

IN THE SUPREME COURT OF THE STATE OF OREGON

**DAN HARMON,**

Petitioner,

v.

**ELLEN F. ROSENBLUM,**  
Attorney General, State of Oregon

Respondent.

Case No. 61586

PETITION TO REVIEW BALLOT TITLE  
CERTIFIED BY ATTORNEY GENERAL

Initiative Petition 18 (2014)

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BALLOT TITLE CERTIFIED  
August 13, 2013  
Initiative Petition  
Chief Petitioner: Patrick Green

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## I. PETITION TO REVIEW BALLOT TITLE

### A. Petitioner's Interest

Petitioner Dan Harmon is an elector of this State, a person dissatisfied with the ballot title that is the subject of this action, and adversely affected by Respondent's actions. Because Petitioner submitted written comments concerning the draft ballot title, he has standing to seek review pursuant to ORS 250.085(2).<sup>1</sup>

### B. Certified Ballot Title

On August 13, 2013, the Attorney General certified the following ballot title:

**Modifies annual minimum tax for corporations  
with Oregon sales of \$10 million or more**

**Result of "Yes" Vote:** "Yes" vote increases or decreases minimum tax for corporations with Oregon sales of \$10 million or more, depending on sales above \$10 million.

**Result of "No" Vote:** "No" vote retains existing law, which provides specified fixed, incremental amounts of minimum tax on corporations with Oregon sales of \$10 million or more.

**Summary:** Current law provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax imposed increases incrementally up to \$100,000 based on the amount of Oregon sales on corporation's tax return. Measure modifies amount of minimum tax for corporations or groups of affiliated corporations with Oregon Sales of \$10 million or more, by imposing on all such corporations a tax of \$7,500 plus 0.25% of the excess over \$10 million. Measure eliminates separate categories based on amount of Oregon sales of \$10 million or more; eliminates cap of \$100,000 on corporate minimum tax. Measure applies to tax years beginning on or after January 1, 2015.

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<sup>1</sup> A copy of IP 18 is attached as Exhibit 1; the draft ballot title is attached as Exhibit 2; Petitioner's comments are attached as Exhibit 3; the Attorney General's explanatory letter is attached as Exhibit 4; and the certified ballot title is attached as Exhibit 5.

## II. ARGUMENTS AND AUTHORITIES

### A. Introduction

Oregon has two types of corporate taxes: excise and income. *See* ORS 317.005 et seq.; ORS 318.010 et seq. An excise tax is a tax imposed upon corporations for the privilege of carrying on or doing business in the State of Oregon and is based on a corporation's net income. ORS 317.010(5). Corporations that have no taxable income must pay an annual minimum tax based upon the corporation's Oregon sales. ORS 317.090. It is this minimum tax that IP 18 seeks to change.

IP 18 is the fifth initiative petition filed by Our Oregon that would decrease corporate taxes for some corporations and increase those taxes for others. *See* Exhibit 3, p. 5. Overall, its chief petitioner estimates that IP 18 would generate over \$1.189 billion in new revenue. *Id.*

### B. Standard of Review

On review, this Court must determine whether the title substantially complies with the requirements of ORS 250.035. ORS 250.085(5).

### C. The Caption

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

The caption does not meet these statutory requirements because it fails to state the actual major effects of IP 18, which is to simultaneously decrease taxes for certain corporations and increase taxes for other corporations. Specifically, as reflected in the chart attached to Petitioner's comments, the minimum tax would decrease for corporations that have Oregon sales

of \$10 million to \$13 million, and the minimum tax would increase for corporations that have Oregon sales above \$13 million. See Exhibit 3, p. 6.

In response to Petitioner's comments, Respondent states "Harmon's reference to '\$13 million' is confusing, because that amount is not mentioned in the measure (or in the current statute)." Exhibit 4, p. 2. Respondent is correct that this threshold amount is not stated in the measure, but that is the point at which IP 18 increases the current corporate minimum tax and this calculation is not disputed by Respondent. Petitioner created the chart to show the actual effects of IP 18 because the text of the measure imposes a somewhat complicated formula for determining the minimum tax; therefore, the actual effects of IP 18 are not apparent on the face of the measure. Rather, one must use a calculator to determine whether IP 18 increases or decreases the current corporate minimum tax, and such calculations show that the measure actually does both, depending on a corporation's amount of Oregon sales. Petitioner does not suggest that a reference to \$13 million be included in the caption, but the caption must identify the "actual major effect[s]" of the proposed measure. *Terhune v. Myers*, 342 Or 475, 480 (2007). As such, Petitioner suggested the following caption:

**Increases or decreases corporate minimum tax, depending on amount of Oregon sales exceeding \$10 million**

Respondent declines to adopt this because the "proposed caption is one word too long." Petitioner disagrees with this calculation as his suggested caption contains fourteen words and the numeric symbol "\$10." Respondent appears to be counting "\$10" as two words, but does not provide any authority for such method of word counting. Moreover, regardless of whether "\$10" is one or two words, the caption must alert voters to the measure's effect of decreasing the minimum tax for some corporations while increasing those taxes for other corporations.

Respondent also declines to adopt the suggested caption because she believes the phrase “[m]odifies annual minimum tax” better states the subject matter of the measure: changing the corporate minimum tax.” Exhibit 4, p. 2. However, IP 18’s subject matter, i.e., actual major effect, is not a *change* in corporate taxes; rather, its actual major effect is a decrease and an increase in corporate taxes. Indeed, every measure proposes “modifying” or “changing” current law in some way, and as such those words are inadequate and underinclusive to describe a measure’s major effect.

