote nullifies, prohibits existing inheritance tax on estates of \$1 million or more, other death-related or family property transfers * * * .” For the same reasons that we declined to adopt their recommendations for the caption, we have declined to adopt their recommendations for the “yes” result statement.

Commenter Mannix stated that the draft “yes” result statement “can be interpreted to mean that the ‘family member’ definition only applies to an inherited gift,” and that it thus might mislead voters. As drafted, however, the “yes” result statement makes it clear that the proposed measure exempts all “family giving” of property from state or local taxation, and not just family giving by way of inheritance; it declares that the measure “exempts ‘family giving’ (defined) of ‘property’ (defined)—including inheritance received from a ‘family member’ (defined)—from state or local taxation.” As a result, it is unlikely that any ambiguity about the applicability of the phrase “family member” will impair voters’ ability to understand result if the proposed measure becomes law. See ORS 250.035(2)(b) (“yes” result statement must “describe[] the result if the state measure is approved”). We therefore have declined to alter the phrase at issue.

Commenter Mannix also suggested that the phrase “state and local taxation” be substituted for the phrase “state or local taxation.” (Emphasis added.) He suggested that the use of “state or local taxation” implies that the proposed measure would permit “one or the other” of those types of taxation. Because we are not convinced that voters are likely to read the phrase at issue in that fashion, we have declined to alter it.

C. The “no” result statement

The draft “no” result statement read:

“No” vote retains law taxing certain estates and making those to whom estate property passes—even if related to decedent—liable for unpaid estate tax.

Commenters Rasmussen and Darby recommended condensing the description of the estate tax imposed by current law, for the purpose of adding the following phrase: “retains tax on all income-producing property transfers between family members.” But because the proposed additional wording likely would mislead voters about current law, we have declined to adopt it. The proposed phrase would suggest that “all income-producing property transfers between family members” are currently taxed. Voters thus might conclude, if the suggested phrase is adopted, that current law imposes a tax on gifts given by one family member to another, and on inheritances in which property passes from one family member to another. In fact, current law does not impose a tax on gifts given from one family member to another, or (with the exception of the tax on estates valued at \$1 million or more) impose a tax on inheritances passed from one family member to another. Consequently, we have not adopted the proposed wording.

Commenter Mannix stated that the draft “no” result statement fails to note “that current state law does not restrict counties, cities, or other units of local government from imposing gift taxes.” He thus proposed that the statement include the phrase, “‘No’ vote maintains authority of local governments to impose gift taxes.” The proposed wording, however, would suggest to voters that the measure would eliminate the “authority of local governments to impose gift taxes” altogether. In fact, even if the proposed measure becomes law, state and local governments still would possess authority to impose certain gift taxes, so long as the gifts being taxed did not constitute gifts between family members. Because the proposed alternative statement might mislead voters into perceiving the proposed measure’s scope as broader than it is, we have not adopted that statement.

Moreover, we note that Commenter Mannix is essentially suggesting that the “no” result statement should tell voters that, under current law, state and local government could impose a tax on gifts, even though no existing law currently imposes such a tax. Put differently, Mr. Mannix is suggesting that the “no” result statement identify a restriction on governmental authority that does not currently exist, even though the absence of that restriction has not resulted in any legislation that can be found in current law. We have concluded that nothing requires the “no” result statement to include information of that nature.

D. The summary

The draft ballot title summary read:

Current law imposes one-time tax on estate of person who dies when value of estate—as determined by federal law—is \$1 million or more; if estate does not pay tax, those to whom estate property passes are liable; does not otherwise tax property received as gifts or inheritance. Measure precludes state, local tax on property—defined as including any legal or equitable interest in anything of value—given from one “family member” (defined) to another family member; includes property passed by will, inheritance, or other operation of law; exempts all “family giving” (defined) from taxation. Measure does not prohibit or restrict ordinary property taxes imposed based on ownership of an interest in property. Measure reduces state revenues; provides no replacement. Other provisions.

Commenters Rasmussen and Darby proposed adding the following phrases to the summary: “[current law] taxes income-producing property transfer regardless of parties’ relationship,” and “[m]easure nullifies existing inheritance tax.” For reasons recounted already, we believe that the proposed phrases might mislead voters about the proposed measure’s impact on current law. We thus have declined to add the proposed phrases.

Commenter Mannix stated that the summary should explain that current law “includes no state prohibition of local taxes on gifts.” Yet the draft summary—by declaring that the “[m]easure precludes state, local tax on property * * * given from one ‘family member’ (defined) to another family member”—necessarily conveys that state and local governments are not currently prohibited from taxing property given from one family member to another. The summary it follows, need not provide additional information along those lines.

