

IN THE SUPREME COURT OF THE STATE OF OREGON

PAUL R. ROMAIN,

Petitioner,

v.

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

Respondent.

Case No.

PETITION TO REVIEW
BALLOT TITLE CERTIFIED
BY THE ATTORNEY
GENERAL

Initiative Petition 47 (2015)

BALLOT TITLE CERTIFIED

August 21, 2015

Initiative Petition 47 (2015)

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PETITION

Pursuant to ORS 250.085 and ORAP 11.30, Petitioner asks the Court to review the ballot title for Initiative Petition 47 (2015) (Ex. A.) ("IP47"). The ballot title was certified by the Attorney General on August 21, 2015 (Ex. B).

PETITIONER'S INTEREST

Petitioner Paul R. Romain is an Oregon elector and is dissatisfied with the ballot title certified by the Attorney General. Petitioner reviewed the draft ballot title (Ex. C) and submitted comments to the Attorney General (Ex. D.) Accordingly, Petitioner has standing under ORS 250.085(2) to seek review of the certified ballot title.

ARGUMENT

I. Introduction

IP47 would repeal Section 6, Chapter 754, Oregon Laws 2009, as amended by Section 3, Chapter 4, Oregon Laws 2015 (the "Low Carbon Fuel Standard" or "LCFS"). The LCFS directs the Oregon Environmental Quality Commission ("EQC") to establish low carbon fuel standards for gasoline, diesel, and fuels used as substitutes for gasoline and diesel. Pursuant to this authority, the EQC has adopted OAR Chapter 340, Division 253. The standards include a schedule to phase in the rules with the goal of reducing the amount of greenhouse gas emissions from the fuels by 10% below 2010 levels by 2025, primarily by blending gasoline and diesel with nonpetroleum based fuels. The LCFS provides for alternative compliance with the standard by allowing regulated parties to purchase credits for fuels used as substitutes for gasoline or diesel from sellers of lower carbon intensity motor vehicle fuels such as compressed and/or liquefied natural gas, electricity, and hydrogen. See OAR 340-253-0200(3), OAR 340-253-0320 to 0340; OAR 340-253-1000 to 1050.

II. Standard of Review

This Court reviews ballot titles for substantial compliance with ORS 250.035. ORS 250.085(1).

III. The Certified Ballot Title

On August 21, 2015, the Attorney General certified the following ballot title:

Repeals law requiring adoption of standards for low carbon fuel to reduce greenhouse gas emissions.

Result of "Yes" Vote: "Yes" vote repeals law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; invalidates rules already adopted.

Result of "No" Vote: "No" vote retains law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; leaves current rules intact.

Summary: Current law requires Environmental Quality Commission (EQC) to adopt low carbon standards for gasoline, diesel, and substitute fuels. In adopting rules, EQC must evaluate the reduction of greenhouse gases, cost-effectiveness, possible adverse effects on public health, ways to minimize costs of complying with fuel standards. EQC may phase in rules to achieve 10% reduction in greenhouse gas emissions below 2010 levels, and may adopt rules allowing all types of low carbon fuels; fuels used in certain vehicles exempt from standards. Initiative repeals law requiring EQC to adopt rules for low carbon fuel standards to reduce greenhouse emissions. Repeal invalidates rules for fuel standards already adopted by EQC under current law.

IV. Proposed Ballot Title

In lieu of the ballot title certified by the Attorney General, Petitioner seeks certification of the alternative ballot title set forth below:

**Repeals the authority of the Environmental Quality Commission
to adopt a low carbon fuel standard.**

Result of "Yes" Vote: "Yes" vote repeals the statutory authority of the Environmental Quality Commission (EQC) to adopt a low carbon fuel standard.

Result of "No" Vote: "No" vote retains law requiring low carbon fuel standards, allowing for compliance by blending fuel or purchasing carbon credits from alternative fuel providers and users.

Summary: Current law gives the Environmental Quality Commission (EQC) the authority to reduce the carbon intensity of transportation fuels by 10% over 10 years. Requires importers of gasoline and diesel reduce the carbon intensity of the fuel by blending lower carbon intensity fuels like ethanol and biodiesel. When there are no lower carbon intensity fuels available to blend, importers have to buy credits from producers and users of other alternative fuels like electricity, natural gas and propane, or stop selling gasoline and diesel. This measure repeals the authority of the EQC to adopt a low carbon fuel standard. Repeal invalidates rules for fuel standards already adopted by EQC under current law.

V. Argument and Authorities

The Attorney General made certain revisions to the draft ballot title in response to comments by Petitioner and others. The certified ballot title, however, still does not substantially comply with ORS 250.035 for the reasons set forth below:

**A. The Caption does not substantially comply with
ORS 250.035(2)(a).**

ORS 250.035(2)(a) provides that the ballot title caption must contain "not more than 15 words that reasonably identif[y] the subject matter of the state

measure." "The caption is the 'headline' of the ballot; it 'provides the context for the reader's consideration of the other information in the ballot title' and must describe the proposed measure's subject matter accurately." Towers v. Rosenblum, 354 Or 125, 129, 310 P3d 1136 (2013) (quoting Greene v. Kulongoski, 322 Or 169, 175, 903 P2d 366 (1995)).