Use of the word “modifies” was examined by this Court in *Rogers v. Myers*, 344 Or 219 (2008), where the petitioner challenged the caption: “Modifies laws relating to law enforcement, criminal sanctions, prosecutions, controlled substances investigations; creates tax credit.” This Court agreed with the petitioner that the phrase “modifies laws relating to” is “so broad that it fails to disclose the subject matter of the proposed measure in terms that give notice to the voters of the principal substantive choice or choices that the measure presents.” *Id.* at 224. In *Rogers*, the Court ruled that it was not adequate to simply tell voters that certain laws would be modified or changed, the caption had to identify the particular change. *Id.* (“The particular wording selected by the Attorney General does not reasonably identify that change.”) See also *Terhune*, 342 Or at 479-80 (“The caption must reflect *specifically* the proposed tuition offset . . . if that is possible within the 15-word limit provided in ORS 250.035(2)(a).”) (emphasis added). Similar to the captions challenged in *Rogers* and *Terhune*, it is not adequate to simply tell voters that IP 18 would modify annual minimum taxes for corporations with Oregon sales of \$10 million or more; the caption must identify the particular changes.

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#### D. Result of “No” Vote

ORS 250.035(2)(c) requires that a ballot title contain a "simple and understandable statement," 25 words long, explaining what will happen if voters reject the measure. This means that the statement must explain to voters "the state of affairs" that will exist if the initiative is rejected, i.e., the status quo. It is essential that the "No" vote result statement relate to the subject matter of the proposed measure to avoid misleading petition signers or voters about the effect of their signature or vote. *Nesbitt v. Myers*, 335 Or 219 (2003), (original review) 335 Or 424, 431 (2003) (review of modified ballot title).

The draft "No" statement does not comply with these requirements because it does not explain the current law in terms that are specific enough to be meaningful to potential signers and voters. Although the draft “No” statement explains that “specified fixed, incremental amounts of minimum tax” would be retained, this does not give Oregonians any meaningful information because the current specified minimum tax is not provided, although there is sufficient room to provide such information. The important aspect of the status quo which needs to be communicated to voters is the amount of the current tax, not simply whether the current tax is specified, fixed, or incremental. Furthermore, there is sufficient space to include information regarding when the minimum tax is triggered, i.e., when a corporation has no taxable income.

For these reasons, Petitioner suggested the following statement:

**Result of “No” Vote:** “No” vote retains existing law, providing minimum tax of \$15,000 to \$100,000 for corporations without taxable income but with Oregon sales exceeding \$10 million.

In response to Petitioner’s suggested statement, Respondent states that the applicability of the corporate minimum tax is beyond the scope of the measure. Exhibit 4, p. 3. Petitioner respectfully disagrees. The “No” result statement must describe what would happen if the

measure is rejected. In this case, if the measure fails, corporations that have no taxable income but do have Oregon sales exceeding \$10 million would continue to be subject to a minimum tax of \$15,000 to \$100,000, and it is entirely appropriate to communicate this to voters.

Additionally, the suggested phrase “corporations without taxable income” does not suggest that the measure changes current law because the statement clearly states that “No” vote retains existing law. Respondent also states in her explanatory letter that voters will likely be confused by the phrase “without taxable income” when the measure is about taxing based on amount of sales. To the contrary, Petitioner believes that the omission of “without taxable income” would be misleading and could cause voters to mistakenly believe that the minimum tax is based on income. Many voters may incorrectly believe that “Oregon sales” and “taxable income” are the same thing, therefore it is important for voters to know that sales and income are not synonymous and that the minimum tax is only imposed upon corporations that have no taxable income.

#### E. The Summary

A ballot title's summary must be a “concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” ORS 250.035(2) (d). The goal of the summary is to “help voters[] understand what will happen if the measure is approved” and the “breadth of [the measure's] impact.” *Mabon v. Myers*, 332 Or 633, 640 (2001) (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169,175 (1989)).

The ballot title does not comply with these standards for two reasons. First, the summary does not state that IP 18 would result in a tax increase for certain corporate taxpayers and a tax decrease for other corporate taxpayers, which is what will happen if the measure is approved. Moreover, potential signers and voters will reasonably expect such information since the result

of “Yes” statement mentions these tax increases and decreases. The summary should build on the information provided in the result statement and summarize the measure’s major effects.

Second, the summary is deficient because it does not inform voters when a taxpayer must pay a minimum tax, i.e., when a business has no taxable income, and this information is critical for a reasonable understanding of what will happen if the measure is approved. Without this information, voters could easily come to the mistaken conclusion that a minimum tax is owed annually regardless of whether the corporation has taxable income and regardless of whether the corporation is liable for other taxes. In order for voters to understand the measure, it is necessary for them to understand that the measure only applies when a business has no taxable income.

To address the problems identified, Petitioner suggests the following summary:

**Summary:** Currently, ORS 317.090 provides that each corporation or affiliated group of corporations must pay an annual minimum tax for the privilege of doing business in Oregon; corporations having no taxable income must pay minimum tax based on amount of Oregon sales; provides that minimum tax imposed on corporations is between \$15,000 and \$100,000 depending on sales exceeding \$10 million. Measure decreases the minimum tax for corporations with Oregon sales between \$10 million and \$13 million; increases minimum tax for corporations with Oregon sales exceeding \$13 million; requires payment of \$7,500 plus 0.25% of the excess over \$10 million. Measure eliminates separate categories of minimum tax on corporations with Oregon sales of \$10 million or more. Measure applies to tax years beginning on/after January 1, 2015.

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### III. CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court declare that the certified ballot title does not substantially comply with ORS 250.035 and refer the ballot title back to the Attorney General for modification.

DATED this 23rd day of August, 2013.

Respectfully submitted,

 Jill Gibson Odell, OSB #973581  
GIBSON LAW FIRM, LLC

*Of Attorneys for Petitioner*

OFFICE OF THE SECRETARY OF STATE

KATE BROWN  
SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT  
DIRECTOR

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SALEM, OREGON 97310-0722

(503) 986-1518

July 8, 2013

**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 July 5, 2013, by Patrick Green, for the General Election of November 4, 2014.

A copy of the text of this proposed initiative petition is on the second page of the letter. 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 July 29, 2013, in order for them to be considered in the review.