Commenter Mannix suggested that the summary should identify the manner in which the proposed measure defines “family member” and “family giving,” and that room for that information could be created, in part, by condensing the description of the current estate tax that appears in the summary. (Commenters Rasmussen and Darby also proposed that the summary should explain how the proposed measure defines “family member.”) But in light of the summary’s word limit, and in light of the lengthy definitions that the proposed measure provides for both “family member” (30 words, not including the list of examples that the measure also provides) and “family giving” (38 words), we have concluded that the better approach is to simply alert the voter—as the draft summary does—that the measure provides particular definitions for those phrases. As a result, we also have declined the invitation to condense the description of current law that appears in the summary’s first sentence.

Commenter Mannix also suggested that the draft summary, by noting that the proposed measure “does not prohibit or restrict ordinary property taxes imposed based on ownership of an interest in property,” refers to a part of the measure that is “not significant enough to warrant inclusion in the summary.” (See Proposed Measure, § 7: “This 2014 Act does not cover or restrict ordinary property taxes that are imposed based upon ownership of an interest in property.”) But because that portion of the measure sheds light on the extent of the effect that the measure—if approved

June 20, 2013


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by voters—would have on existing law, we believe that the summary should refer to it. See ORS 250.035(2)(d) (requiring ballot title summary to summarize the measure's "major effect"). We therefore have retained the description.

E. Conclusion

Although we have further reviewed the proposed measure, and although we have reviewed the comments we received, we have not modified the draft ballot title. We certify the attached ballot title under ORS 250.067(2).

Sincerely,

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BALLOT TITLE

**Exempts from state, local taxation “family giving” (defined) of any “property”
(defined), including by inheritance**

Result of “Yes” Vote: “Yes” vote exempts “family giving” (defined) of
“property” (defined)—including inheritance received from a “family member”
(defined)—from state or local taxation; reduces state revenue.

Result of “No” Vote: “No” vote retains law taxing certain estates and making
those to whom estate property passes—even if related to decedent—liable for unpaid
estate tax.

Summary: Current law imposes one-time tax on estate of person who dies when
value of estate—as determined by federal law—is \$1 million or more; if estate does not
pay tax, those to whom estate property passes are liable; does not otherwise tax property
received as gifts or inheritance. Measure precludes state, local tax on property—defined
as including any legal or equitable interest in anything of value—given from one “family
member” (defined) to another family member; includes property passed by will,
inheritance, or other operation of law; exempts all “family giving” (defined) from
taxation. Measure does not prohibit or restrict ordinary property taxes imposed based on
ownership of an interest in property. Measure reduces state revenues; provides no
replacement. Other provisions.

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KATE BROWN
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June 5, 2013

Via Fax No. 1-503-373-7414

The Honorable Kate Brown
Secretary of State
Elections Division
255 Capital Street NE, Suite 501
Salem, Oregon 97310-0722

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KATE BROWN
SECRETARY OF THE STATE

Re. Initiative Petition 12 (2014) - Draft Ballot Title Comments
Our File No. 4815-1163

Dear Secretary Brown:

This firm represents Gail Rasmussen, an Oregon elector and President of the Oregon Education Association, and BethAnne Darby, an Oregon elector and Associate Executive Director of the Oregon Education Association. We write in response to your May 21, 2013, News Release which invites comments to the draft ballot title for Initiative Petition 12 (2014).

1. INTRODUCTION.

Initiative Petition 12 (2014) ("IP 12") is the most recent iteration in a series of tax initiatives filed by Gerald Freeman, Robert Zielenski, Jr., and Marie Bowers/Wayne Brady designed to nullify the existing inheritance tax on estates valued at greater than \$1 million and to prohibit the State and its subdivisions from taxing income-producing property transfers between family members. See e.g. Initiative Petitions 13, 14, 15, and 18 (2012). Although IP 12 references "gifts of family" and "family giving," Oregon does not currently have a gift tax. Similarly, while IP 12 references property which passes as a result of the death of a person, Oregon does not currently tax estates valued at less than \$1 million. See ORS 118.010; ORS 118.160 (State estate tax). Accordingly, like Initiative Petitions 13, 14, 15, and 18 before it, the practical effect of IP 12 is the same as that of its predecessors, albeit for a broader category of people.

