

ELLEN F. ROSENBLUM
Attorney General



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Appellate Court Records

FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

March 26, 2014

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

Re: *Frank Dixon v. Ellen Rosenblum, Attorney General, State of Oregon*
SC S062090

Dear Chief Justice Balmer:

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

Sincerely,

/s/ Matthew J. Lysne

Matthew J. Lysne
Senior Assistant Attorney General
matthew.j.lysne@doj.state.or.us

MJL:aft/5124711

cc: Roy Pulvers/without encl.
Mark Frohnmayer/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

FRANK DIXON,

Petitioner,

v.

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

Respondent.

Supreme Court No. S062090

RESPONDENT'S ANSWERING
MEMORANDUM TO PETITION TO
REVIEW BALLOT TITLE RE:
INITIATIVE PETITION NO. 51
(SUPREME COURT)

Petitioner seeks review of the Attorney General's certified ballot title for Initiative Petition (IP) 51 (2014). This court reviews ballot titles for "substantial compliance with the requirements of ORS 250.035." ORS 250.085(5). The Attorney General submits this answering memorandum pursuant to ORAP 11.30(6). For the reasons explained below, the certified ballot title for IP 51 substantially complies with ORS 250.035.

A. The Attorney General's caption substantially complies with ORS 250.035(2)(a).

The caption for the ballot title of a state measure must reasonably identify the subject matter of the measure and contain no more than 15 words.

ORS 250.035(2)(a). A caption substantially complies with ORS 250.035(2)(a) if it identifies the subject matter of the proposed measure in terms that will not confuse or mislead potential petition signers and voters. *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 988 (2001). The caption is the "cornerstone for the other

portions of the ballot title" and its "headline," and it "provides the context for

the reader's consideration of other information in the ballot title." *Id.* at 637.

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 court then examines the words of the caption to determine whether they reasonably identify the proposed measure's subject matter. *Id.*

The Attorney General's caption states:

**Changes general election nomination process: provides single
primary ballot; vote one or more; two advance**

Petitioner argues that the caption is materially underinclusive because it references a single nomination "process" rather than the multiple "processes" that the proposed measure will change: the existing primary process for political parties, the existing nomination process for minor parties and nonaffiliated voters, and the general election process itself. Petitioner relies on *Keisling v. Myers*, 343 Or 379, 171 P3d 345 (2007), as support for that argument.

The caption's phrase "[c]hanges general election nomination process" is not deficient under *Keisling* in using "process" and not "processes." In *Keisling*, the Supreme Court referred the ballot title to the Attorney General for modification of the caption's phrase "changes partisan primaries," because it failed to include "[c]andidates for minor parties or independent candidates [who] do not participate in partisan primaries." 343 Or at 385. The ballot title here does not suffer from that defect.

Petitioner further contends that the phrase "two advance" is materially underinclusive, unclear, and misleading. He suggests that *Keisling* requires the caption to make "the critical point" that there will be *only* two candidates on the general election ballot. Petitioner is mistaken.

The phrase "two advance" is neither unclear nor misleading. In the context of the caption as a whole, it is clear that "two advance" refers to the top two candidates in the primary election advancing to the general election. Petitioner fails to explain how the phrase is "materially underinclusive." In *Keisling*, the court did not require the Attorney General to modify the caption's phrase "top two candidates proceed to general election." Rather, the court found the caption's other phrase, "changes partisan primaries," to be

significantly underinclusive. The *Keisling* court agreed with the petitioners' argument that

nothing in the foregoing caption suggests what would be true under the proposed measure, *viz.*, that minor party and independent candidates would not be able to obtain direct access to the general election ballot, as they now may do in various ways. Instead, such candidates would be required to face all other candidates in the primary, with none being on the general election ballot unless that candidate were to be one of the top two vote-getters.

343 Or at 385. *Keisling* does not support petitioner's argument that "two advance" is materially underinclusive.

The court should certify the caption without modification.

B. The Attorney General's result statements substantially comply with ORS 250.035(2)(b) and (c).

The two result statements are required to describe, in 25 words or less, the results of approving and rejecting the measure. ORS 250.035(2)(b) and (c).

A "yes" vote result statement must accurately describe in simple and understandable terms the result if the proposed measure is approved. *Mabon*,

332 Or at 639. A "no" result statement describes the result if the proposed measure is rejected. ORS 250.035(2)(c). ORS 250.035(3) requires the two statements to be parallel "to the degree practicable."

The Attorney General certified the following result statements:

Result of “Yes” Vote: “Yes” vote replaces current general election nomination process for most partisan offices; all candidates listed on common primary ballot; vote one or more; two advance.

Result of “No” Vote: “No” vote retains current general election nomination processes: primaries for major parties; no common primary ballot; one vote/ office; multiple candidates on general election ballot.

Petitioner objects that the phrase “replaces current general election nomination process for most partisan offices” in the “Yes” result statement suffers from the same defects as the parallel opening phrase in the caption. The court should reject that argument for the reasons already stated.

Petitioner further argues that the phrase “all candidates listed on common primary ballot” is “undefined, unclear, and confusing.” Contrary to that contention, voters will understand that a “common primary ballot” listing “all candidates” means there is a single, comprehensive ballot used by all electors at a primary in which voters participate in common, *i.e.*, together. The second definition of “common” is: “2a : belonging to or shared by two or more individuals or things or by all members of a group < a common friend > * * *.” Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/in%20common> . See, e.g., *Keisling*, 343 Or at 383 (“At bottom, all of those challenges proceed from *a common* theme”) (emphasis

added); *see also Wood v. Dept of Revenue*, 305 Or 23, 27-28, 749 P2d 1169 (1988), *quoting Ward v. Maryland*, 79 US (12 Wall) 418, 430, 20 L Ed 449 (1871) (“but it should not be forgotten that the people of the several states live under *one common* Constitution * * *”) (emphasis added). Thus, the phrase “all candidates listed on common primary ballot” is neither confusing nor misleading.

Petitioner further argues that the phrase “vote one or more” in the “Yes” result statement is “materially incomplete and confusing,” in that it does not differentiate between candidates and offices. He also argues that the phrase “two advance” is “defective for the same reason as in the caption.” Contrary to petitioner’s contention, voters will have no difficulty understanding that the phrase “vote one or more” refers to candidates. Read in the context of the whole “Yes” result statement, voters also will recognize that “two advance” necessarily means “two candidates advance to the general election.”

With regard to the “No” result statement, petitioner argues that the phrase “retains current general election nomination processes”—due to the use of a colon after “processes”—fails to make clear that a “No” vote retains “party primaries, other nomination processes, and the existing structure of the general election.” Petitioner further contends: “The point that a ‘No’ vote retains

‘party primaries for major parties’ is materially underinclusive for failure to reference retention of all of the other nomination processes, as [the court] found in *Keisling/Lutz/Smith*, 343 Or at 384-386.”