KATE BROWN  
Secretary of State

BY:

Lydia Plukchi  
Compliance Specialist

**Section 1.** ORS 317.090 is amended to read:

(1) As used in this section:

(a) "Oregon sales" means:

(A) If the corporation apportions business income under ORS 314.650 to 314.665 for Oregon tax purposes, the total sales of the taxpayer in this state during the tax year, as determined for purposes of ORS 314.665;

(B) If the corporation does not apportion business income for Oregon tax purposes, the total sales in this state that the taxpayer would have had, as determined for purposes of ORS 314.665, if the taxpayer were required to apportion business income for Oregon tax purposes; or

(C) If the corporation apportions business income using a method different from the method prescribed by ORS 314.650 to 314.665, Oregon sales as defined by the Department of Revenue by rule.

(b) If the corporation is an agricultural cooperative that is a cooperative organization described in section 1381 of the Internal Revenue Code, "Oregon sales" does not include sales representing business done with or for members of the agricultural cooperative.

(2) Each corporation or affiliated group of corporations filing a return under ORS 317.710 shall pay annually to the state, for the privilege of carrying on or doing business by it within this state, a minimum tax as follows:

(a) If Oregon sales properly reported on a return are:

(A) Less than \$500,000, the minimum tax is \$150.

(B) \$500,000 or more, but less than \$1 million, the minimum tax is \$500.

(C) \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.

(D) \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.

(E) \$3 million or more, but less than \$5 million, the minimum tax is \$2,000.

(F) \$5 million or more, but less than \$7 million, the minimum tax is \$4,000.

(G) \$7 million or more, but less than \$10 million, the minimum tax is \$7,500.

(H) \$10 million or more, but less than \$25 million, the minimum tax is \$15,000 plus 0.25% of the excess over \$10 million.

~~(I) \$25 million or more, but less than \$50 million, the minimum tax is \$30,000.~~

~~(J) \$50 million or more, but less than \$75 million, the minimum tax is \$50,000.~~

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KATE BROWN  
SECRETARY OF THE STATE

Section 1. ORS 314.000 is amended to read:

(1) As used in this section:

(a) "Oregon sales" means:

(A) If the corporation apportion business income under ORS 314.000 to 314.002 for Oregon tax purposes, the total sales of the taxpayer in this state during the taxable year for purposes of ORS 314.002;

(B) If the corporation does not apportion business income for Oregon tax purposes, the total sales in this state that the taxpayer would have had, as determined for purposes of ORS 314.002, 314.003, 314.004, 314.005, 314.006, 314.007, 314.008, 314.009, 314.010, 314.011, 314.012, 314.013, 314.014, 314.015, 314.016, 314.017, 314.018, 314.019, 314.020, 314.021, 314.022, 314.023, 314.024, 314.025, 314.026, 314.027, 314.028, 314.029, 314.030, 314.031, 314.032, 314.033, 314.034, 314.035, 314.036, 314.037, 314.038, 314.039, 314.040, 314.041, 314.042, 314.043, 314.044, 314.045, 314.046, 314.047, 314.048, 314.049, 314.050, 314.051, 314.052, 314.053, 314.054, 314.055, 314.056, 314.057, 314.058, 314.059, 314.060, 314.061, 314.062, 314.063, 314.064, 314.065, 314.066, 314.067, 314.068, 314.069, 314.070, 314.071, 314.072, 314.073, 314.074, 314.075, 314.076, 314.077, 314.078, 314.079, 314.080, 314.081, 314.082, 314.083, 314.084, 314.085, 314.086, 314.087, 314.088, 314.089, 314.090, 314.091, 314.092, 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314.981, 314.982, 314.983, 314.984, 314.985, 314.986, 314.987, 314.988, 314.989, 314.990, 314.991, 314.992, 314.993, 314.994, 314.995, 314.996, 314.997, 314.998, 314.999, 315.000.

(C) If the corporation apportion business income using a method different from the method prescribed by ORS 314.000 to 314.002, Oregon sales as defined by the Department of Revenue by rule.

(d) If the corporation is an agricultural cooperative that is a cooperative organization described in section 1381 of the Internal Revenue Code, "Oregon sales" does not include sales representing business done with or for members of the agricultural cooperative.

(E) Each corporation or affiliated group of corporations filing a return under ORS 314.000 shall pay annually to the state for the privilege of carrying on or doing business by it within this state a minimum tax as follows:

(a) If Oregon sales properly reported on a return are:

(A) Less than \$200,000, the minimum tax is \$150.

(B) \$200,000 or more, but less than \$1 million, the minimum tax is \$200.

(C) \$1 million or more, but less than \$2 million, the minimum tax is \$1,000.

(D) \$2 million or more, but less than \$3 million, the minimum tax is \$1,500.

(E) \$3 million or more, but less than \$4 million, the minimum tax is \$2,000.

(F) \$4 million or more, but less than \$5 million, the minimum tax is \$2,500.

(G) \$5 million or more, but less than \$10 million, the minimum tax is \$3,500.

(H) \$10 million or more, but less than \$25 million, the minimum tax is \$4,500. \$7,500 plus 0.2% of the excess over \$10 million.

(I) \$25 million or more, but less than \$50 million, the minimum tax is \$5,000.

(J) \$50 million or more, but less than \$75 million, the minimum tax is \$6,000.

~~(K) \$75 million or more, but less than \$100 million, the minimum tax is \$75,000.~~

~~(L) \$100 million or more, the minimum tax is \$100,000.~~

(b) If a corporation is an S corporation, the minimum tax is \$150.

(3) The minimum tax is not apportionable (except in the case of a change of accounting periods), and is payable in full for any part of the year during which a corporation is subject to tax.

**Section 2.** The amendments to ORS 317.090 by Section 1 of this 2014 Act apply to tax years beginning on or after January 1, 2015.

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2013 APR 26 AM 11 33  
KATE BROWN  
SECRETARY OF THE STATE

## **DRAFT BALLOT TITLE**

**Modifies annual minimum tax for corporations with Oregon sales  
of \$10 million or more**

**Result of "Yes" Vote:** "Yes" vote increases or decreases minimum tax for corporations with Oregon sales of \$10 million or more, depending on sales above \$10 million.