The "subject matter" of a measure refers to "the 'actual major effect' of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words)." Buehler v. Rosenblum, 354 Or 318, 323, 311 P3d 882 (2013) (quoting Whitsett v. Kroger, 348 Or 243, 247, 230 P3d 545 (2010)). "The caption must also identify the measure's subject matter in terms that will not 'confuse or mislead potential petition signers and voters,' Mabon v. Myers, 332 Or 633, 637, 33 P3d 988 (2001), and it cannot overstate or understate the scope of the legal changes that the measure would enact. Kain/Waller v. Myers, 337 Or 36, 40, 93 P3d 62(2004)." Buehler, 354 Or at 323.

"A caption may describe accurately the actual major effect of a measure and still not comply with the requirements of the statute if the description is 'too vague and gives voters no clear picture of what is at stake.'" Girod v. Kroger, 351 Or 389, 397, 268 P3d 562 (2011) (quoting Hunnicuttt/Stacey v. Myers, 343 Or 387, 391, 171 P3d 349 (2007)).

The caption is not sufficient in that it gives the impression to the potential voter that the measure will eliminate the means to reduce greenhouse gas emissions. Any person reading the caption gets the impression that eliminating the low carbon fuel standard will mean no greenhouse gas emission reduction. The caption will confuse or mislead the voter. There are many ways to reduce greenhouse gas emissions other than a low carbon fuel standard.

One of the arguments against the low carbon fuel standard, more fully explained below, is that it will not actually be effective in reducing greenhouse gas

emissions. To state in the caption that the measure would remove a way to reduce greenhouse gas emissions is neither accurate nor impartial within the meaning of ORS 250.032. The measure simply repeals the authority of the Environmental Quality Commission (EQC) to adopt a low carbon fuel standard, and the caption should reflect this simple message.

For these reasons the caption should read:

**Repeals the authority of the Environmental Quality Commission
to adopt a low carbon fuel standard.**

B. The "Yes" and "No" vote statements do not substantially comply with ORS 250(2)(b) and (c).

ORS 250.035(2)(b) requires the "yes" vote statement to describe "the result if the state measure is approved" within 25 words. "[T]he result of a proposed measure's enactment that belongs in the 'yes' vote result statement is that outcome that is the most significant and immediate, or that carries the greatest consequence, for the general public. Stated differently, the legislature intended the 25-word 'yes' vote result statement to notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon." Carley v. Myers, 340 Or 222, 231, 132 P3d 651 (2006) (quoting Novick/Crew v. Myers, 337 Or 568, 574, 100 P3d 1064 (2004)).

ORS 250.035(2)(c) requires the "no" vote statement to describe "the result if the state measure is rejected" within 25 words. The "no" vote result statement "should state accurately what voters would retain, under their existing legal or contractual arrangements, if they defeat the measure." Carson v. Kroger, 351 Or 508, 518, 270 P3d 243 (2012) (quoting Earls v. Myers, 330 Or 171, 177, 999 P2d 1134 (2000)). "The object is to advise 'potential voters as to the choice they are being asked to make.'" Carson, 351 Or at 518, 270 P3d 243 (quoting Whitsett v. Kroger, 348 Or 243, 252, 230 P3d 545 (2010)).

The low carbon fuel standard is premised upon the concept that traditional liquid fuel like gasoline and diesel will not be able to comply with a 10% reduction in carbon content by blending anything that likely will become available in the marketplace. Therefore, those who produce and use gasoline and diesel will have to buy carbon credits from those who produce and use alternative fuels like electricity. In other words, it is simply a means of requiring those consumers of gasoline and diesel to pay money for the privilege of using those fuels, and the recipients of that money will be those who produce and use alternative fuels.

The "Yes" and "No" statements are confusing in the same manner that the draft caption is confusing to the voter. The two vote statements imply that you are eliminating the means to reduce greenhouse gas emissions. In fact, there is considerable doubt whether or not a low carbon fuel standard has any effect on greenhouse emissions. By leaving open the ability to buy carbon credits to comply with the standards, the same amount of carbon can exist. The standard simply becomes a way to transfer money from one fuel source to another, with no carbon reduction whatsoever.

The "Yes" and "No" statements should instead read:

Result of "Yes" Vote: "Yes" vote repeals the statutory authority of the Environmental Quality Commission (EQC) to adopt a low carbon fuel standard.

Result of "No" Vote: "No" vote retains law requiring low carbon fuel standards, allowing for compliance by blending fuel or purchasing carbon credits from alternative fuel providers and users.

C. The certified summary does not substantially comply with ORS 250.035(2)(d).

ORS 250.035(2)(d) requires that a ballot title contain "[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect." The purpose of an initiative ballot summary "is to help voters understand what will happen if the measure is approved, and* * *[it] should* * *be worded so that voters will understand the breadth of its impact." Wyant v. Myers, 336 O 128, 139, 81 P3d 692 (2003) (quoting Fred Meyer, Inc. v. Roberts, 308 Or 169, 175, 777 P2d 406 (1989)).

In Novick/Crew, the Oregon Supreme Court described the "major effect" requirement as follows:

"Logically, those would include additional important consequences or details that the result statement does not convey and helpful contextual information about the impact of the proposed measure on existing law." 337 Or at 574, 100 P3d 1064.