Petitioner’s reliance on *Keisling* is, once again, misplaced. In *Keisling* (which involved IP 109 (2008)), the Attorney General’s “No” vote statement provided:

RESULT OF “NO” VOTE: “No” vote retains the current party primary election system, retains procedures for the nomination of minor political party and independent candidates to the general election.

343 Or at 383. In referring the ballot title for modification, the court did not specifically require the Attorney General to modify that result statement and, indeed, the result statement did not suffer from the deficiency the court found in the caption: the court subsequently certified the modified ballot title that included the Attorney General’s “No” vote result statement, unchanged.

The “No” result statement for this measure, too, is free of the deficiency found in parts of the Attorney General’s ballot title for IP 109 (2008).

Petitioner also objects, again, to the term “common primary ballot,” both standing alone and as used in a “double negative” phrase, “no common primary ballot.” As already discussed, the court should reject the petitioner’s challenges

to “common primary ballot.” There is little if any merit in petitioner’s

argument that the “No” result statement’s grammatical structure makes it unclear. In addition, voters will understand the parallel phrase “no common primary ballot” to be the opposite of the “common primary ballot” referred to in the “Yes” result statement.

The Attorney General’s result statements substantially comply with ORS 250.035(2)(b) and (c). Therefore, the court should certify the result statements without modification.

C. The Attorney General’s summary substantially complies with ORS 250.035(2)(d).

The summary is to 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 its impact.”

Mabon, 332 Or at 640.

The Attorney General certified the following summary:

Summary: Currently, voters are limited to voting for one candidate for each office in primary elections; multiple candidates may appear for each office on general election ballot. Major parties nominate candidates through party primaries with separate ballots for each. Measure replaces that system for most partisan offices, including many federal (not presidential), all state, county, city, district partisan offices. Primary ballot will list all candidates for each office. Voters may vote for as many candidates as they like for each office, regardless of party affiliation of

voter/candidate. Only top two candidates will appear on general election ballot; may be from same party. Primary, general election ballots must contain candidates' party registration/endorsements. Eligible person, regardless of party, may be selected to fill vacancy. Other provisions.

Petitioner contends that any parts of the summary that carry through the defects he alleges in the other parts of the ballot title render the summary noncompliant with ORS 250.035(2)(d). In particular, he objects to the summary's statement: "Currently, voters are *limited* to voting for one candidate for each office in primary elections." (Emphasis added by petitioner). He further argues that "[v]oters may vote for as many candidates as they like for each office" is "loaded and biased" "feel-good" language impermissibly favoring passage of the measure.

All but one of petitioner's arguments are addressed above. The court should reject the argument that "[v]oters may vote for as many candidates as they like for each office" is "loaded and biased" language favoring passage of the measure. The summary's wording is accurate and makes the proposed new nominating procedure clear and understandable to voters. This court should conclude that the Attorney General's summary substantially complies with the statutory requirements.

D. Conclusion

Petitioner has not identified any aspect of the Attorney General's ballot title that fails to comply substantially with the statute. The court should certify the Attorney General's ballot title for IP 51. In the alternative, this court could refer the ballot title for IP 51 to the Attorney General for modification.¹

Respectfully submitted,

ELLEN F. ROSENBLUM #753239
Attorney General
ANNA M. JOYCE #013112
Solicitor General

/s/ Matthew J. Lysne

MATTHEW J. LYSNE #025422
Senior Assistant Attorney General
matthew.j.lysne@doj.state.or.us

Attorneys for Respondent
Ellen F. Rosenblum, Attorney General,
State of Oregon

¹ The Attorney General has recently certified two additional, related ballot titles in IP 54 and IP 55. After review of the comments submitted on the draft ballot titles for IP 54 and IP 55, we believe the certified ballot titles for those measures likely resolve most of the challenges raised with respect to the Attorney General's ballot title for IP 51. (ATT-1; ATT-2). Relatedly, for purposes of this court's review of IP 54 (Case No. S062128) and IP 55 (Case S062129), petitioner has urged this court to consider IP 38, 51, 54, and 55 together because the measures are "intimately related" and the challenges to each "contain significant common elements." (Petition, S062128, at 3; Petition, S062129, at 3).

BALLOT TITLE NO. 54

Changes general election nomination processes: provides single primary ballot; vote one or more; two advance

Result of “Yes” Vote: “Yes” vote replaces general election nomination processes; all candidates listed on single primary ballot; vote one or more per office; two advance to general election.

Result of “No” Vote: “No” vote retains general election nomination processes: party primaries for major parties; separate primary ballots; one vote per office; multiple candidates on general election ballot.

Summary: Currently, each major party has a separate primary election ballot. Major party’s registered voters nominate party’s candidates; others’ primary ballots include only nonpartisan candidates; all vote for one candidate per office. General election ballot may include multiple candidates per office: unaffiliated, major, minor party candidates. Measure replaces system for most partisan/all nonpartisan offices: federal (not Presidential), all state, county, city, district offices. Single primary ballot lists all candidates for each office. Voters choose one or more candidates per office, regardless of voter’s, candidate’s party affiliation. Only top two vote-getters per office proceed to general election; may be from same party. Primary, general election ballots must contain candidates’ party registration/endorsements. Eligible person, regardless of party, may be selected to fill vacancy. Other provisions.

BALLOT TITLE NO. 55**Changes general election nomination processes: provides for single primary ballot listing candidates; top two advance**

Result of “Yes” Vote: “Yes” vote replaces general election nomination processes for most partisan offices; all candidates listed on one single primary ballot; two advance to general election ballot.

Result of “No” Vote: “No” vote retains current general election nomination processes, including party primaries for major parties; separate primary ballots; multiple candidates can appear on general election ballot.

Summary: Currently, each major party has a separate primary election ballot. Major party’s registered voters nominate party’s candidates; others’ primary ballots include only nonpartisan candidates; all vote for one candidate per office. General election ballot may include multiple candidates per office: unaffiliated, major, minor party candidates. Measure replaces that system for most partisan offices, including many federal (not Presidential), all state, county, city, district offices. Single primary ballot lists all candidates for each office. Voters may vote for any candidate, regardless of voter’s or candidate’s party affiliation. Only top two candidates per office appear on general election ballot; may be from same party. Primary, general election ballots must contain candidates’ party registration/endorsements. Eligible person, regardless of party, may be selected to fill vacancy. Other provisions.