**Result of "No" Vote:** "No" vote retains existing law, which provides specified fixed, incremental amounts of minimum tax on corporations with Oregon sales of \$10 million or more.

**Summary:** Current law provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax imposed increases incrementally up to \$100,000 based on the amount of Oregon sales on corporation's tax return. Measure modifies amount of minimum tax for corporations or groups of affiliated corporations with Oregon sales of \$10 million or more, \$50 million or more, and \$100 million or more, by requiring payment of \$7,500 plus 0.25% of the excess over \$10 million. Measure eliminates separate categories, with incrementally increasing minimum tax on corporations with Oregon sales of \$25 million or more. Measure applies to tax years beginning on/after January 1, 2015.

RECEIVED  
JUL 15 PM 2 08  
KATE BROWN  
SECRETARY OF THE STATE



July 29, 2013

Via Facsimile - (503)373-7414

The Honorable Kate Brown  
Secretary of State  
Elections Division  
255 Capitol Street NE, Ste 501  
Salem, OR 97310-0722

Re: Public Comment on Initiative Petition #18 (2014)

Dear Secretary Brown,

I represent Dan Harmon, who is an elector in the State of Oregon and wishes to comment on the draft ballot title for IP #18 (2014). The Attorney General has proposed the following ballot title for IP #18:

**Modifies annual minimum tax for corporations with Oregon sales of \$10 million or more**

**Result of "Yes" Vote:** "Yes" vote increases or decreases minimum tax for corporations with Oregon sales of \$10 million or more, depending on sales above \$10 million.

**Result of "No" Vote:** "No" vote retains existing law, which provides specified fixed, incremental amounts of minimum tax on corporations with Oregon sales of \$10 million or more.

**Summary:** Current law provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax imposed increases incrementally up to \$100,000 based on the amount of Oregon sales on corporation's tax return. Measure modifies the amount of minimum tax for corporations or groups of affiliated corporations with Oregon sales of \$10 million or more, \$50 million or more, and \$100 million or more, by requiring payment of \$7,500 plus 0.25% of the excess over \$10 million. Measure eliminates separate categories, with incrementally increasing minimum tax on corporations with Oregon sales of \$25 million or more. Measure applies to tax years beginning on/after January 1, 2015.

## **I. INTRODUCTION**

Oregon has two types of corporate taxes: excise and income. *See* ORS 317.005 et seq.; ORS 318.010 et seq. An excise tax is a tax imposed upon businesses for the privilege of carrying on or doing business in the State of Oregon and is based on the business' net income. ORS 317.010(5). Businesses that have no taxable income must pay an annual minimum tax based upon the business' Oregon sales. ORS 317.090. It is this minimum tax that IP #18 seeks to change.

Exhibit 3  
Page 1 of 6

IP #18 is the fifth initiative petition filed by Our Oregon that would decrease corporate taxes for some corporations and increase those taxes for others.<sup>1</sup> Overall, its chief petitioners estimate that IP #18 would generate over \$1.189 billion in new revenue.

## II. CAPTION

ORS 250.035(2)(a) requires a ballot title to contain "[a] caption of not more than 15 words that reasonably identifies the subject matter of the state measure." To comply with this standard, case law requires that the caption identify the proposal's subject matter in terms that will not "confuse or mislead potential signers and voters." *Kain/Waller v. Myers*, 337 Or 36, 40 (2004). The Oregon Supreme Court recently emphasized that the "subject matter" is the "actual major effect" of the measure. *Lavey v. Kroger*, 350 Or 559 563 (2011). If a draft ballot title is challenged for failure to comply with these requirements, upon review the Oregon Supreme Court's "initial task is to determine whether the title prepared by the Attorney General is unfair or insufficient." *Remington v. Paulus*, 296 Or 317, 320 (1984).

The draft caption does not meet these statutory requirements because it fails to state the actual major effects of IP 18, which is to simultaneously decrease taxes for certain corporations and increase taxes for other corporations. Specifically, the minimum tax would decrease for corporations that have Oregon sales of \$10 million to \$13 million, and the minimum tax would increase for corporations that have Oregon sales above \$13 million. While the word "modifies" alerts voters that the annual minimum tax would change pursuant to IP 18, the caption must reasonably identify that change. Indeed, IP 18's subject matter is not a change in corporate taxes; rather, its subject matter is a decrease and an increase in corporate taxes, depending on the amount of Oregon sales. The actual major effects of IP 18 are illustrated by Exhibit 2.

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

**Increases or decreases corporate minimum tax, depending on amount of Oregon sales exceeding \$10 million**

## III. RESULT OF "NO" VOTE

The Attorney General issued the following draft "no" statement:

**Result of "No" Vote:** "No" vote retains existing law, which provides specified fixed, incremental amounts of minimum tax on corporations with Oregon sales of \$10 million or more.

---

<sup>1</sup> <http://ouroregon.org/20#15initiatives> See Exhibit 1.



ORS 250.035(2)(c) requires that a ballot title contain a "simple and understandable statement," 25 words long, explaining what will happen if voters reject the measure. This means that the statement must explain to voters "the state of affairs" that will exist if the initiative is rejected, i.e., the status quo. It is essential that the "no" vote result statement relate to the subject matter of the proposed measure to avoid misleading petition signers or voters about the effect of their signature or vote. *Nesbitt v. Myers*, 335 Or 219 (2003), (original review) 335 Or 424, 431 (2003) (review of modified ballot title).

The draft "No" statement does not comply with these requirements because it does not explain the current law in terms that are specific enough to be meaningful to potential signers and voters. Although the draft "No" statement explains that "specified fixed, incremental amounts of minimum tax" would be retained, this does not give Oregonians any meaningful information because the current specified minimum tax is not provided, even though there is sufficient room to provide such information. The important aspect of the status quo which needs to be communicated to voters is the amount of the current tax, not simply whether the current tax is specified, fixed, or incremental. Furthermore, there is sufficient space to include information regarding when the minimum tax is triggered, i.e., when a corporation has no taxable income.