The initiative defines "family member" broadly to cover relationship by "blood, marriage, domestic partnership, adoption, or by other laws recognizing family relationships between a giver and a recipient within the third degree of relationship to the giver." Section 4. It also defines "property" broadly to include "any legal or equitable interest in anything of value, including the whole of any lot or tract of land and tangible or intangible personal property." Section 5. The initiative's prohibition on taxation covers all "family giving"—defined as "to give without compensation any property, by voluntary act or operation of law"—made "during the family member's lifetime" or "relating to the

Honorable Kate Brown

Re. IP 12 (2014) – Draft Ballot Title Comments

June 5, 2013

Page 2

death of a person.” The only exception to this broad prohibition is “ordinary property taxes that are imposed based upon ownership of an interest in property.” Section 6. To the extent IP 12 conflicts with any other Oregon law, the initiative provides that its terms supersede. Section 8.

As a result, IP 12 would exempt from taxation not just estates of \$1 million or more, but all income produced from property transferred between a broad category of “family members, including rental income and capital gains. For example, IP 12 would allow “family members” to shield from taxation rental income by transferring property ownership to each other and then receiving the rental income back as a gift. Similarly, “family members” could shield from taxation capital gains made on the sale of stock or other investment income by transferring stock to “family members” and receiving the gains back as gifts. Nothing in IP 12 would limit the right of the “family member” to re-gift the underlying property. Simply put, IP 12 would allow a broad category of “family members” with large estates and income-producing property to transfer such property among themselves in an effort to shield such property from capital gains or income taxation, resulting in significant loss of revenue for the State and local jurisdictions.

As discussed further below, these practical effects of IP 12 in relation to current law are not apparent from the draft ballot title and for this reason the ballot title must be revised.

2. The Caption

ORS 250.035(2)(a) provides that a ballot title contain “a [c]aption of not more than 15 words that reasonably identifies the subject matter of the state measure.” The first step in determining the subject matter of the initiative is “the changes, if any, the measure would enact in the context of existing law.” *Sizemore v. Myers*, 342 Or 578, 583 (2007) (quoting *Phillips v. Myers*, 325 Or 221, 225-226 (1997)). The caption is the “cornerstone for the other portions of the ballot title” and in order to comply with the statute, it must identify the proposal’s subject matter in terms that will not “confuse or mislead potential petition signers and voters.” *Mabon v. Myers*, 332 Or 633, 33 P3d 988 (2001) (citations omitted). It also cannot overstate or understate the scope of the legal changes the initiative would enact.

The Attorney General’s draft caption fails to substantially comply with this mandate. It reads:

**Exempts from state, local taxation “family giving” (defined) of
any “property” (defined), including by inheritance**

The Caption should be revised first and foremost because it inaccurately and incompletely describes the changes the measure would enact in the context of existing law. In its review of the certified ballot title for IPs 15 and 18 (2012) (i.e., predecessor initiatives to IP 12), the Oregon Supreme Court recognized that, when a proposed measure is explicitly directed at changing the existing statutory scheme and its major effect will be to change that scheme, the particulars of the existing scheme may be an essential element that must be disclosed in the caption in order to inform the reader of “the scope of the legal changes that the proposed measure would enact.” *Rasmussen v. Kroger*, 351 Or 195, 200, 262 P3d 777 (2011) citing *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004). Here, contrary to the Supreme Court’s instruction, the caption’s use of the term “family

Honorable Kate Brown

Re. IP 12 (2014) - Draft Ballot Title Comments

June 5, 2013

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giving" from the initiative in quotations followed by the term defined in parentheses gives the voter no real information about the scope of the proposed changes to existing law effected by the initiative.

Under current law, there is no State gift tax or inheritance tax on estates valued at less than \$1 million. See ORS 118.010; ORS 118.160 (State estate tax). However, estates valued at \$1 million or more and income producing property transfers between family members are subject to taxation. "[P]rohibiting the imposition of these current tax measures would represent a significant policy choice that goes to the heart of the proposed measure's effect [***]. Because that effect is part of the subject matter of the proposed measure, it must be acknowledged in the ballot title's caption [***] in order to inform voters of the scope of the proposed change." *Rasmussen v. Kroger*, 351 Or 358, 364, 266 P3d 87, 90 (2011)(requiring modification of the certified caption for IP 18 to include reference to estates of \$1 million if possible to do so within word limit). Leaving that explanation to the summary is not enough because, the "informational function" of the caption is of "particular importance in light of ORS 254.175(2), which, since 1995, has authorized county clerks to print ballots without displaying the summary of the certified ballot title." *Caruthers v. Myers*, 346 Or 300, 304, 210 P3d 882 (2009).