The proposed summary is not impartial, nor does it give the voter an accurate picture of the existing law. By quoting the political statements in the legislation that give the impression that the EQC has the ability to control costs, exempt certain fuel users can actually reduce greenhouse gas emissions, the summary gives the voter a very biased and inaccurate view of the current law.

The current low carbon fuel standard law requires the EQC to determine the carbon intensity of gasoline, diesel, and other fuels used as substitutes for gasoline and diesel. Once that carbon intensity of the particular fuel is determined, only gasoline and diesel have to reduce that carbon intensity by 10% over a ten-year period. There is no requirement that a fuel like propane or electricity reduces its carbon intensity by any number. Gasoline and diesel can reduce their carbon intensity numbers by blending into that fuel other fuels, like

ethanol and biodiesel, which have a lower carbon intensity number. However, there is a limit on just how much ethanol and biodiesel can be blended into gasoline and biodiesel. Depending upon the carbon intensity number of the ethanol or biodiesel that is available to blend, it soon becomes impossible for anyone producing or using gasoline or diesel to comply with the program simply by blending fuel.

As an alternative to making lower carbon intensity fuel, the EQC has given the gasoline and diesel producers and users an expensive way out. All fuels that are lower in carbon intensity than gasoline and diesel will generate carbon credits, and these credits can be sold to those who produce gasoline and diesel. Those credits, which do nothing to reduce the carbon intensity of gasoline and diesel, can be used by the producers to comply with the program. In other words, you do not have to make a lower carbon intensity fuel; you simply have to have enough money to transfer to those who are producing or using fuel like propane or electricity. If the government collected this money from gasoline and diesel producers and transferred it to those who produce propane or electricity, it would be called a tax. Since it is a mandate to produce, pay, or stop selling, it avoids the consequences of a fuel tax.

A simple description of the low carbon fuel standard is that it requires gasoline and diesel producers to do something with their fuel that is impossible with existing alternatives. Once it becomes impossible to comply, those producers have to subsidize those who produce and use alternative fuels like propane and electricity, or go out of business. The proposed measure simply repeals this impossible program. The summary should describe the current law to be repealed in simple, accurate terms.

For these reasons, we propose the following summary.

Summary: Current law gives the Environmental Quality Commission (EQC) the authority to reduce the carbon intensity of transportation fuels by 10% over 10 years. Requires importers of gasoline and diesel to reduce the carbon intensity of the fuel by blending lower carbon intensity fuels like ethanol and biodiesel. When there are no lower carbon intensity alternative fuels available to blend, importers have to buy credits from producers and users of other alternative fuels like electricity, natural gas, and propane, or stop selling gasoline and diesel. This measure repeals the authority of the EQC to adopt a low carbon fuel standard. Repeal invalidates rules for fuel standards already adopted by EQC under current law.

CONCLUSION

The ballot title certified by the Attorney General fails to substantially comply with ORS 250.035(2) for the reasons set forth above. Petitioner respectfully requests the Court to certify his proposed alternative ballot title or modify the Attorney General's proposed ballot title as appropriate in accordance with ORS 250.085(8).

DATED this 4th day of September 2015.

THE ROMAIN GROUP, LLC

Paul R. Romain, OSB No. 732565
Of Attorneys for Petitioner

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the Petition to Review Ballot Title Certified by the Attorney General (Initiative Petition 47-2015) on September 4, 2015, with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16 on September 4, 2015.

I hereby certify that I served the foregoing Petition to Review Ballot Title Certified by the Attorney General (Initiative Petition 47-2015) on the parties below on September 4, 2015, by mailing true and correct copies by U.S. Mail (two copies to the Attorney General; one copy to all other parties). I also certify that I e-mailed one copy to the Secretary of State at the e-mail address below and pursuant to ORS 250.085(4).

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DATED this 4th day of September, 2015.

Paul R. Romain, OSB No. 732565
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707 S.W. Washington Street, Suite 927
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EXHIBIT A

Relating to low carbon fuel standard.

Be It Enacted by the People of the State of Oregon:

Section 1. Section 6, chapter 754, Oregon Laws 2009, as amended by Section 3, chapter 4, Oregon Laws 2015, is repealed.

RECEIVED
2015 MAY 20 PM 11 46
KATE BROWN
SECRETARY OF THE STATE

EXHIBIT B

ELLEN F. ROSENBLUM
Attorney General



FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE APPELLATE DIVISION

August 21, 2015

RECEIVED
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SECRETARY OF STATE

Jim Williams
Director, Elections Division
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Re: Proposed Initiative Petition — Repeals Law Requiring Adoption of Standards for Low Carbon Fuel to Reduce Greenhouse Gas Emissions
DOJ File #BT-47-15; Elections Division #2016-047

Dear Mr. Williams:

We received comments about the draft ballot title for the above-referenced measure from Steven Berman on behalf of elector Nik Blosser, and from elector Paul Romain. This letter summarizes those comments, our responses to the comments and the reasons why we altered or declined to alter the draft ballot title in response to the comments. ORAP 11.30(7) requires this letter to be included in the record if the Oregon Supreme Court is asked to review the ballot title.

Before addressing the comments on the draft ballot title, we first discuss the state of current law and IP 47's changes to the law.