To cure these defects, we suggest the following "No" statement:

**Result of "No" Vote:** "No" vote retains existing law, providing minimum tax of \$15,000 to \$100,000 for corporations without taxable income but with Oregon sales exceeding \$10 million.

#### IV. SUMMARY

The Attorney General has issued the following draft summary:

**Summary:** Current law provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax imposed increases incrementally up to \$100,000 based on the amount of Oregon sales on corporation's tax return. Measure modifies the amount of minimum tax for corporations or groups of affiliated corporations with Oregon sales of \$10 million or more, \$50 million or more, and \$100 million or more, by requiring payment of \$7,500 plus 0.25% of the excess over \$10 million. Measure eliminates separate categories, with incrementally increasing minimum tax on corporations with Oregon sales of \$25 million or more. Measure applies to tax years beginning on/after January 1, 2015.

ORS 250.035(2)(d) requires that a ballot contain a "concise and impartial statement of not more than 125 words summarizing the measure and its major effects." "[T]he purpose of the summary is to 'help voters understand what will happen if the measure is approved' and 'the breadth of its impact.'" *Mabon*, 322 Or at 640 (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175 (1989)).

ORS 310.035(3)(c) requires that a ballot contain a "simple and understandable statement" 22 words long, explaining what will happen if voters reject the measure. This means that the statement must explain to voters "the state of affairs" that will exist if the initiative is rejected, i.e., the status quo. It is essential that the "no" vote result statement relate to the subject matter of the proposed measure to avoid misleading ballot signers or voters about the effect of their signature on vote. *Wesley v. Meyer*, 333 Or 219 (2002) (original review) 333 Or 434, 431 (2002) (review of modified ballot text).

The third "no" statement does not comply with these requirements because it does not explain the current law in terms that are specific enough to be meaningful to potential signers and voters. Although the third "no" statement explains that "specified (tax) income amount" of minimum tax would be retained, this does not give Oregonians any meaningful information because the current specified minimum tax is not provided, even though there is sufficient room to provide such information. The important aspect of the status quo which needs to be communicated to voters is the amount of the current tax, not simply whether the current tax is specified, fixed or incremental. Furthermore, there is sufficient space to include information regarding when the minimum tax is triggered, i.e., when a corporation has no taxable income.

To our best ability, we suggest the following "no" statement:

Meaning of "No": Voters "No" vote retains existing law providing minimum tax of \$10,000 to \$100,000 for corporations without taxable income but with Oregon sales exceeding \$10 million.

IV. SUMMARY

The Attorney General has issued the following draft summary:

Meaning of "No": Current law provides that each corporation or affiliated group of corporations filing a tax return under ORS 310 must pay an annual minimum tax amount of tax imposed increases incrementally up to \$100,000 based on the amount of Oregon sales or corporations' tax return. Measure modifies the amount of minimum tax for corporations or groups of affiliated corporations with Oregon sales of \$10 million or more, \$20 million or more, and \$100 million or more by requiring payment of \$7,500 plus 0.35% of the excess over \$10 million. Measure eliminates separate categories with incrementally increasing minimum tax on corporations with Oregon sales of \$10 million or more. Measure applies to tax years beginning on or after January 1, 2017.

ORS 310.035(3)(b) requires that a ballot contain a "concise and impartial statement of not more than 125 words summarizing the measure and its major effects." "[T]he purpose of the summary is to help voters understand what will happen if the measure is approved," and "the breadth of its impact." *Wesley v. Meyer*, 333 Or 440 (quoting *Frederick v. Roberts*, 308 Or 100, 112 (1992)).

The ballot title does not comply with these standards for three reasons. First, the summary does not state that IP 18 would result in a tax increase for certain corporate taxpayers and a tax decrease for other corporate taxpayers, and potential signers and voters will reasonably expect such information since the result of "Yes" statement mentions these tax increases and decreases. The summary offers an opportunity to expand upon the information provided in the result statement and to summarize the measure's major effects, which is a tax increase and a tax decrease. This summary statement does just the opposite. It's more abstract and less specific – and thereby more confusing to voters – than the "yes" and "no" statements.

Second, the summary is deficient because it does not inform voters when a taxpayer must pay a minimum tax, i.e., when a business has no taxable income, and this information is critical for a reasonable understanding of what will happen if the measure is approved. Without this information, voters could easily come to the mistaken conclusion that a minimum tax is owed annually regardless of whether the corporation has taxable income and regardless of whether the corporation is liable for other taxes. In order for voters to understand the measure, it is necessary for them to understand that the measure only applies when a business has no taxable income.

Third, the summary incorrectly states that \$25 million is the point at which the measure eliminates separate categories of incrementally increasing minimum taxes on corporations. In fact, IP 18 would eliminate the separate categories of minimum tax on corporations with Oregon sales of \$10 million or more.

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

**Summary:** Currently, ORS 317.090 provides that each corporation or affiliated group of corporations must pay an annual minimum tax for the privilege of doing business in Oregon; corporations having no taxable income must pay minimum tax based on amount of Oregon sales; provides that minimum tax imposed on corporations is between \$15,000 and \$100,000 depending on sales exceeding \$10 million. Measure decreases the minimum tax for corporations with Oregon sales between \$10 million and \$13 million; increases minimum tax for corporations with Oregon sales exceeding \$13 million; requires payment of \$7,500 plus 0.25% of the excess over \$10 million. Measure eliminates separate categories of minimum tax on corporations with Oregon sales of \$10 million or more. Measure applies to tax years beginning on/after January 1, 2015.

Thank you for considering our comments to the draft ballot title.

Very truly yours,

Jill Gibson Odell  
Gibson Law Firm

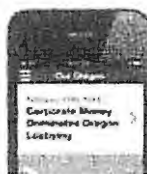
Attachments



OUR  
OREGON

A better Oregon.  
There's an app for that.

Get the Our Oregon  
Mobile App



SOME BIG IDEAS TO FUND OREGON'S PRIORITIES

ABOUT OUR INITIATIVES

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## SOME BIG IDEAS TO FUND OREGON'S PRIORITIES

We're exploring ways to fund Oregon's schools and other critical priorities. Will you join us?