To correct these deficiencies, we propose the Attorney General certify a caption which tracks the modified ballot title approved by the Oregon Supreme Court for IP 18 (2012):

**Nullifies existing inheritance tax on estates of \$1 million,
prohibits taxing family property transfers**

3. The Results Statements

ORS 250.035(2)(b)-(c) require that a ballot title contain a simple understandable statement of not more than 25 words that describes the result if the state measure is approved or rejected. Typically, the "yes" vote result statement builds on the caption. The purpose of the "yes" vote result statement is to "notify petition signers and voters of 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). In contrast, the "no" vote result statement must explain to voters "the state of affairs" that will exist if this initiative is rejected, that is, the *status quo*. It is also essential that the law described in the "no" vote result statement concern the subject matter of the proposal. Otherwise, the description could mislead voters about the effect of their vote. *Nesbitt v. Myers*, 335 Or 219, 223, 64 P3d 1133 (2003). See also, *Nesbitt v. Myers*, 335 Or 424, 431, 71 P3d 530 (2003)(review of modified ballot title). "[T]o comply with [***] statutory requirements, the Attorney General may have to go beyond the words of a measure in order to give the voters accurate and neutral information about a proposed measure." *Caruthers v. Myers*, 344 Or 596, 601, 189 P3d 1 (2008).

Here, the Attorney General's draft ballot title provides the following result statements:

**Result of "Yes" Vote: "Yes" vote exempts "family giving" (defined)
of "property" (defined)- including inheritance received from a
"family member" (defined)-from state or local taxation; reduces state
revenue.**

Honorable Kate Brown

Re. IP 12 (2014) - Draft Ballot Title Comments

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Result of "No" Vote: "No" vote retains law taxing certain estates and making those to whom estate property passes-even if related to decedent-liable for unpaid estate tax.

Although the "yes" vote result statement correctly notifies voters about the loss of revenue effected by the initiative, both result statements still suffer from the same deficiency outlined above with regard to the caption. They fail to provide the voter sufficient substantive information about the scope of current law to understand the policy choice proposed by the initiative's operative terms. The "no" vote result statement vaguely references "certain" estates and wastes precious words discussing the effect of "unpaid" estate taxes at the expense of providing concrete information about current taxation of income producing family property transfers. Like the draft caption, the draft "yes" vote result statement simply lists defined terms of the initiative without providing any substantive information about the nature of the changes effected by the initiative, i.e., to nullify the existing inheritance tax on estates of \$1 million and to prohibit taxation of income producing family property transfers. This is the information which voters need to assess the extent of the loss of revenue and policy choice.

To correct these deficiencies, we respectfully propose the following alternatives which track those approved by the Oregon Supreme Court for IP 18 (2012):

Result of "Yes" Vote: "Yes" vote nullifies, prohibits existing inheritance tax on estates of \$1 million or more, other death-related or family property transfers; reduces state revenue.

Result of "No" Vote: "No" vote retains existing inheritance tax on estates of \$1 million or more; retains tax on all income-producing property transfers between family members.

4. Summary

ORS 250.035(2)(d) requires that the ballot title contain a 125 word statement which accurately summarizes the measure and its major effects in a concise and impartial manner. The goal is to provide voters with enough information to understand what will happen if the measure is approved and the "breadth of its impact." *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989).

The draft summary proposed by the Attorney General reads as follows:

Summary: Current law imposes one-time tax on estate of person who dies when value of estate-as determined by federal law-is \$1 million or more; if estate does not pay tax, those to whom estate property passes are liable; does not otherwise tax property received as gifts or inheritance. Measure precludes state, local tax on property-defined as including any legal or equitable interest in anything of value- given from one "family member" (defined) to another family member; includes property passed by will, inheritance, or other operation of law; exempts all "family giving" (defined) from

Honorable Kate Brown

Re. IP 12 (2014) - Draft Ballot Title Comments

June 5, 2013

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taxation. Measure does not prohibit or restrict ordinary property taxes imposed based on ownership of an interest in property. Measure reduces state revenues; provides no replacement. Other provisions.

The summary does a better job of explaining the policy choice effected by the initiative. The explanation of current law correctly includes the \$1 million trigger for estate tax and notifies the voter that there is no gift tax. However, the statement still fails to notify the voter that income-producing transfers between family members are taxed under current law. In addition, although the explanation of the changes effected by the measure correctly points out that the measure reduces state revenues and provides no replacement, it still fails to clue the voter into the broad definition of "family member" or "family giving" so that the voter understands the extent of the potential loss of revenue suffered by the State. As noted above, IP 12 is broad enough to exempt from taxation not just large estates, but all income produced from property transferred between family members, including rental income and capital gains. It would allow "family members" with large estates and income-producing property to transfer such property back and forth in an effort to shield such property from taxation, resulting in significant loss of revenue for the State and local jurisdictions.