OFFICE OF THE SECRETARY OF STATE

KATE BROWN
SECRETARY OF STATE



ELECTIONS DIVISION

JIM WILLIAMS
DIRECTOR

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

(503) 986-1518

March 10, 2014

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

Re: Frank Dixon v. Ellen Rosenblum, Attorney General, State of Oregon
S062090, Petition to Review Ballot Title

Dear Ms. Joyce:

Pursuant to ORS 250.067(4), we transmit to you for filing with the court as part of the record in the above referenced matter, the written comments filed in this office pursuant to ORS 250.067(1), regarding initiative petition #51. We also enclose the draft and certified ballot titles with their respective transmittal letters.

Sincerely,



Lydia Plukchi
Compliance Specialist

enclosures

Prospective Petition for State Measure

SEL 310

rev 1/12: ORS 250.046

To the Secretary of State,

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

Type of Petition

☒ Initiative

☐ Referendum

☒ Statutory

☐ Constitutional

Designating Chief Petitioners

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

Chief Petitioner Information

Name print

1 Mark Frohnmayer

Residence Address, Street/Route
1263 W. 5th Ave

City
Eugene

State
OR

Zip Code
97402

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

@gmail.com

Day Phone Number

Sponsoring Organization if any

Name print

Signature

2

Residence Address, Street/Route

City

State

Zip Code

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

Sponsoring Organization if any

Name print

Signature

3

Residence Address, Street/Route

City

State

Zip Code

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

Sponsoring Organization if any

RECEIVED
2013 DEC 20 PM 2 28
KATE BROWN
SECRETARY OF THE STATE

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

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

● Prospective Petition initial filing with filing officer

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

○ Completed Petition signatures submitted to filing officer

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

Identify Petition

Fair and Unified Elections Initiative

12/20/2013
Date Signed

Signed

Date Signed

Signed

Date Signed

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



Warning

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

SEL 301: Statement No Petition Circulators Will be Paid

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

○ Prospective Petition Initial Filing with Filing Officer

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

○ Completed Petition Signatures Submitted to filing officer

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

Identify Petition

Signed

Date Signed

Signed

Date Signed

Signed

Date Signed

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

RECEIVED
2013 DEC 20 PM 2 28
KATE BROWN
SECRETARY OF THE STATE



Warning

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

Relating to elections; creating new provisions; and repealing ORS 188.120, 248.008, 254.025, 254.056, 254.115 and 254.365.

PREAMBLE.

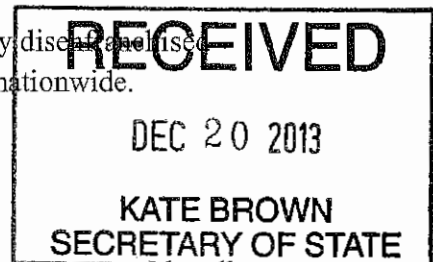
It's time to fix the broken two-party system. Despite Oregon's constitutional guarantee of Free and Equal Elections, **our publicly-funded partisan election process is divided and unfair:** in the primary election, voters may only vote for candidates sharing their same major party affiliation, and the **30% of voters** and all candidates that are not members of one of the two major parties **are effectively shut out.**

Candidates wanting a chance to win must therefore **mold themselves to the partisan interest of one of the two major parties** before making their cases to the whole electorate they will serve. **In** districts dominated by one party, the election is decided in the primary, before the majority of voters have even had a say.

The outcomes of our current election process: a disillusioned, largely disenfranchised electorate and polarized, ineffective, corruptible lawmaking bodies nationwide.

This **Fair and Unified Elections Initiative** will:

- **unify** our divided partisan election process,
- **give every voter an equal voice** on every candidate,
- give every voter a nuanced choice between the **two candidates most approved** by all voters,
- allow all candidates to **appeal to the entire electorate** for the full election cycle and
- give all candidates a uniform level playing field, regardless of political party affiliation.



The **Fair and Unified Elections Initiative** recasts the primary election from a partisan filter to a uniform process that narrows the field from all candidates to the two democratically best.

Every voter receives a ballot that shows all candidates for non-presidential partisan offices, and then **each voter casts a simple "up-or-down" approval vote** on each candidate on the ballot. The two candidates for each office approved by the most voters advance to the general election for a runoff.

This **Fair and Unified** process has several advantages: it is a minor tweak to our existing ballot architecture, it is **scientifically best-in-class** for simple two-stage voting systems, it never requires voters to make the strategic choice to decline support for their most-favored candidates and therefore gives all candidates a fair accounting, and it does away with the "spoiler" effect.

It's time for a better Democracy. Oregon will lead the way.

SECTION 1. Short title and suggested 15-word summary. This 2014 Act may be cited as the Fair and Unified Elections Act of 2014, and summarized as "Unifies partisan elections: Primary ballots contain all candidates; two most voter-approved advance to General."

SECTION 2. Sections 3 to 6 of this 2014 Act are added to and made a part of ORS chapter 249.

SECTION 3. Statement of intent. (1) The intent of the Fair and Unified Elections Act of 2014 is to create a unified election system in which each elector has, at the primary election, an equal voice on each candidate's ability to advance, without regard to the political party affiliation, or lack of party affiliation, of either the elector or the candidates, and without regard to the number of candidates sharing similar viewpoints. Specifically, each voter may cast a vote in favor of any and all candidates the voter approves to advance, and in so doing may approve of more than one candidate for a single office. The two candidates receiving the most votes will advance to the general election, in which the winner will be the candidate receiving the greatest number of votes cast at the general election. This 2014 Act applies to all voter choice offices.

(2) Nothing in this 2014 Act restricts the right of individuals to join or organize into political parties or the right of association of political parties. Nothing in this 2014 Act restricts the right of political parties to contribute to, endorse or otherwise support a candidate for a voter choice office. Political parties may establish internal procedures to endorse or support candidates or otherwise participate in all elections, and may nominate candidates for election to voter choice offices at a party convention or by whatever lawful mechanism the parties choose, other than at primary elections conducted under ORS chapter 254.

(3) This 2014 Act makes no change in current law relating to presidential primaries. This 2014 Act conforms to the ruling of the United States Supreme Court in *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008). Each political party retains the right to restrict participation in its presidential primary to those electors who disclose their political preference for that party at the time of registration or to open its presidential primary to include electors who register without disclosing a political preference.

SECTION 4. Definition. (1) As used in sections 3 to 6 of this 2014 Act, and except as provided in subsection (2) of this section, "voter choice office" means the office of United States Senator, Representative in Congress, Governor, Secretary of State, State Treasurer, Attorney General, state Senator and state Representative and any other state, county, city or district office.

(2) "Voter choice office" does not include a nonpartisan office or an office for which nominations to the general election by political parties are expressly authorized by law.

SECTION 5. Particular provisions for voter choice offices. (1) Electors may vote for one or more candidates listed on the primary election ballot for a voter choice office. An elector may vote for as many of the listed candidates as the elector chooses and in so doing may cast a vote for more than one candidate for a single voter choice office, provided that the elector does not cast more than one vote for any individual candidate.