Email\*

Zip/Postal Code\*

On April 26, we filed numerous initiative petitions with the Secretary of State's office for the 2014 election.

These initiatives would raise hundreds of millions of dollars to more than \$1 billion in funding for Oregon's classrooms and critical services by raising tax rates on large corporations. Most of these corporations are headquartered out of state, but make a lot of money here—and are essentially getting a free ride.

There's not yet been any one magic solution proposed that can solve the problem, so we're filing many different initiatives as a way of keeping multiple ideas on the table in case we need to pursue them. It's very early in the process, and we won't have a decision about what initiatives we move forward on for several months.

Right now, Oregon is tied for the lowest business taxes in the nation. Our business taxes are far below our closest neighbors, including Washington. It should be no wonder, then, that we have the third largest class sizes in the country and one of the shortest school years.

It's no secret that our schools are hurting, classrooms are overcrowded, and senior services continue to be threatened. It's also no secret that Oregonians believe that large corporations should pay their fair share.

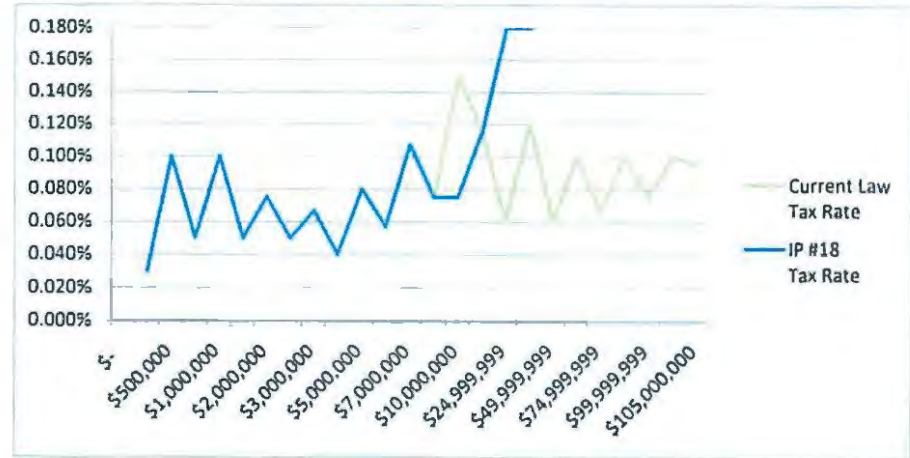
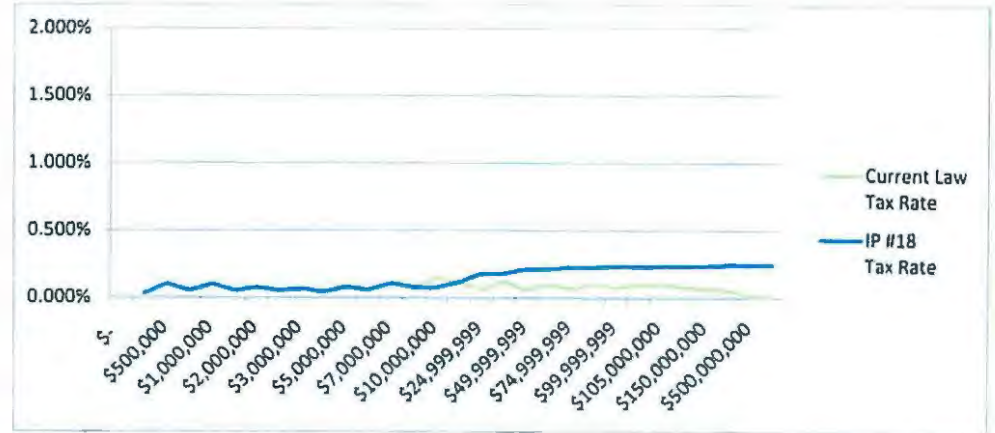
Our Oregon has been on the front lines of the fight for a fairer tax system and more funding for the state's critical priorities, like our schools and senior health care. By filing these initiatives, we're continuing to take the lead in making sure that Oregon remains a great place to live for everyone.

Here's what we filed:

Title	Estimated Revenue*	Notes
Large Corporations Should Pay Their Fair Share I	\$1 billion	Lift the existing \$100,000 corp minimum cap on corps with more than \$100 million; tax revenue above \$100 million at 2%
Large Corporations Should Pay Their Fair Share II	\$500 million	Lift the existing \$100,000 corp minimum cap on corps with more than \$100 million; tax revenue above \$100 million at 1%
Invest in Oregon's Future I	\$1.109 billion	Replace current corporate minimum tax for C-corps with more than \$10 million in sales with a gross receipts tax of 0.25%
Invest in Oregon's Future II	\$2+ billion	Replace current corporate minimum tax for C-corps with more than \$10 million in sales with a graduated gross receipts tax of 0.25% to 1% (for corps with more than \$100 million in sales)
Fund Oregon's Priorities	\$150 million	Increase corporate income tax rate on profits above \$10 million to 10%
If Corporations Are People, Let's Tax Them Like It	\$370+ million	Change the corporate income tax structure to mirror personal income tax rates