A. Current law

1. Or Laws 2009, ch 754

In 2009 the Oregon legislature passed House Bill 2186 which was signed into law as Oregon Laws 2009, Chapter 754. The new law provided the Environmental Quality Commission ("EQC") with the authority to establish low carbon fuel standards to reduce greenhouse gas emissions.

The law set limits on the scope of the EQC's rulemaking authority and imposed certain requirements in the rulemaking. The law adopted the definition of "greenhouse

gas” in ORS 468A.210,¹ and defined “low carbon fuel standards” as “standards for the reduction of greenhouse gas emission, on average, per unit of fuel energy.” Or Laws 2009, ch 754 § 6(1)(a), (b).

The law authorized the EQC to adopt rules for “low carbon fuel standards for gasoline, diesel and fuels used as substitutes for gasoline or diesel.” Or Laws 2009, ch 754 § 6(2)(a). Before adopting such rules, the law required the EQC to consider the low carbon fuel standards of other states, including but not limited to Washington. Or Laws 2009, ch 754 § 6(2)(c). To mitigate the cost of complying with the standard, the EQC was required to provide exemptions and deferrals. Or Laws 2009, ch 754 § 6(2)(d). In adopting the rules, the EQC was also required to evaluate a number of factors, including:

- Safety, feasibility, net reduction of greenhouse gas emissions and cost-effectiveness;
- Potential adverse impacts to public health and the environment;
- Flexible implementation approaches to minimize the cost of complying with the rules;
- Technical and economic studies of greenhouse gas emission reduction measures in other states.

Or Laws 2009, ch 754 § 6(3)(a)-(d). Exempted from the law are farm vehicles, farm tractors, other specified agricultural vehicles, and logging trucks. Or Laws 2009, ch 754 § 6(4).

The standards that the law authorizes the EQC to adopt include but are not limited to:

- A schedule to phase in the rules by 2020 so as to reduce the amount of greenhouse gas emissions from the fuels to 10% below 2010 levels;
- Standards for greenhouse gas emissions attributable to fuels through their lifecycles, including, but not limited to, emissions from production, storage, transportation and combustion of fuels and from changes in land use associated with the fuels;

¹ 468A.210(2) defines “greenhouse gas” as “any gas that contributes to anthropogenic global warming including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.”

- Provisions that allow the use of all types of low carbon fuels to meet the standards, including, but not limited to, biofuels, biogas, compressed natural gas, gasoline, diesel, hydrogen and electricity;
- Provisions for deferrals from the low carbon fuel standards as necessary to ensure adequate fuel supplies;
- Exemptions for liquefied petroleum gas and other alternative fuels used in volumes below thresholds established by the EQC;
- Standards, specifications and testing requirements and other measures as needed to ensure the quality of fuels produced pursuant to the low carbon fuels standards;
- Adjustments to the amounts of greenhouse gas emissions per unit of fuel energy assigned to fuels for combustion and drive train efficiency.

Or Law 2009, ch 754 § 6(2)(b)(a)-(g).

Section 6 of Or Law 2009, ch 754 took effect on July 1, 2011. However, the law allowed the EQC to adopt rules prior to that date that would take effect on that date. Or Laws 2009, ch 764 §7. The law contained a sunset clause that would repeal § 6 on December 31, 2015. Or Laws 2009, ch 754 § 8.

Pursuant to Or Laws 2009, ch 754, the EQC adopted an extensive set of rules for low carbon fuel standards. The rules are currently codified at OAR 340-253-0000, *et seq.*

2. Or Laws 2015, ch 4

In 2015, the Oregon legislature amended the 2009 law with Senate Bill 324. The governor signed that bill and it became effective on March 12, 2015. It has been designated as Oregon Laws 2015, ch 4.

Section 1 of SB 324 repeals the sunset clause of the 2009 law. Or Laws 2015, ch 4 § 1. Section 3 of SB 324 made numerous amendments to the 2009 law. Specifically, it:

- Requires that the EQC “shall” adopt low carbon fuel standards (as opposed to the permissive “may” in the 2009 law). Or Laws 2015, ch 4 § 3(2)(a).
- Extends the deadline to obtain a reduction in low carbon fuel emissions to 10% below 2010 levels from 2020 to 2025. Or Laws 2015, ch 4 § 3(b)(A).
- Removes the provision in the 2009 law allowing the EQC to issue exemptions and deferrals to the rules. Or Laws 2015, ch 4 § 3(2)(d).
- Requires the EQC to adopt rules for managing and containing the costs of compliance by including provisions that ensure the ability to obtain and trade credits for fuels used as substitutes for gasoline or diesel. Or Laws 2015, ch 4 § 3(2)(d).
- Requires the EQC to exempt from the standards any person importing less than 500,000 gallons of diesel or gasoline in any calendar year. Or Laws 2015, ch 4 § 3(2)(c).²
- Prohibits biodiesel from being considered an “alternate fuel” unless it meets certain requirements. Or Laws 2015, ch 4 § 3(f).
- Modifies the non-exclusive list of low carbon fuels that may be used to meet the low carbon fuel standards. Or Laws 2015, ch 4 § 3(2)(b)(C).
- Modifies exemptions to the 2009 law, to clarify that it applies to fuel for certain vehicles; expands the list of exempt vehicles; requires the EQC to adopt rules setting forth qualifications for those exemptions. Or Laws 2015, ch 4 § 4(a), (b).