To correct these deficiencies we propose the following alternative:

Summary: Current law imposes a one-time inheritance tax on estate of person who dies when value of estate-as determined by federal law--is at least \$1 million; taxes income producing property transfer regardless of parties' relationship; does not otherwise tax property received as gifts or inheritance. Measure nullifies existing inheritance tax, prohibits state and local tax on transfer of any "property" (defined) without compensation, by voluntary act or operation of law, from one "family member"-defined to include by marriage, domestic partnership, adoption, or by other laws-to another. Measure allows ordinary property taxes imposed based on ownership of an interest in property. Measure reduces state revenues; provides no replacement. Other provisions.

Thank you for your careful consideration of these comments. Please send a copy of the certified ballot title as soon as it is available.

Sincerely,

BENNETT, HARTMAN, MORRIS & KAPLAN LLP

Aruna A. Masih

AAM

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cc: Clients



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

June 5, 2013

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

RE: Draft Ballot Title (Initiative Petition 12)

Ladies & Gentlemen:

I am writing to you with comments in regard to the draft Ballot Title prepared by the Attorney General as to Initiative Petition number 12 (Protect Family Giving From Taxes Act). I write on my own behalf as an Oregon elector, and as the main drafter of this initiative. I also write as an attorney, presenting these comments on behalf of each of the three Chief Petitioners, Marie H. Bowers, Robert A. Zielinski, Jr., and Gerald C. Freeman. These comments address the issues as to whether the draft Ballot Title fully complies with the statutory requirements.

While we attorneys often (and properly) focus on technical requirements, it is also important to remember that the Ballot Title is supposed to provide the regular voter with an understanding of the meaning of a given initiative, while seeking to limit any advocacy or prejudicial slant. It is often a challenge to find that "sweet spot," within the statutory word limitations, in which a Ballot Title informs the voter about important elements of an initiative, but also gives an understandable description in plain English.

Background

The essential element of the Protect Family Giving From Taxes Act (hereinafter "the Act") is that it creates a "Safe Harbor" in Oregon law, in which no gift from one family member to another family member, at any time, can be subjected to the imposition of any tax by the state, any county, any city, and any other unit of government with taxing power.

Section 2 of the Act is designed to provide a clear guide as to the intent of the Act, and the goal of creating the Safe Harbor from taxes as to family gifts.

Section 3 is a clear, powerful, and definitive statement as to the prohibition of state and local taxes on property which is transferred as a gift within a family.

Section 4 provides a broad definition of "family member." It is designed to be as inclusive as possible, as to the current societal understanding of "family," without being so broad as to render the term meaningless.

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Section 5 provides a broad definition of “property” within the context of understandable legal terms.

Section 6 gives a definition of “family giving” which is designed to be inclusive but reasonably clear. One essential component is the concept of giving without compensation. The Act is not about sales or rentals.

Section 7 is designed to make it clear that family giving during life, and upon death, is encompassed with the Act.

Section 8 is designed to ensure a liberal interpretation of the Act, in favor of protecting family giving from taxation in Oregon. This Section makes it clear that the Act is intended to supersede any contrary provisions in current law.

A significant preclusive effect is the fact that the Act prevents counties, cities, and any other unit of government from imposing any tax on family giving. As the Act is a state statute, its terms pre-empt any local effort to impose such a tax. We recognize that the Act is a statute, and that the Legislature may, in the future, over-ride it. But the immediate effect is to guarantee the Safe Harbor described above. For the long term, we depend on the pre-emptive effect as to local government power and the disinclination of legislators to over-rule a vote of the people.

With all of this in mind, we turn to the language of the draft Ballot Title.

1. Caption

This is the hardest part to write, since so much needs to be distilled into a 15-word limit. Also, the over-use of the language, “(defined)” can be misleading as it suggests that a definition in the Act is somewhat esoteric.

Here, the use of the shorthand term “family giving” in the space-limited Caption leads to the need to add “(defined)” and to then describe “property” as “(defined)”. But other terminology can be used which gives a clearer understanding about what the Act is about, in simpler terms.

The following is a caption which can be understood by the average voter:

**Gifts by family member (defined) to another family member are
exempt from state, local taxation.**

The above avoids use of the dangling, confusing phrase “including by inheritance,” which is only part of the Act and can be better dealt with in the Summary.

2. Result of “Yes” Vote

This 25-word statement is under-inclusive in one critical element: the phrase “including inheritance received from a ‘family member’ (defined).” This phrasing form can be

interpreted to mean that the “family member” definition only applies to an inherited gift. The “family member” definition in the Act applies to all gifts.