Sales	Current Law Sales Tax	Current Law Tax Rate	IP #18 Sales Tax	IP #18 Tax Rate
\$ -	\$ 150		\$ 150	
\$ 499,999	\$ 150	0.030%	\$ 150	0.030%
\$ 500,000	\$ 500	0.100%	\$ 500	0.100%
\$ 999,999	\$ 500	0.050%	\$ 500	0.050%
\$ 1,000,000	\$ 1,000	0.100%	\$ 1,000	0.100%
\$ 1,999,999	\$ 1,000	0.050%	\$ 1,000	0.050%
\$ 2,000,000	\$ 1,500	0.075%	\$ 1,500	0.075%
\$ 2,999,999	\$ 1,500	0.050%	\$ 1,500	0.050%
\$ 3,000,000	\$ 2,000	0.067%	\$ 2,000	0.067%
\$ 4,999,999	\$ 2,000	0.040%	\$ 2,000	0.040%
\$ 5,000,000	\$ 4,000	0.080%	\$ 4,000	0.080%
\$ 6,999,999	\$ 4,000	0.057%	\$ 4,000	0.057%
\$ 7,000,000	\$ 7,500	0.107%	\$ 7,500	0.107%
\$ 9,999,999	\$ 7,500	0.075%	\$ 7,500	0.075%
\$ 10,000,000	\$ 15,000	0.150%	\$ 7,500	0.075%
\$ 13,000,000	\$ 15,000	0.115%	\$ 15,000	0.115%
\$ 24,999,999	\$ 15,000	0.060%	\$ 45,000	0.180%
\$ 25,000,000	\$ 30,000	0.120%	\$ 45,000	0.180%
\$ 49,999,999	\$ 30,000	0.060%	\$ 107,500	0.215%
\$ 50,000,000	\$ 50,000	0.100%	\$ 107,500	0.215%
\$ 74,999,999	\$ 50,000	0.067%	\$ 170,000	0.227%
\$ 75,000,000	\$ 75,000	0.100%	\$ 170,000	0.227%
\$ 99,999,999	\$ 75,000	0.075%	\$ 232,500	0.232%
\$ 100,000,000	\$ 100,000	0.100%	\$ 232,500	0.233%
\$ 105,000,000	\$ 100,000	0.095%	\$ 245,000	0.233%
\$ 125,000,000	\$ 100,000	0.080%	\$ 295,000	0.236%
\$ 150,000,000	\$ 100,000	0.067%	\$ 357,500	0.238%
\$ 200,000,000	\$ 100,000	0.050%	\$ 482,500	0.241%
\$ 500,000,000	\$ 100,000	0.020%	\$ 1,232,500	0.247%
\$ 1,000,000,000	\$ 100,000	0.010%	\$ 2,482,500	0.248%





DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

August 13, 2013

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

RECEIVED  
2013 AUG 13 PM 2 15  
KATE BROWN  
SECRETARY OF THE STATE

Re: Proposed Initiative Petition — Modifies Annual Minimum Tax For Corporations With Oregon Sales Of \$10 Million Or More  
DOJ File #BT-18-13; Elections Division #18

Dear Mr. Trout:

We have received the comments submitted in response to the draft ballot title for the prospective Initiative Petition # 18 (2014). Comments were submitted by Steven Berman, on behalf of chief petitioner Patrick Green; and by Jill Gibson Odell, on behalf of Dan Harmon. We provide the enclosed certified ballot title.

This letter summarizes the comments we received, our response to those comments, and the reasons we made or declined to make the changes proposed by the commenters. This letter must be included in the record in the event the Oregon Supreme Court is asked to review this ballot title. ORAP 11.30(7).

The measure amends ORS 317.090(2), which provides for a minimum corporate tax, the amount of which is determined based on the dollar amount of reported Oregon sales. The tax "brackets" impose incrementally increasing taxes as the dollar amount of Oregon sales increases. Currently, sales of more than \$10 million are subject to incrementally increasing tax under the following tax brackets: \$10 million to \$25 million; \$25 million to \$50 million; \$50 million to \$75 million; \$75 million to \$100 million; and \$100 million or more. *Id.*

Mr. Green objects only to the draft summary. Mr. Harmon objects to the draft caption, "no" result statement, and summary.

A. The caption

The caption must "inform potential petition signers and voters of the sweep of the measure." *Terhune v. Myers*, 342 Or 475, 479, 154 P3d 1284 (2007). It must identify the "principal effect" or "actual major effect" of the proposed measure, *Terhune*, 342 Or at 479, without being inaccurate or underinclusive, *Hunnicut v. Myers*, 342 Or 491, 495, 155 P3d 870 (2007). The caption must use terms that reasonably identify the proposed measure's subject



matter and do not understate or overstate the scope of the legal changes that the proposed measure would enact. *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004). To determine the subject matter of a proposed measure, the court first examines its words and the changes, if any, that the proposed measure would enact in the context of existing law. *Kain/Waller*, 337 Or at 41.

The draft caption reads:

Modifies annual minimum tax for corporations  
with Oregon sales of \$10 million or more

Mr. Harmon asserts that the draft caption does not meet the requirement “to state the actual major effects of IP 18.” He states that the caption must tell voters *how* the measure modifies the annual minimum tax: by increasing the tax for some corporations (those with sales above \$13 million) and decreasing the tax for others (those with sales of \$10 million to \$13 million). At the outset, Harmon’s reference to “\$13 million” is confusing, because that amount is not mentioned in the measure (or in the current statute).

On the merits, Harmon’s argument is not persuasive. He suggests a caption stating: “Increases or decreases corporate minimum tax, depending on amount of Oregon sales exceeding \$10 million.” Harmon’s proposed caption is one word too long. In addition, we decline to adopt Harmon’s suggested change because we believe that the phrase “[m]odifies annual minimum tax” better states the subject matter of the measure: changing the corporate minimum tax. We certify the draft caption.

**B. The “No” result statement**

ORS 250.035(2)(c) requires a ballot title to contain “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected.”

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The draft “no” result statement provides:

“No” vote retains existing law, which provides specified fixed; incremental amounts of minimum tax on corporations with Oregon sales of \$10 million or more.

Commenter Harmon asserts that the draft “no” statement is insufficiently specific. He comments that voters should be informed in the “no” result statement of “the amount of the current tax” (“\$15,000 to \$100,000”). He also comments that the “no” statement must tell voters the minimum tax is triggered when a corporation has no taxable income. We disagree with both comments.

First, telling voters that existing law provides for a minimum tax of \$15,000 to \$100,000 would be less informative than the draft “no” statement. Harmon’s proposed alternative does not explain how the amount of the tax imposed is determined. It does not tell voters that the tax is incremental. It does not tell voters that the amount is fixed. Therefore, we do not accept the commenter’s proposed change.