B. IP 47’s changes to the law

IP 47 is straightforward. It provides:

² The current rules allowed for an exemption of 250,000 gallons. OAR 340-253-0100(1)(b); OAR 350-253-0040(51).

Section 1. Section 6, chapter 754, Oregon Laws 2009, as amended by Section 3, chapter 4, Oregon Laws 2015, is repealed.

(Underlining in original). Thus, if passed, the initiative repeals in its entirety the portion of the statute detailed above that requires the EQC to adopt rules pertaining to low carbon standards for the reduction of greenhouse gases. A direct result of the repeal is that the rules adopted by the EQC in 2011 would be invalidated.

C. The caption

The caption of a ballot title must “reasonably identif[y] the subject matter of the state measure.” ORS 250.035(2)(a). The “subject matter” of a measure refers to “the ‘actual major effect’ of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words).” *Whitsett v. Kroger*, 348 Or 243, 247, 230 P3d 545 (2010). The draft ballot title contains the following caption:

**Repeals law requiring adoption of standards for low carbon fuel to
reduce greenhouse gas emissions**

Commenter Blosser agrees that the caption substantially complies with the statutory requirements and suggests no changes to it. Commenter Romain asserts that the caption does not meet statutory requirements because it “will tend to confuse the voter.” In his view, “[t]here are many ways to reduce greenhouse gas emissions other than a low carbon fuel standard,” and the caption “gives the impression” that low carbon fuels are the only avenue for reducing those emissions. Commenter Romain also asserts that the caption is misleading because it is “debatable” that the use of low carbon fuels reduces greenhouse gas emissions.

We disagree. IP 47 is straightforward; it repeals the law requiring that EQC adopt low fuel standards to help reduce greenhouse gas emissions. Nothing in the caption implies that low carbon fuel standards are the only means for reducing greenhouse gas emissions. Moreover, a discussion of the efficacy of the current law and the best means of reducing greenhouse gas emissions is best left to the voters’ pamphlet and the political process.

We certify the following caption:

**Repeals law requiring adoption of standards for low carbon fuel to
reduce greenhouse gas emissions**

D. The vote result statements

ORS 250.035(2)(b) and (c) require 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 approved or rejected. The draft ballot title contains the following result statements:

Result of “Yes” Vote: “Yes” vote repeals law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; invalidates rules already adopted.

Result of “No” Vote: “No” vote retains law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; leaves current rules intact.

Commenters Blosser and Romain assert that the results statements do not meet statutory standards, albeit for diametrically opposed reasons. Commenter Blosser asserts that the “Yes” statement is deficient because the “predominant result” of the initiative, if passed, would be to “allow for increased greenhouse gas and carbon emissions.” On the other hand, Commenter Romain asserts the “Yes” statement is deficient because “there is considerable doubt whether or not a low carbon fuel standard has any effect on greenhouse gas emissions.” He further asserts that, due to the “ability to buy carbon credits to comply with the standards,” no emission reduction results from low carbon fuel standards. Commenter Romain similarly asserts that the “No” statement is deficient for similar reasons.³

However, a discussion of whether low carbon fuels do or do not affect the level of greenhouse gas emissions is not the function of a results statement. Rather, that is a discussion best left to the voting process and the voters’ pamphlet. We conclude that the results statements accurately describe “the result if the state measure” is passed or rejected. ORS 250.035(2)(b), (c). We certify the following result statements:

Result of “Yes” Vote: “Yes” vote repeals law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; invalidates rules already adopted.

³ Commenter Blosser asserts that the phrase “liquid, no-liquid transportation fuels” in the “No” statement is potentially misleading and inaccurate. We believe the Commenter Blosser may be referring to language in the ballot titles for IPs # 45 or #46. IP #47 does not contain that language.

Result of “No” Vote: “No” vote retains law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; leaves current rules intact.

E. The summary

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

Summary: Repeals law requiring Environmental Quality Commission (EQC) to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions. Repeal would invalidate rules for fuel standards already adopted by EQC under current law. Current law requires EQC to adopt low carbon standards for gasoline, diesel, and substitute fuels. In adopting rules EQC must evaluate the reduction of greenhouse gases, cost-effectiveness, possible adverse effects on public health, ways to minimize costs of complying with fuel standards; EQC must adopt rules for managing costs of complying with fuel standards. EQC may phase in rules to achieve 10% reduction in greenhouse gas emissions below 2010 level, and may adopt rules allowing all types of low carbon fuels; fuels used in certain vehicles exempt from standards.

Commenter Blosser asserts that the summary does not meet statutory requirements for three reasons: (1) it does not inform voters that passage of the initiative will result in increased greenhouse gases; (2) it does not specify that current law allows low-carbon fuels such as “natural gas, liquefied petroleum gas and electricity” to meet low-carbon standards and that those sources would be eliminated from consideration; and (3) it is confusing because, although it makes clear what current law requires, it does not make clear that the initiative eliminates those requirements.

We reject Commenter Blosser’s first two assertions for the reasons discussed above. However, we agree with his third assertion and makes changes to the summary accordingly.