(2) Except as provided in a home rule charter or subsection (3) of this section, for voter choice offices, the two candidates receiving the highest number of votes at the primary election shall be the sole candidates who advance to the general election.

(3) If three or more candidates for a voter choice office are on the ballot for a primary election and a vacancy occurs in a nomination to the office after the primary election and before the 61st day before the general election, the qualified candidate who received the next highest number of votes at the primary election, if any, shall be the replacement nominee. The chief elections officer, as defined in ORS 254.005, shall file the name of the replacement nominee with each appropriate county clerk.

SECTION 6. Filing and nominating processes for voter choice offices. Except as provided in this 2014 Act, all provisions of state law that apply to the filing and nomination processes for candidates for nonpartisan offices, also apply to voter choice offices.

SECTION 7. Sections 8 to 10 of this 2014 Act are added to and made a part of ORS chapter 254.

SECTION 8. Definition. (1) As used in this chapter, and except as provided in subsection (2) of this section, "voter choice office" means the office of United States Senator, Representative in Congress, Governor, Secretary of State, State Treasurer, Attorney General, state Senator and state Representative and any other state, county, city or district office.

(2) "Voter choice office" does not include a nonpartisan office or an office for which nominations to the general election by political parties are expressly authorized by law.

SECTION 9. Election ballots for voter choice offices. (1) This section is intended to give electors access to information in the public record about candidates for voter choice offices and the political parties that endorse those candidates, without infringing on the rights of political parties and their members to organize and associate.

(2) For each primary election that includes a voter choice office, the county clerk shall print on the ballot:

(a)(A) If the candidate for a voter choice office is registered as affiliated with a political party on the 70th day before the date of the election, following the name of the candidate the statement "Registration: _____" (name of political party); or

(B) If the candidate for a voter choice office is not registered as affiliated with a political party on the 70th day before the date of the election, following the name of the candidate the statement "Registration: not a member of a party" or, if the candidate chooses, no statement concerning the candidate's party registration status;

(b) The statement: "A candidate's political party registration shown on this ballot for voter choice offices indicates the candidate's party registration status as of 70 days prior to the election. It does not imply the endorsement of the political party identified."; and

(c) For each candidate for a voter choice office, following the name of the candidate the name of any political party that has officially endorsed the candidate, preceded by the phrase "Endorsed by:". The county clerk shall print only those endorsements that have been received and accepted by the candidate and for which the chief elections officer has received notice not later than the 61st day before the date of the election.

(3) For each general election that includes a voter choice office, the county clerk shall print on the ballot:

(a)(A) If the candidate for a voter choice office is registered as affiliated with a political party on the 70th day before the date of the election, following the name of the candidate the statement "Registration: _____" (name of political party); or

(B) If the candidate for a voter choice office is not registered as affiliated with a political party on the 70th day before the date of the election, following the name of the candidate the statement "Registration: not a member of a party" or, if the candidate chooses, no statement concerning the candidate's party registration status;

(b) The statement: "A candidate's political party registration shown on this ballot for voter choice offices indicates the candidate's party registration status as of 70 days prior to the election. It does not imply the endorsement of the political party identified."

(c) For each candidate for a voter choice office, following the name of the candidate the name of any political party that has officially endorsed the candidate, preceded by the phrase

“Endorsed by:”. The county clerk shall print only those endorsements that have been received and accepted by the candidate and for which the chief elections officer has received notice not later than the 61st day before the date of the election.

(4) As used in this section, “political party” means a party qualified as a major or minor political party in this state under ORS chapter 248.

(5) The Secretary of State may adopt rules to implement this section.

SECTION 10. Election process for voter choice offices. Except as provided in this 2014 Act, all provisions of state law that apply to elections and ballots for nonpartisan offices, also apply to voter choice offices.

SECTION 11. Severability. Section 9 of this 2014 Act and each of its subsections, paragraphs and subparagraphs is severable from this 2014 Act. If section 9 of this 2014 Act or any subsection, paragraph or subparagraph in section 9 of this 2014 Act is held unconstitutional, the remaining parts of this 2014 Act shall remain in force.

SECTION 12. ORS 188.120 is repealed and section 13 of this 2014 Act is enacted in lieu thereof.

SECTION 13. Congressional vacancies. (1) If a vacancy in election or office of Representative in Congress or United States Senator occurs before the 61st day before the general election, the Governor shall call a special election to fill that vacancy. If a vacancy in election or office of United States Senator occurs after the 62nd day before the general election but on or before the general election, and if the term of that office is not regularly filled at that election, the Governor shall call a special election to fill the vacancy as soon as practicable after the general election.

(2) If a special election to fill the vacancy in election or office of Representative in Congress or United States Senator is called before the 80th day after the vacancy occurs, nominations to the election shall take the form of a declaration of candidacy or nominating petition, which may be filed by any otherwise eligible elector.

(3) If a special election to fill the vacancy in election or office of Representative in Congress or United States Senator is called after the 79th day after the vacancy occurs, a special primary election shall be conducted by the Secretary of State for the purpose of nominating candidates to the special election called to fill the vacancy. A declaration of candidacy or nominating petition may be filed by any otherwise eligible elector not later than the 10th day following the issuance of the writ of election.

(4) Special elections and special primary elections conducted under this section shall be as provided for voter choice offices generally, except that the Secretary of State may accept nominating petitions, declarations of candidacy and endorsements according to a schedule for filing set by the secretary, and except that, in the case of a special election held under subsection (1) of this section, the ballot shall include the names of all qualified candidates who have filed declarations of candidacy or nominating petitions.

(5) As used in this section, “voter choice office” has the meaning given that term in section 4 of this 2014 Act.

SECTION 14. Section 15 of this 2014 Act is added to and made a part of ORS chapter 236.

SECTION 15. Vacancies in voter choice offices. (1) As used in this section, “voter choice office” has the meaning given that term in section 4 of this 2014 Act.

(2) Notwithstanding ORS 171.051, 171.060, 171.068, 236.100, 236.215 and 236.217, whenever a vacancy exists in any voter choice office in this state and is to be filled by

appointment, a person who is otherwise eligible may be appointed to fill the vacancy regardless of the person's affiliation or lack of affiliation with a political party, and whenever a vacancy exists in any voter choice office in this state and is to be filled by election, the election procedures for voter choice offices shall be followed.

SECTION 16. Section 17 of this 2014 Act is added to and made a part of ORS 171.051 to 171.064.

SECTION 17. State legislative vacancies. In the case of a vacancy in the office of state Senator or state Representative that is to be filled by an appointing authority as provided in ORS 171.051, the following apply:

(1) Notwithstanding ORS 171.051, an otherwise eligible person may be appointed to fill the vacancy regardless of the person's affiliation or lack of affiliation with a political party.