In addition, the exemption in the Act applies to state and local taxation. The use of the phrase “state or local taxation” implies that they may be one or the other. There is no such option in the Act. Accordingly, we recommend the following as a substitute:

Result of “Yes” Vote: “Yes” vote exempts gifts from one “family member” (defined) to another family member, including gifts by inheritance, from state and local taxation; reduces state revenue.

3. Result of “No” Vote

This provision is significantly under-inclusive and misleading. It completely ignores the fact that current state law does not restrict counties, cities, or other units of local government from imposing gift taxes, including taxes on gifts between family members. This must be addressed in this provision. This, of course, requires an adjustment of the wording, due to the 25-word limit. The following provision is properly inclusive and understandable:

Result of “No” Vote: “No” vote maintains authority of local governments to impose gift taxes, retains taxes on certain property passed at death from family member to family member.

The key element here is that current estate taxes apply to any gifts in an estate. The only portion of the current estate tax in issue is that portion relating to property passed from one family member to another family member. The “No” Vote result should only relate to that part of the current tax law which is affected. Our alternative language achieves this.

4. Summary

The Summary needs to encapsulate the full range of the effect of the Act, including its effect on current law. Current law includes no state prohibition of local taxes on gifts, including gifts between family members. This needs to be explained. Also, the use of “(defined)” after key words or phrases should be avoided in the Summary. Since there is a greater word allocation, some effort should be made to explain the Act’s terminology. The reality is that many voters will not take the time to read the full text of the Act, and its definitions, in the Voters’ Pamphlet. That is one reason why the Ballot Title is more than a Caption, and actually includes a Summary.

The draft Summary does define property. It should also generally define “family member” and “family giving” as part of its explanation of the Act.

The source of the current state tax on gifts – whether it is paid by the estate or the person who inherits – is unnecessarily explained in the draft Summary, and the explanation itself is confusing. Also, the current Oregon deduction of \$1 million is mentioned right after “federal law” is mentioned. The federal deduction is presently \$5 million, and is indexed. All of

these complications should be avoided in the Summary, because the Act does not affect federal law and does not change the Oregon estate tax deduction level. In this context, the Act simply exempts any family giving from any Oregon tax, whether it is an estate tax or is construed as an inheritance tax. Our proposed Summary avoids these unnecessary distractions and complications.

The Summary should start by explaining what the Act actually will do, then explain current law. This is the approach we take.

Accordingly, we propose the Summary be modified to read as follows:

Summary: Measure prohibits state, local tax on property given from one family member to another family member. “Property” is defined as including any legal or equitable interest in anything of value. “Family member” means a relationship by blood, marriage, domestic partnership, including range from great-grandparents to great grandchildren, siblings, cousins, nieces, nephews, domestic partners, etc. Such “family giving” means to give property, without compensation, from one family member to another family member, whether while alive or upon death. Current law contains no prohibition against county, city, local taxes on gifts. Current law imposes state tax on gifts, whether or not gifts are to family members, when property is passed upon death by will, inheritance or other operation of law. Measure reduces state revenues, provides no replacement.

Our approach does not mention that the Act does not prohibit or restrict ordinary property taxes because this is a technical protection provision in the Act, to avoid inappropriate construction of its terminology. It is not significant enough to warrant inclusion in the Summary. We also excluded the last phrase from the draft – “Other provisions” – because the “other provisions” are minor.

In summary, we propose that the draft Ballot Title be modified to read as presented above. I have attached the full text of our proposal, entitled “Alternative Ballot Title,” for your convenience.

Thank you for your consideration.

Sincerely,

Kevin L. Mannix,
Attorney at Law
For myself, and behalf of the Chief Petitioners

**Alternative Ballot Title
Initiative Petition 12**

**Gifts by family member (defined) to another family member are
exempt from state, local taxation.**

Result of "Yes" Vote: "Yes" vote exempts gifts from one "family member" (defined) to another family member, including gifts by inheritance, from state and local taxation; reduces state revenue.

Result of "No" Vote: "No" vote maintains authority of local governments to impose gift taxes, retains taxes on certain property passed at death from family member to family member.

Summary: Measure prohibits state, local tax on property given from one family member to another family member. "Property" is defined as including any legal or equitable interest in anything of value. "Family member" means a relationship by blood, marriage, domestic partnership, including range from great grandparents to great grandchildren, siblings, cousins, nieces, nephews, domestic partners, etc. Such "family giving" means to give property, without compensation, from one family member to another family member, whether while alive or upon death. Current law contains no prohibition against county, city, local taxes on gifts. Current law imposes state tax on gifts, whether or not gifts are to family members, when property is passed upon death by will, inheritance or other operation of law. Measure reduces state revenues, provides no replacement.