Commenter Romain asserts that the summary is deficient because it does not make plain that the low-carbon fuel blending program that is allowed under the statute is an “impossible program.” Moreover, he asserts, the summary does not explain that the option of trading credits by using non-carbon fuels such as propane or electricity amounts to nothing more than “producers hav[ing] to subsidize those who produce and use alternative fuels like propane and electricity, or go out of business.” The crux of his contention is that the statute is poorly designed and that IP #47, if enacted, would rectify

those shortcomings by doing away with them. Notably, Commenter Romain does not assert that any of the information in the summary is incorrect.

We reject Commenter Romain's assertions for the same reasons we rejected his comments with respect to the caption and results statements. That is, discussing the merits of the current program or the merits of repealing it is not the function of the summary. That is the function of the voting process.

We certify the following summary:

Summary: Current law requires Environmental Quality Commission (EQC) to adopt low carbon standards for gasoline, diesel, and substitute fuels. In adopting rules, EQC must evaluate the reduction of greenhouse gases, cost-effectiveness, possible adverse effects on public health, ways to minimize costs of complying with fuel standards; EQC must adopt rules for managing costs of complying with fuel standards. EQC may phase in rules to achieve 10% reduction in greenhouse gas emissions below 2010 levels, and may adopt rules allowing all types of low carbon fuels; fuels used in certain vehicles exempt from standards. Initiative repeals law requiring EQC to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions. Repeal invalidates rules for fuel standards already adopted by EQC under current law.

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✓

BALLOT TITLE

Repeals law requiring adoption of standards for low carbon fuel to reduce greenhouse gas emissions

Result of “Yes” Vote: “Yes” vote repeals law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; invalidates rules already adopted.

Result of “No” Vote: “No” vote retains law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; leaves current rules intact.

Summary: Current law requires Environmental Quality Commission (EQC) to adopt low carbon standards for gasoline, diesel, and substitute fuels. In adopting rules, EQC must evaluate the reduction of greenhouse gases, cost-effectiveness, possible adverse effects on public health, ways to minimize costs of complying with fuel standards; EQC must adopt rules for managing costs of complying with fuel standards. EQC may phase in rules to achieve 10% reduction in greenhouse gas emissions below 2010 levels, and may adopt rules allowing all types of low carbon fuels; fuels used in certain vehicles exempt from standards. Initiative repeals law requiring EQC to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions. Repeal invalidates rules for fuel standards already adopted by EQC under current law.

EXHIBIT C

OFFICE OF THE SECRETARY OF STATE

JEANNE P. ATKINS
SECRETARY OF STATE

ROBERT TAYLOR
DEPUTY SECRETARY OF STATE



ELECTIONS DIVISION

JIM WILLIAMS
DIRECTOR

255 CAPITOL STREET N.E., SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1538

INITIATIVE PETITION

TO: All Interested Parties
FROM: Lydia Plukchi, Compliance Specialist
DATE: July 23, 2015
SUBJECT: Initiative Petition 2016-047 Draft Ballot Title

The Elections Division received a draft ballot title from the Attorney General on July 23, 2015, for Initiative Petition 2016-047, proposed for the November 8, 2016, General Election.

Caption

Repeals law requiring adoption of standards for low carbon fuel to reduce greenhouse gas emissions

Chief Petitioners

Lila Leathers-Fitz 255 Depot St Fairview, OR 97024
Charles E. Ireland PO Box 815 Myrtle Creek, OR 97457

Comments

Written comments concerning the legal sufficiency of the draft ballot title may be submitted to the Elections Division. Comments will be delivered to the Attorney General for consideration when certifying the ballot title.

Additionally, the Secretary of State is seeking public input on whether the petition complies with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. The Secretary will review any procedural constitutional comments received by the deadline and make a determination whether the petition complies with constitutional requirements.

To be considered, draft ballot title comments and procedural constitutional requirement comments must be received in their entirety by the Elections Division no later than 5 pm:

Comments Due	How to Submit	Where to Submit
August 6, 2015	Scan and Email	irrlisnotifier.sos@state.or.us
	Fax	503.373.7414
	Mail	255 Capitol St NE Ste 501, Salem OR 97310

ELLEN F. ROSENBLUM
Attorney General



FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

July 23, 2015

RECEIVED
2015 JUL 23 PM 4 30
SECRETARY OF STATE

Jim Williams
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition — Repeals Law Requiring Adoption of Standards for Low Carbon Fuel to Reduce Greenhouse Gas Emissions
DOJ File #BT-47-15; Elections Division #2016-047

Dear Mr. Williams:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to repealing the law requiring the adoption of standards for low carbon fuel to reduce greenhouse gas emissions.

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.

Alicia Thomas
Legal Secretary

AFT/6678889

Enclosure

Paul Romain
707 SW Washington St., Ste. 927
Portland, OR 97205

Lila Leathers-Fitz
255 Depot Street
Fairview, OR 97024

Charles E. Ireland, Jr.
P.O. Box 815
Myrtle Creek, OR 97457

DRAFT BALLOT TITLE

Repeals law requiring adoption of standards for low carbon fuel to reduce greenhouse gas emissions

Result of “Yes” Vote: “Yes” vote repeals law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; invalidates rules already adopted.

Result of “No” Vote: “No” vote retains law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; leaves current rules intact.