(2) Candidates for the remaining two years of the term of office of a state Senator under ORS 171.051 (4) shall be nominated as provided for that office in ORS chapter 249, except that the Secretary of State shall accept declarations of candidacy and nominating petitions according to a schedule for filing set by the secretary, but in any case not later than the 62nd day before the first general election to be held during that term of office.

(3) ORS 171.060 (1) does not apply to the appointment.

(4) The procedure described in ORS 171.060 (2) for a vacancy in the office of state Senator or state Representative not affiliated with a major political party applies to the appointment.

SECTION 18. ORS 254.056 is repealed and section 19 of this 2014 Act is enacted in lieu thereof.

SECTION 19. Date and purpose of general election and primary election. (1) The general election shall be held on the first Tuesday after the first Monday in November of each even-numbered year. Except as provided in ORS 254.650, at the general election officers of the state and subdivisions of the state, members of Congress and electors of President and Vice President of the United States as are to be elected in that year shall be elected.

(2) The primary election shall be held on the third Tuesday in May of each even-numbered year. At the primary election:

(a) Nonpartisan candidates shall be nominated or elected by all electors, as described in ORS chapter 249;

(b) Voter choice office candidates shall be nominated by all electors, as described in ORS chapter 249, for offices to be filled at the general election held in that year;

(c) In a presidential election year, delegates to nominating conventions for the offices of President and Vice President of the United States shall be selected as provided in ORS chapters 248 and 249, and precinct committeepersons shall be elected by members of major political parties; and

(d) Notwithstanding paragraph (c) of this section and ORS 248.015 (1) and (5), if the number of candidates having filed for precinct committeeperson is equal to or less than the number of positions to be filled at the primary election, no election for precinct committeeperson shall be held and all candidates having filed shall be issued a certificate of election under ORS 248.023.

SECTION 20. ORS 254.115 is repealed and section 21 of this 2014 Act is enacted in lieu thereof.

SECTION 21. Official primary election ballot. (1) The official primary election ballot shall be styled "Primary Election Ballot" and shall state:

- (a) The name of the county for which it is intended.
 - (b) The date of the primary election.
 - (c) The names of all candidates for nomination or election at the primary election to nonpartisan, voter choice or other offices whose nominating petitions or declarations of candidacy have been made and filed, and who have not died, withdrawn or become disqualified.
 - (d) The number, ballot title and financial estimates under ORS 250.125 of any measure.
 - (e) In a presidential election year, the name of each candidate for a political party nomination for President of the United States who has qualified for the ballot under ORS 249.078, and the names of candidates for election as precinct committeepersons, if required. Only votes cast by members of the applicable political party shall be tallied and published for any such contest.
- (2) The ballot may not contain the name of any person other than those referred to in subsection (1) of this section. The name of each candidate for whom a nominating petition or declaration of candidacy has been filed shall be printed on the ballot in but one place. In the event that two or more candidates for the same nomination or office have the same or similar surnames, the location of their places of residence shall be printed with their names to distinguish one from another.

SECTION 22. Sections 23 and 26 of this 2014 Act are added to and made a part of ORS chapter 248.

SECTION 23. Political party nominations. Notwithstanding ORS 248.006 and 248.007 and section 25 of this 2014 Act, at the primary election, a political party otherwise authorized by law to nominate candidates through the primary election may nominate candidates only for an office for which nominations to the general election by political parties are expressly authorized by law.

SECTION 24. ORS 248.008 is repealed and section 25 of this 2014 Act is enacted in lieu thereof.

SECTION 25. Qualification for and maintenance of minor political party status. (1) An affiliation of electors becomes a minor political party in the state, a county or other electoral district, qualified to make nominations for public office in that electoral district and in any other electoral district wholly contained within the electoral district, when the affiliation of electors has acted as described in either paragraph (a) or (b) of this subsection:

(a)(A) When the affiliation of electors has filed with the Secretary of State a petition with the signatures of at least a number of electors equal to one and one-half percent of the total votes cast in the electoral district for all candidates for Governor at the most recent election at which a candidate for Governor was elected to a full term.

(B) The petition must contain only original signatures and must be filed not later than two years following the date the prospective petition is filed. The petition must state the intention to form a new political party and designate a name for the political party.

(C) Before circulating the petition, the chief sponsor of the petition must file with the Secretary of State a signed copy of the prospective petition. The chief sponsor must include with the prospective petition a statement declaring whether one or more persons will be paid money or other valuable consideration for obtaining signatures of electors on the petition. After the prospective petition is filed, the chief sponsor must notify the filing officer not later than the 10th day after the chief sponsor first has knowledge or should have had knowledge that:

(i) Any person is being paid for obtaining signatures, when the statement included with the prospective petition declared that no person would be paid for obtaining signatures of electors.

(ii) No person is being paid for obtaining signatures, when the statement included with the prospective petition declared that one or more persons would be paid for obtaining signatures of electors.

(D) The circulator shall certify on each signature sheet that the circulator witnessed the signing of the signature sheet by each individual whose signature appears on the signature sheet and that the circulator believes each individual is an elector registered in the electoral district.

(E) The Secretary of State shall verify whether the petition contains the required number of signatures of electors. The Secretary of State may not accept a petition for filing if it contains less than 100 percent of the required number of signatures. The Secretary of State by rule shall designate a statistical sampling technique to verify whether a petition contains the required number of signatures of electors. A petition may not be rejected for the reason that it contains less than the required number of signatures unless two separate sampling processes both establish that the petition lacks the required number of signatures. The second sampling must contain a larger number of signatures than the first sampling. The Secretary of State may employ professional assistance to determine the sampling technique. The statistical sampling technique may be the same as that adopted under ORS 250.105.

(b) When the affiliation of electors has polled for any one of its candidates for any public office in the electoral district at least one percent of the total votes cast in the electoral district for all candidates for:

(A) Presidential elector at the last general election at which candidates for President and Vice President of the United States were listed on the ballot; or

(B) Any single state office to be voted upon in the state at large at the most recent primary or general election at which a candidate for the office was elected to a full term.

(2) After satisfying either subsection (1)(a) or (b) of this section, the minor political party may nominate candidates for election at the next primary election for a voter choice office, as defined in section 4 of this 2014 Act, or general election for President and Vice President of the United States.

(3) A filing officer may not accept a certificate of nomination of a candidate nominated by a minor political party for a subsequent primary or general election unless the minor political party has maintained status as a minor political party as described in subsection (4) of this section.