Second, the applicability of the corporate minimum tax is not the subject of the measure. That is, the measure does not change anything about which corporations are subject to the minimum tax (that is the subject of a separate statute). Thus, Harmon's suggested phrasing is beyond the scope of the measure. In addition, using the phrase "corporations without taxable income" for the first time in the "no" result statement could be misleading and confusing to voters. The proposed new phrase could suggest that the measure changes current law applying a minimum tax to corporations without taxable income. It is also likely to be confusing, because voters would not understand the meaning of "without taxable income," particularly when the measure is about taxing based on amount of sales.

For those reasons, we certify the draft "no" result statement.

**C. The summary**

Commenter Harmon has three objections to the draft summary. First, he renews his comment that voters need to be informed that the measure results in a tax increase for certain corporate taxpayers and a tax decrease for other corporate taxpayers. The commenter states that voters and petition signers will expect to see that information in the summary, because it is in the "yes" result statement.

We do not agree. Appropriately, the draft "yes" vote statement describes for voters what the result will be if the measure passes. See ORS 250.035(2)(b) ("yes" result statement is "[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is approved."). The summary builds on the caption and the "yes" result statement by explaining how the minimum corporate tax is currently structured: the amount of tax imposed increases incrementally up to \$100,000 based on the corporation's Oregon sales. The summary then explains that the measure eliminates that structure and, in its place, imposes a tax of \$7,500 plus 0.25% of the amount of sales over \$10 million. We believe voters will understand that the result for any particular corporation could be an increase or a decrease in the amount of taxes the corporation would have paid under the current tax structure.

Second, Harmon comments that the summary fails to inform voters that a corporation is subject to the minimum tax in ORS 317.090 when it has no taxable income. Contrary to Harmon's assertion, that information is not "critical for a reasonable understanding of what will happen if the measure is approved." As discussed above, the measure has no effect on when a corporation is subject to the minimum corporate tax. The summary is not required to explain the minimum tax itself, only how the amount of tax imposed will be different under the measure.

Third, Harmon comments that the summary incorrectly states that the measure eliminates the categories of incrementally increasing tax when Oregon sales reach \$25 million. Harmon correctly notes that the categories are eliminated for *all* amounts of sales of \$10 million or more. We disagree that the draft summary is incorrect, but we acknowledge that it could be confusing to voters. Therefore, we have made Harmon's proposed correction in the certified summary.



On our own review, we note that the summary's description of the current minimum corporate tax structure is incomplete, as it fails to mention the category of sales of \$25 million to \$50 million. We have corrected that omission.

Commenter Green comments that the draft summary does not inform voters that the measure eliminates the \$100,000 cap on the minimum tax—which Green asserts is “a major effect of the measure.” We agree, and we have made a corresponding change to the summary. Green also objects to the second to last sentence of the summary (starting with “Measure eliminates...” ) as confusing and redundant. As discussed above, we agree, and we have modified the summary accordingly.

We certify the following summary:

Current law provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax imposed increases incrementally up to \$100,000 based on the amount of Oregon sales on corporation's tax return. Measure modifies amount of minimum tax for corporations or groups of affiliated corporations with Oregon sales of \$10 million or more, by imposing on all such corporations a tax of \$7,500 plus 0.25% of the excess over \$10 million. Measure eliminates separate categories based on amount of Oregon sales of \$10 million or more; eliminates cap of \$100,000 on corporate minimum tax. Measure applies to tax years beginning on or after January 1, 2015.

We certify the attached ballot title.

Sincerely,

✓  
Judy C. Lucas  
Senior Assistant Attorney General  
judy.lucas@doj.state.or.us

JCL:chc/4507852

Enclosure

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KATE BROWN  
SECRETARY OF THE STATE

~~Assistant Attorney General~~

**BALLOT TITLE**

**Modifies annual minimum tax for corporations with Oregon sales  
of \$10 million or more**

**Result of "Yes" Vote:** "Yes" vote increases or decreases minimum tax for corporations with Oregon sales of \$10 million or more, depending on sales above \$10 million.

**Result of "No" Vote:** "No" vote retains existing law, which provides specified fixed, incremental amounts of minimum tax on corporations with Oregon sales of \$10 million or more.

**Summary:** Current law provides that each corporation or affiliated group of corporations filing a tax return under ORS 317.710 must pay an annual minimum tax; amount of tax imposed increases incrementally up to \$100,000 based on the amount of Oregon sales on corporation's tax return. Measure modifies amount of minimum tax for corporations or groups of affiliated corporations with Oregon sales of \$10 million or more, by imposing on all such corporations a tax of \$7,500 plus 0.25% of the excess over \$10 million. Measure eliminates separate categories based on amount of Oregon sales of \$10 million or more; eliminates cap of \$100,000 on corporate minimum tax. Measure applies to tax years beginning on or after January 1, 2015.

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KATE BROWN  
SECRETARY OF THE STATE

### **CERTIFICATE OF FILING**

I hereby certify that I electronically filed the PETITION TO REVIEW BALLOT TITLE CERTIFIED BY ATTORNEY GENERAL (Initiative Petition 18) with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16 on August 23, 2013.

### **CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing PETITION TO REVIEW BALLOT TITLE CERTIFIED BY ATTORNEY GENERAL (Initiative Petition 18) upon the following individuals on August 23, 2013, by delivering a true, full and exact copy thereof via U.S. Mail to:

Judy C. Lucas, OSB # 903285  
Department of Justice  
1162 Court St. NE  
Salem, OR 97310-4096  
Telephone: (503) 378-4402  
Fax: (503) 378-6306  
Attorneys for Respondent

Patrick Green, Chief Petitioner  
813 SW Alder Street, Ste. 800A  
Portland, OR 97205

And upon the following individual via facsimile transmission:

Kate Brown, Secretary of State  
Elections Division  
255 Capitol St. NE, Ste. 501  
Salem, OR 97310-0722  
Fax: (503) 373-7414

DATED this 23<sup>rd</sup> day of August, 2013.

GIBSON LAW FIRM, LLC

Jil \_\_\_\_\_

*Of Attorneys for Petitioner*