Summary: Repeals law requiring Environmental Quality Commission (EQC) to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions. Repeal would invalidate rules for fuel standards already adopted by EQC under current law. Current law requires EQC to adopt low carbon standards for gasoline, diesel, and substitute fuels. In adopting rules EQC must evaluate the reduction of greenhouse gases, cost-effectiveness, possible adverse effects on public health, ways to minimize costs of complying with fuel standards; EQC must adopt rules for managing costs of complying with fuel standards. EQC may phase in rules to achieve 10% reduction in greenhouse gas emissions below 2010 level, and may adopt rules allowing all types of low carbon fuels; fuels used in certain vehicles exempt from standards.

RECEIVED
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SECRETARY OF STATE

EXHIBIT D

THE ROMAIN GROUP, LLC LAWYERS & PUBLIC POLICY ADVOCATES

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August 6, 2015

VIA FACSIMILE (503) 373-7414 & Email

Jeanne P. Atkins
Secretary of State
Elections Division
255 Capitol St. N.E., Suite 501
Salem, OR 97310

Re: Written Comments on Draft Ballot Title for Initiative Petition No. 2016-047

Dear Secretary Atkins:

Our office represents Paul Romain, an elector and a person dissatisfied with the Attorney General's draft ballot title for Initiative Petition No.47. Mr. Romain objects to the Attorney General's draft ballot title on the grounds that the draft ballot title does not substantially comply with ORS 250.035(2).

For the reasons set forth below, we respectfully request that the alternative ballot title caption, statements and summary set forth in this submission be certified in lieu of the Attorney General's draft ballot title.

1. THE DRAFT CAPTION DOES NOT COMPLY WITH ORS 250.035(2)(a).

The draft caption states:

Repeals law requiring adoption of standards for low carbon fuel to reduce greenhouse gas emissions

ORS 250.035(2)(a) provides that the ballot title caption must contain "not more than 15 words that reasonably identif[y] the subject matter of the state measure." "The caption is the 'headline' of the ballot; it 'provides the context for the reader's consideration of the other information in the ballot title' and must describe the proposed measure's subject matter accurately." *Towers v. Rosenblum*, 354 Or 125, 129, 310 P3d 1136 (2013) (quoting *Greene v. Kulongoski*, 322 Or 169, 175, 903 P2d 366 (1995)).

The "subject matter" of a measure refers to "the 'actual major effect' of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words)." *Buehler v. Rosenblum*, 354 Or 318, 323, 311 P3d 882 (2013) (quoting *Whitsett v.*

Kroger, 348 Or 243, 247, 230 P3d 545 (2010)). “The caption must also identify the measure’s subject matter in terms that will not ‘confuse or mislead potential petition signers and voters,’ *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 988 (2001), and it cannot overstate or understate the scope of the legal changes that the measure would enact. *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62(2004).” *Buehler*, 354 Or at 323.

“A caption may describe accurately the actual major effect of a measure and still not comply with the requirements of the statute if the description is ‘too vague and gives voters no clear picture of what is at stake.’” *Girod v. Kroger*, 351 Or 389, 397, 268 P3d 562 (2011) (quoting *Hunnicutt/Stacey v. Myers*, 343 Or 387, 391, 171 P3d 349 (2007)).

In this case, the draft caption for Initiative Petition No. 47 is not sufficient in that it gives the impression to the potential voter that the measure will eliminate the means to reduce greenhouse gas emissions. There are many ways to reduce greenhouse gas emission other than a low carbon fuel standard. The draft caption will tend to confuse the voter. The proposed measure simply repeals the authority of the Environmental Quality Commission to adopt one means of possibly reducing greenhouse gas. The caption should reflect this simple message.

In addition, as explained in greater detail below, one of the arguments against the low carbon fuel standard is that it will not actually be effective in reducing greenhouse gas emissions. The draft caption at the very least implies that the low carbon fuel standard will reduce greenhouse gas emissions, which is debatable and creates the misleading implication that the vote for the measure is a vote against reducing greenhouse gas emissions. The draft caption is neither accurate nor impartial within the meaning of ORS 250.032.

For these reasons, we suggest the caption should read:

Repeals the authority of the Environmental Quality Commission to adopt a low carbon fuel standard

2. THE DRAFT “YES” AND “NO” VOTE STATEMENTS DO NOT COMPLY WITH ORS 250.035(2)(b) AND (c).

The draft “yes” and “no” vote statements read as follows:

Result of “Yes” Vote: “Yes” vote repeals law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; invalidates rules already adopted.

Result of “No” Vote: “No” vote retains law requiring Environmental Quality Commission to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions; leaves current rules intact.

ORS 250.035(2)(b) requires the “yes” vote statement to describe “the result if the state measure is approved” within 25 words. “[T]he result of a proposed measure’s enactment that belongs in the ‘yes’ vote result statement is that outcome that is the most significant and immediate, or that carries the greatest consequence, for the general public. Stated differently, the legislature intended the 25-word ‘yes’ vote result statement to notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of

Oregon.” *Carley v. Myerrs*, 340 Or 222, 231, 132 P3d 651 (2006) (quoting *Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004)).