(4) In order to maintain status as a minor political party for a subsequent primary or general election:

(a) Following each general election, at any time during the period beginning on the date of the next primary election and ending on the 90th day before the next general election, a number of electors equal to at least one-half of one percent of the total number of registered electors in this state must be registered as members of the party; or

(b)(A) Following each general election, at any time during the period beginning on the date of the next primary election and ending on the 90th day before the next general election, a number of electors equal to at least one-tenth of one percent of the total votes cast in the state or electoral district for all candidates for Governor at the most recent general election at which a candidate for Governor was elected to a full term must be registered as members of the party;

and

(B) At least once in a four-year period, a candidate or candidates of the party must poll at least one percent of the total votes cast in the electoral district for all candidates for:

(i) Presidential elector at the last general election at which candidates for President and Vice President of the United States were listed on the ballot; or

(ii) Any single state office to be voted upon in the state at large at the most recent primary or general election at which a candidate for the office was elected to a full term.

(5) An affiliation of electors that fails to maintain status as a minor political party ceases to be a minor political party on the 90th day before the date of the next general election.

(6) During the period beginning on the date of the primary election and ending on the 90th day before the date of the general election, the Secretary of State shall determine at least once each month whether registration requirements to maintain status as a minor political party have been satisfied.

(7) If a minor political party changes its name, only those electors who register on or after the effective date of the name change as members of the party under the new party name shall be counted as members of the party.

(8) An affiliation of electors or a minor political party may not nominate a candidate who is the nominee of another political party at the same election in order to satisfy the one percent requirement referred to in subsection (1)(b) or (4)(b)(B) of this section.

(9) For purposes of this section, "subsequent primary or general election" means any primary or general election that is held after the first general election following qualification as a minor political party under subsection (1) of this section.

SECTION 26. Term of office of precinct committeeperson. Notwithstanding ORS 248.015, the term of office of a precinct committeeperson elected under ORS 248.015 before the effective date of this 2014 Act is four years and expires on the 24th day after the date of the primary election held in a presidential election year at which the precinct committeeperson was last elected.

SECTION 27. Repeals. ORS 254.025 and 254.365 are repealed.

SECTION 28. Captions. The section captions used in this 2014 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2014 Act.

SECTION 29. Effect. Sections 3 to 6, 8 to 11, 13, 15, 17, 19, 21, 23, 25 and 26 of this 2014 Act and the repeal of ORS 188.120, 248.008, 254.025, 254.056, 254.115 and 254.365 by sections 12, 18, 20, 24 and 27 of this 2014 Act:

(1) Apply only to appointments and elections to public office occurring on or after the effective date of this 2014 Act;

(2) Apply to a certificate of nomination, nominating petition or declaration of candidacy filed before the effective date of this 2014 Act for an election to a voter choice office to be conducted on or after the effective date of this 2014 Act;

(3) Apply only to vacancies occurring during terms of office where the person originally elected for the term during which the vacancy occurred was elected for that term after the effective date of this 2014 Act; and

(4) Are not intended to require a change in the composition of any committee or commission described in ORS 137.658 or 244.250.

SECTION 30. The Legislative Assembly shall enact any legislation that may be necessary to carry out the provisions of this 2014 Act.



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

January 21, 2014

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

Re: Proposed Initiative Petition — Changes Election Nomination Processes; Replaces
Current Primary System with Unified Primary for All Candidates
DOJ File #BT-51-14; Elections Division #51

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 changing election nomination processes; replaces current primary system with unified primary for all candidates.

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

A copy of the draft ballot title is enclosed.

Sincerely,

Cameron Craft
Legal Secretary

chc/4923744

Enclosure

Mark Frohnmayer
1263 W. 5th Ave
Eugene, OR 97402

RECEIVED
2014 JAN 21 PM 1 54
KATE BROWN
SECRETARY OF THE STATE

DRAFT BALLOT TITLE

Changes election nomination processes; replaces current primary system with unified primary for all candidates

Result of “Yes” Vote: “Yes” vote changes election nomination processes for most partisan offices; all candidates run in unified primary; top two primary candidates compete in general election.

Result of “No” Vote: “No” vote retains the current party primary election system, retains procedures for the nomination of minor political party and independent candidates to the general election.

Summary: Currently, major parties nominate candidates to general election through party primaries; minor parties, independents nominate candidates directly to general election; and multiple candidates for office may appear on general election ballot. Measure changes those nomination processes for most partisan offices, including United States Senator; Congressional Representative; Governor; Secretary of State; State Treasurer; Attorney General; State Senator; State Representative; any state, county, city, district office that is either partisan or for which law authorizes political party nominations. Primary ballots contain all prospective candidates; elector may vote for one or more candidates regardless of party affiliation. Top two candidates in primary compete in general election. Primary, general election ballots must contain candidates’ party registration, endorsements. Eligible person, regardless of party affiliation, may fill vacancy. Other provisions.

RECEIVED
2014 JAN 21 PM 1 54
KATE BROWN
SECRETARY OF THE STATE

February 3, 2014

Oregon Secretary of State Kate Brown
Elections Division
225 Capitol Street NE, Ste. 501
Salem, Oregon 97310-0722

Re: 2014 General Election Initiative Petition #51 – Draft Ballot Title Comments

Secretary Brown,

These comments are submitted pursuant to ORS 250.067(1). I oppose the draft ballot title prepared by the Attorney General for initiative petition #51 for the 2014 general election. The draft ballot title is identical to the one proposed for initiative petition #38 as required by ORS 250.062, and naturally suffers from its same deficiencies.

I submitted comments on the draft ballot title for initiative petition #38 that were accepted as valid criticisms and were used to create the certified ballot title for initiative petition #38.

Given the very small differences between initiative petitions #38 and #51, all of my comments on the draft ballot title for initiative petition #38 also apply to the draft ballot title for initiative petition #51. Initiative petition #51 should be given the same certified ballot title as initiative petition #38.

I am submitting these comments for the purpose of enabling the Attorney General to revise the ballot title pursuant to ORS 250.067(2)(a) rather than being required to certify the draft ballot without change under ORS 250.067(2)(b).

Kyle Markley
c/o Caitlin Mitchel, P.C.
P.O. Box 3223
Hillsboro, OR 97123-1938

RECEIVED
2014 FEB 4 AM 8 03
KATE BROWN
SECRETARY OF THE STATE



Elections Division
255 Capitol Street NE, Suite 501
Salem, OR 97310

February 4, 2014

Via regular mail and fax 503 373-7414

Re: Comments on Initiative #51 (2014)

Dear Elections Division:

I am the Chair of the Democratic Party of Oregon and an elector in Oregon. This is to register the following comments to the Attorney General's proposed Ballot Title for Initiative Petition #51 submitted for the 2014 General Election.

CAPTION

The caption violates ORS 250.035(2)(a) (reasonably identifies subject matter), as it is not fair and accurate (and thus not reasonable). The caption uses a term "Unified Primary" that has no independently accepted meaning in common lay usage. The caption fails to include any reference to the significant change to general elections in that voters will choose between only two candidates in the general election. Candidates selected by minor political parties will be forced to compete with candidates endorsed by major political parties in the primary and finish at least second to appear on the general election ballot. Currently, candidates selected by minor political parties are guaranteed a line on the general election ballot, as are candidates chosen on the primary ballot for the major political parties.