Prepared by Kevin L. Mannix
Attorney for Chief Petitioners

ELLEN F. ROSENBLUM
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

May 21, 2013

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

Re: Proposed Initiative Petition: Exempts from state, local taxation "family giving" (defined) of any "property" (defined), including by inheritance
DOJ File #BT-12-13; Elections Division #12

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 exempting family giving from state or local taxation.

Written comments from the public are due to you within ten business days after your receipt of this draft title. A copy of all written comments provided to you should be forwarded to this office immediately thereafter.

A copy of the draft ballot title is enclosed.

Sincerely,

Misty Kintz
Legal Secretary

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KATE BROWN
SECRETARY OF THE STATE

RCM:mlk/4253199

Enclosure

Marie H. Bowers
SW Salmon Ct.
Redmond, Oregon 97756

Robert A. Zielinski Jr.
River Road N.
Gervais, Oregon 97026

Gerald C. Freeman
Oak Grove Road
Rickreall, Oregon 97371

DRAFT BALLOT TITLE

Exempts from state, local taxation “family giving” (defined) of any “property” (defined), including by inheritance

Result of “Yes” Vote: “Yes” vote exempts “family giving” (defined) of “property” (defined)—including inheritance received from a “family member” (defined)—from state or local taxation; reduces state revenue.

Result of “No” Vote: “No” vote retains law taxing certain estates and making those to whom estate property passes—even if related to decedent—liable for unpaid estate tax.

Summary: Current law imposes one-time tax on estate of person who dies when value of estate—as determined by federal law—is \$1 million or more; if estate does not pay tax, those to whom estate property passes are liable; does not otherwise tax property received as gifts or inheritance. Measure precludes state, local tax on property—defined as including any legal or equitable interest in anything of value—given from one “family member” (defined) to another family member; includes property passed by will, inheritance, or other operation of law; exempts all “family giving” (defined) from taxation. Measure does not prohibit or restrict ordinary property taxes imposed based on ownership of an interest in property. Measure reduces state revenues; provides no replacement. Other provisions.

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SECRETARY OF THE STATE

Prospective Petition for State Measure**SEL 310**

rev 1/12: ORS 250.045

To the Secretary of State,

We, the undersigned, request a ballot title for the attached proposed measure to be submitted to the people of Oregon for their approval or rejection at the election to be held on NOVEMBER 4, 2014.

Type of Petition☒ **Initiative**☐ **Referendum**☒ **Statutory**☐ **Constitutional****Designating Chief Petitioners**

Every petition must designate not more than three persons as chief petitioners, setting forth the name, residence address and title (if officer of sponsoring organization) of each. All chief petitioners for an initiative or referendum petition must sign this form. Please carefully read the instructions for circulators and signers on the back of this form.

Chief Petitioner Information

Name print

Signature

1 Marie H. Bowers

Residence Address, Street/Route

SW Salmon Ct.

City

Redmond

State

OR

Zip Code

97756

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

503-364-1913

Sponsoring Organization if any

Name print

2 Robert A. Zielinski Jr.

Residence Address, Street/Route

River Rd. N.

City

Gervais

State

OR

Zip Code

97026

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

503-364-1913

Sponsoring Organization if any

Name print

Signature

3 Gerald C. Freeman

Residence Address, Street/Route

Oak Grove Rd.

City

Rickreall

State

OR

Zip Code

97371

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

503-364-1913

Sponsoring Organization if any

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SEL 301: Statement One or More Petition Circulators Will be Paid

rev 1/12: ORS 250.045, ORS 250.165, ORS 255.165, ORS 255.135

● Prospective Petition initial filing with filing officer

I/We hereby declare one or more petition circulators will be paid money or other valuable consideration for obtaining signatures of active registered voters on the attached petition. I/We understand the filing officer must be notified not later than the 10th day after I/we first have knowledge or should have had knowledge that no petition circulator will be compensated for obtaining signatures. By signing this document, I hereby state that no circulators will be compensated on this petition based on the number of signatures obtained by the circulator.

○ Completed Petition signatures submitted to filing officer

By signing this document, I hereby state that no circulators have been compensated on this petition based on the number of signatures obtained by the circulator.

Identify Petition Protect Family Giving From Taxes Act

12-7-12

Date Signed

1/23/13

Date Signed

1/23/13

Date Signed

→ Statement must be signed by all chief petitioners for an initiative or referendum petition.