ORS 250.035(2)(c) requires the “no” vote statement to describe “the result if the state measure is rejected” within 25 words. The “no” vote result statement “should state accurately what voters would retain, under their existing legal or contractual arrangements, if they defeat the measure.” *Carson v. Kroger*, 351 Or 508, 518, 270 P3d 243 (2012) (quoting *Earls v. Myers*, 330 Or 171, 177, 999 P2d 1134 (2000)). “The object is to advise ‘potential voters as to the choice they are being asked to make.’” *Carson*, 351 Or at 518, 270 P3d 243 (quoting *Whitsett v. Kroger*, 348 Or 243, 252, 230 P3d 545 (2010)).

The proposed draft “yes” and “no” vote statements are confusing in the same manner that the draft caption is confusing to the voter. The two vote statements imply that you are eliminating the means to reduce greenhouse gas emissions. In fact, there is considerable doubt whether or not a low carbon fuel standard has any effect on greenhouse gas emissions. By leaving open the ability to buy carbon credits to comply with the standards, the same amount of carbon can exist. The standard simply becomes a way to transfer money from one fuel source to another, with no carbon reduction what so ever.

Accordingly, the “yes” and “no” vote statements should instead read as follows:

Result of “Yes” Vote: “Yes” vote repeals the statutory authority of the Environmental Quality Commission (EQC) to adopt a low carbon fuel standard.

Result of “No” Vote: “No” vote retains law requiring low carbon fuel standards, allowing for compliance by blending fuel or purchasing carbon credits from alternative fuel providers and users.

3. THE DRAFT SUMMARY DOES NOT COMPLY WITH ORS 250.035(2)(d).

The draft summary states:

Summary: Repeals law requiring Environmental Quality Commission (EQC) to adopt rules for low carbon fuel standards to reduce greenhouse gas emissions. Repeal would invalidate rules for fuel standards already adopted by EQC under current law. Current law requires EQC to adopt low carbon fuel standards for gasoline, diesel, and substitute fuels. In adopting rules EQC must evaluate the reduction of greenhouse gases, cost-effectiveness, possible adverse effects on public health, ways to minimize costs of complying with fuel standards; EQC must adopt rules for managing costs of complying with fuel standards. EQC may phase in rules to achieve 10% reduction in greenhouse gas emissions below 2010 level, and may adopt rules allowing all types of low carbon fuels; fuels used in certain vehicles exempt from standards.

ORS 250.035(2)(d) requires that a ballot title contain “[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” The purpose of an initiative ballot summary “is to help voters understand what will happen if the measure is approved, and ...[it] should ...be worded so that voters will understand the breadth of its

impact.” *Wyant v. Myers*, 336 Or 128, 139, 81 P3d 692 (2003) (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989)).

In *Novick/Crew*, the Oregon Supreme Court described the “major effect” requirement as follows:

Logically, those would include additional important consequences or details that the result statement does not convey and helpful contextual information about the impact of the proposed measure on existing law.

337 Or at 574, 100 P3d 1064.

The current low carbon fuel standard law requires the Environmental Quality Commission to determine the carbon intensity of gasoline, diesel and other fuels used as substitutes for gasoline and diesel. Once that carbon intensity of the particular fuel is determined, only gasoline and diesel have to reduce that carbon intensity by 10 percent over a ten year period. There is no requirement that a fuel like propane or electricity reduce its carbon intensity by any number. Gasoline and diesel can reduce their carbon intensity numbers by blending into that fuel other fuels, like ethanol and biodiesel, which have a lower carbon intensity number. However, there is a limit on just how much ethanol and biodiesel can be blended into gasoline and biodiesel. Depending upon the carbon intensity number of the ethanol or biodiesel that is available to blend, it soon becomes impossible for anyone producing or using gasoline or diesel to comply with the program simply by blending fuel.

As an alternative to making lower carbon intensity fuel, the Environmental Quality Commission has given the gasoline and diesel producers and users an expensive way out. All fuels that are lower in carbon intensity than gasoline and diesel will generate carbon credits, and these credits can be sold to those who produce gasoline and diesel. Those credits, which do nothing to reduce the carbon intensity of gasoline and diesel, can be used by the producers to comply with the program. In other words, you do not have to make a lower carbon intensity fuel; you simply have to have enough money to transfer to those who are producing or using fuel like propane or electricity. If the government collected this money from gasoline and diesel producers and transferred it to those who produce propane or electricity, it would be called a tax. Since it is a mandate to produce, pay or stop selling, it avoids the consequences of a fuel tax.

A simple description of the low carbon fuel standard is that it requires gasoline and diesel producers to do something with their fuel that is impossible with existing alternatives. Once it becomes impossible to comply, those producers have to subsidize those who produce and use alternative fuels like propane and electricity, or go out of business. The proposed initiative simply repeals this impossible program. The summary should describe the current law to be repealed in simple, accurate terms.

For these reasons, we propose the following summary.

Summary: Current law gives the Environmental Quality Commission (EQC) the authority to reduce the carbon intensity of transportation fuels by 10% over 10 years. Requires importers of gasoline and diesel reduce the carbon intensity of the fuel by blending lower carbon intensity fuels like ethanol and biodiesel. When there are no lower carbon intensity alternative fuels available to blend, importers have to buy credits from producers and users of other alternative fuels

like electricity, natural gas and propane, or stop selling gasoline and diesel. This measure repeals the authority of the EQC to adopt a low carbon fuel standard.

Thank you for your consideration of these comments.

— —

The Romain Group, LLC,
By Paul R. Romain