The caption also fails to mention in any way the important subject of the change in the way vacancies are filled in certain offices including the Congressional, Oregon House and Senate seats in that a vacancy may be filled by a candidate of another party to serve out an unexpired term without the vote of the people; and potentially shifting major party legislative majorities with national or statewide consequences.

In addition, the text of Measure 65 (2008) is virtually the same as the substantive text of the current Initiative 51 (2014), except for the inclusion of the provisions to allow primary voters to cast votes for more than one candidate for a single office. The approved caption for Measure 65 was "Changes General Election Nomination Processes for Major/Minor Party, Independent Candidates for Most Partisan Offices." The use of similar language for the present initiative's caption, rather than the creation of misleading and inaccurate terminology, is in keeping with the intent of ORS 250.035(2)(a).

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KATE BROWN
SECRETARY OF THE STATE



Initiative #38 was certified by the Attorney General on January 31, 2014. The subject, purpose and major effect of Initiative #38 and #51 are substantially similar. The Attorney General shall provide identical draft ballot titles for the measures. ORS 250.062

RESULT STATEMENTS

The "Yes" Result Statement suffers from the same basic problems noted for the caption. It is therefore not simple nor understandable, as required by ORS 250.035(2)(b), nor is it fair and accurate, implicit in that requirement. In addition, the "Yes" Result Statement fails to convey a fundamental change in the way we conduct elections in that an elector in a primary may vote for as many candidates as the elector wishes for a single office.

The "No" Result Statement is not a simple nor understandable statement of the result if the measure is rejected, as required by ORS 250.035(2)(c), nor is it fair and accurate, implicit in that requirement, in that it fails to mention retention of the current general election system and retention of the system to fill vacancies with members of the same party.

SUMMARY

The Summary is not a concise and impartial statement summarizing the state measure and its major effect as required by ORS 250.035(2)(d), nor is it fair and accurate, implicit in that requirement. All of the defects noted above are repeated in the Summary.

The Summary fails to convey five profound changes in the way Oregon voters participate in elections. Initiative #51 will allow a voter to cast multiple votes for each elective office on the ballot, a practice that deviates from virtually any method of voting in the United States. Initiative #51 will force a voter to distinguish between a mix of major and minor candidates, instead of grouping major party candidates together on the primary ballot. Initiative #51 will deprive a voter of the guarantee on the general ballot that there will be a choice between a candidate for every party, both major and minor. Initiative #51 may limit a voter to a choice between two candidates of the same party or deprive a voter of a choice between major party nominees on the general ballot. Initiative #51 will remove a voter's assurance that in the event a vacancy occurs without a new election, the representative will be from the same major party as the person elected to serve.

Very truly yours,

Frank Dixon
State Party Chair
Democratic Party of Oregon

232 NE 9th Avenue
Portland OR 97232
(503) 224-8200 (phone)
(503) 224-5335 (fax)
www.dpo.org

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COMMENTS ON DRAFT BALLOT TITLE FOR PETITION 51 (2014)

Tom Civiletti
Seth Woolley

February 4, 2014

RECEIVED
FEB 4 PM 4 44
KATE BROWN
SECRETARY OF THE STATE

Tom Civiletti is an elector residing at 14614 SE Fair Oaks Avenue, Milwaukie, OR 97267.

Seth Alan Woolley is an elector residing at 3403 NE Stanton Street, Portland, OR 97212.

They both offer these comments on the Draft Ballot Title (DBT) for Petition 51 ("P51").

I. COMMENTS APPLICABLE TO ALL OF THE P51 DRAFT BALLOT TITLE.

The operative language of P51 appears essentially identical to that of P38. The P51 DBT appears identical to the P38 DBT. Thus, our comments would generally be the same as those filed by Seth Woolley and Dan Meek on the P38 DBT.

We assume that the Attorney General will revise the Certified Ballot Title (CBT) for P51 to be the same as the CBT for P38, although no law requires that.¹

The P38 DBT comments showed in detail why the substance of the P38 DBT was incorrect, as P38 does not remove the existing mechanisms for minor

1. ORS 250.062 states:

If the Attorney General determines that the subject, purpose and major effect of two or more state initiative measures to be submitted at the same election are substantially similar, the Attorney General shall provide identical draft ballot titles for the measures.

This statute applies only to draft ballot titles, not certified ballot titles. So the Attorney General is free to this time actually consider the legal analysis showing that P51 does not remove minor party-nominated and petitioned-for candidates from the general election ballot.

parties, assemblies of electors, or individual nonaffiliated candidates, to place candidates on the general election ballot, in addition to those who would be placed there via the primary election system envisioned by P38. The Attorney General's response to those comments was a one-sentence denial of that conclusion, without any analysis of the proposed measure. The P51 DBT is incorrect in the same way, as is the P38 Certified Ballot Title (CBT).

In addition, the P51 DBT fails to mention at all one of the largest impacts of the proposed measure: the disbanding of most of Oregon's minor political parties (all of them with fewer members than half of 1% of all Oregon registered voters, or currently 10,743 members). P51 would thus disband these existing qualified parties: Americans Elect, Constitution, Pacific Green, Progressive, and Working Families. This would necessarily be the result of P51, because Section 25 of P51 amends ORS 248.008 to require that any party with membership of less than half of 1% of Oregon registered voters must, in order to "maintain status as a minor party," have "polled for any one of its candidates for any public office in the electoral district at least one percent of the total votes cast in the electoral district for all candidates for:"

(A) Presidential elector at the last general election at which candidates for President and Vice President of the United States were listed on the ballot; or

(B) Any single state office to be voted upon in the state at large at the most recent primary or general election at which a candidate for the office was elected to a full term.

The problem is that, under P51, there is no such thing as a candidate of a minor party, as minor parties are not allowed to nominate candidates (according to the Attorney General's interpretation of P51). There is nothing in P51 that defines "one of its candidates" with respect to minor parties. That phrase has an obvious meaning under existing law--a candidate nominated by the minor party.

If a minor party endorses a candidate in the "common primary," that also does not mean that such candidate is "one of its candidates." P51 places no limits on the number of endorsements a qualified minor party can make in any race. A minor party could, for example, endorse all of the candidates for Governor or any other office. Does that make each of those candidates "one of its candidates" for the purpose of meeting the 1% vote requirement? Then the 1% vote requirement would be meaningless.

If somehow endorsement is equated with nomination, then it would be a simple matter for the other parties to squeeze out any particular minor party by also endorsing the candidates endorsed by that minor party, thus disqualifying the votes received by that candidate as counting toward the 1% requirement under ORS 248.008(8), as set forth in Section 25 of P51.