Warning

Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years.

SEL 301: Statement No Petition Circulators Will be Paid

rev 1/12: ORS 250.045, ORS 250.165, ORS 255.165, ORS 255.135

○ Prospective Petition Initial Filing with Filing Officer

I/We hereby declare no petition circulators will be paid money or other valuable consideration for obtaining signatures of active registered voters on the attached petition. I/We understand the filing officer must be notified not later than the 10th day after I/we first have knowledge or should have had knowledge that any petition circulator will be compensated for obtaining signatures. By signing this document, I hereby state that no circulators will be compensated on this petition.

○ Completed Petition Signatures Submitted to filing officer

By signing this document, I hereby state that no circulators were compensated for obtaining signatures on the attached petition.

Identify Petition

Signed

SECRETARY OF THE STATE
KATE BROWN

Date Signed

Signed

2013 JUN 24 PM 10 19

Date Signed

Signed

RECEIVED

Date Signed

→ Statement must be signed by all chief petitioners for an initiative or referendum petition.



Warning

Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years.

PROTECT FAMILY GIVING FROM TAXES ACT

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

Section 1. This 2014 Act shall be known as the Protect Family Giving from Taxes Act.

Section 2. Current laws do not fully represent broad definitions of family and the importance of giving among family members and across generations. Some forms of family giving are penalized. This 2014 Act is intended to allow family members at any time to give to other family members without taxes or penalties. The People believe that there should be no penalties or taxes imposed by the State of Oregon or any other unit of government as to giving between family members. The People intend to allow gifts of family belongings, possessions, and any other kind of property between family members, within a generation or across generations, to encourage families to help family members as to education, home ownership and maintenance, business start-ups and maintenance, or any other endeavor. This includes giving family property which has special emotional significance, such as a family home, family heirloom, family business, or any other kind of property owned within a family.

Section 3. The State of Oregon and all other units of government in Oregon, including but not limited to counties and cities, shall not impose any tax on property to the extent that the property is transferred as family giving. All family giving is exempt from taxation.

Section 4. For purposes of this 2014 Act, "family member" means a relationship by blood, marriage, domestic partnership, adoption or by other laws recognizing family relationships, between a giver and a recipient within the third degree of relationship to the giver. "Family member" includes, by example, but is not limited to, relationships within the range of spouses, domestic partners, great grandparents, grandparents, parents, children, grandchildren, great grandchildren, great uncles, great aunts, uncles, aunts, nephews, nieces, great nephews, great nieces, siblings and cousins.

Section 5. For purposes of this Act, "property" includes, but is not limited to, any legal or equitable interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property.

Section 6. For purposes of this Act, "family giving" means to give without compensation any form of property, by voluntary act or operation of law, from one family member to another family member or from one family member to a trust for the benefit of another family member.

Section 7. This 2014 Act precludes taxation imposed on any property that is given from one family member to another family member during the family members' lifetimes, and any property designated to be passed or is passed from a family member to another family member by way of a will or testate or intestate succession or other operation of law relating to the death of a person. This 2014 Act also precludes taxation of any inheritance received by a family member from another family member. This 2014 Act does not cover or restrict ordinary property taxes that are imposed based upon ownership of an interest in property.

Section 8. This 2014 Act supersedes any Oregon law that is inconsistent with this 2014 Act. The Legislative Assembly shall amend ORS 118.010 and any other provision of law necessary to effectuate the intent of the People in this 2014 Act. This 2014 Act shall be generously construed to effectuate the intent of the People. Where two or more interpretations of this 2014 Act are possible, the interpretation that is the intent of the People is the interpretation that produces the most advantageous tax results for family members.

Section 9. This 2014 Act is effective January 1, 2015.

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KATE BROWN
SECRETARY OF PHILADELPHIA

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on July 26, 2013, I directed the original Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 12 to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and served upon Aruna A. Masih, attorney for Bethanne Darby and Gail Rasmussen, by using the court's electronic filing system.

I further certify that on July 26, 2013, I directed the Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 12 to be served upon chief petitioners Marie Bowers, Robert Zielinski Jr., and Gerald C. Freeman, by mailing a copy, with postage prepaid, in an envelope addressed to:

Marie Bowers
SW Salmon Ct.
Redmond, OR 97756

Robert Zielinski Jr.
River Rd. N.
Gervais, OR 97026

Id C. Freeman
Oak Grove Rd.
reall, OR 97371

/s/ Rolf C. Moan

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Attorney for Respondent
Ellen Rosenblum, Attorney General,
State of Oregon