A. DETAILED LEGAL ANALYSIS SHOWS THAT THE CAPTION, YES/NO STATEMENTS, AND SUMMARY IN THE DRAFT BALLOT TITLE ARE ENTIRELY WRONG.

The DBT caption states that P51 "replaces current primary system with unified primary for all candidates." Similar statements are contained in the yes/no statements and the summary, such as "Primary ballot contain all prospective candidates" (Summary).

In addition, P51 § 3 is a "statement of intent" which affirmatively states that P51 is not intended to prevent minor parties from continuing to nominate candidates to the general election ballot:

(2) Nothing in this 2014 Act restricts the right of individuals to join or organize into political parties or the rights of association of political parties. Nothing in this 2014 Act restricts the right of political parties to contribute to, endorse or otherwise support a candidate for a voter choice office. Political parties may establish internal procedures to endorse or support candidates or otherwise participate in all elections, and may nominate candidates for election to voter choice offices at a party convention or by whatever lawful mechanism the parties choose, other than at primary elections conducted under ORS chapter 254.

This indicates intent to preserve the authority of minor parties to "nominate candidates for election to voter choice offices at a party convention or by whatever lawful mechanism the parties choose." "Nominate * * * to voter choice offices" means placing candidates on the general election ballot. This is entirely consistent with the detailed legal analysis of P51 below. But it is entirely inconsistent with the DBT, which states in the "Yes" statement:

"all candidates run in unified primary; top two primary candidates compete in general election."

That is wrong. Not all candidates run in the "unified primary." Candidates of minor parties continue to be nominated under existing processes and do not run

in the "unified primary." Other candidates may continue to place themselves on the general election ballot by submitting sufficient valid voter signatures.

The statement of the effects of a statute should conform to the rules set out in ***PGE v. Bureau of Labor and Industries***, 317 Or 606, 610-11, 859 P2d 1143 (1993) (court's task in determining legislative intent first is to examine text of statute, including context in which statute is found and, if intent is clear, to proceed no further with analysis). The best evidence of legislative intent is wording of the statute itself. *Id.* In this first level of analysis, the court considers the context of the statutory provision at issue, which includes other provisions of the same statute and related statutes. *Id.*, 317 Or at 611. In interpreting a statute, a court is declares what is, in terms or substance, contained therein, and does not insert what has been omitted or omit what has been inserted. Where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all. These rules of construction are codified in statute. ORS 174.010.

All of the DBT indicates that it would advance to the general election only two candidates per contest for partisan office. But the actual words of P51 show otherwise.

Let's start with P51 § 23, which states:

Notwithstanding ORS 248.006 and 248.007 and section 25 of this 2014 Act, at the primary election, a political party otherwise authorized by law to nominate candidates through the primary election may nominate candidates only for an office for which nominations to the general election by political parties are expressly authorized by law.

ORS 248.006-.007 apply specifically and only to what are defined as "major parties" (currently only the Republicans and Democrats), and those are the only parties "otherwise authorized by law to nominate through primary election." ORS 248.007. No minor party is authorized to nominate through primary elections. Section 25, which replaces ORS 248.008, refers to the formation and *first* nominating cycle of newly formed political parties, not to their nominations occurring in later cycles.

ORS 249.009, which is unaffected by P51 § 23, is the actual nominating process for an established minor party *after* its first election cycle. This statute is left undisturbed by P51. This actual language of P51, which by its terms focuses only on the major parties, is consistent with the rest of P51. Nothing in P51 repeals or expressly prohibits nomination by assembly of electors (ORS

249.735) or nomination by individual electors (ORS 249.740). These forms of nomination, along with minor party nominations (all using "certificates of nomination") have their own requirements and filing deadline, well after the May primary date retained in P51 §17(2). In fact, ORS 249.722 does not allow minor parties to file certificates of nomination until 15 days after the primary election, and P51 does not change that.

Thus on its face, without adding or omitting words, or trying to divine that the drafter "really meant" something else, the actual terms of P51 § 23 force only the Republican and Democratic parties to engage in the "Voter Choice" process, since they are the only parties "otherwise authorized to nominate candidates through primary election." ORS.248.007(7).

In order to abolish the ability of the minor parties (and assemblies of electors) to continue to file Certificates of Nomination for candidates to appear on the general election ballot, then P51 would have needed to state, "Notwithstanding ORS 248.006-009 and notwithstanding ORS 249.740-.850, * * *"

Here, P51 is fully capable of being applied as written and can be read harmoniously, in *para materia*, with all the provisions of the law it did not repeal or amend. As written, P51 applies to the candidates of major parties (ORS 248.006-.007) and newly formed "minor" parties in their first nominating cycle (ORS 248.008) but does not refer to or alter the nominating process of established minor parties currently existing or formed before the effective date of the Measure, and P51 does not apply to alternative forms of general election ballot access under ORS 249.740-.850.

The language in P51 § 21 supports the plain meaning of § 23 and its lack of application to minor parties, by its failure to amend ORS 248.009 and ORS 249.740-.850. Section 21, describing the primary ballot, keeps intact the precise language of current ORS 254.115(1). By its terms, ORS 254.115(1) applies only to the candidates of major parties, who gain access to the May primary ballot by filing either a "nominating petition" or "declaration of candidacy." Those documents, by statute, cannot be used by nonaffiliated candidates or minor party candidates.

Currently, and *without change* by P51, ORS 249.016 and .020(1) restrict the use of "Declarations of Candidacy" to those who are (1) members of and (2) seeking to be the nominees of either of the major political parties. "Nominating petitions" are also used only for the purpose of seeking a major party nomination. ORS 249.016. Nothing in the measure amends ORS 249.016 to require or even allow minor party candidates to use declarations or nominating

petition procedures, thus leaving in place the language of ORS 249.020(1) limiting the use of these forms to those who are members of major political parties seeking partisan nominations. The result is to exclude minor party registrants from filing declarations of candidacy or circulating nominating petitions from the "primary" ballot.

A court would be violating clear controlling law if it rewrote ORS 249.020(1) and ORS 249.062 to delete some words about "major" parties and added some words such as "*any party*" or "*all parties*" to the description of which type of candidates can use these forms. The general rule of construction is that statutory terms are considered to mean the same thing each time they are used, and the drafter did not repeal or amend the existing statutory requirements for the "declaration" or "nominating petition," so there is some presumption that he intended the words to have the exact and continuing meaning they have in existing law.

Had the drafter intended that those candidates (minor party nominees and candidates who are nominated by electors or assemblies) who currently obtain ballot access by being named on "Certificates of Nomination" also be required to participate in the May primary, the ballot description under P51 § 21 should have included amendments to ORS 234.115(1)(c) to require the ballot to show the "names of all candidates whose nominating petitions or declarations of candidacy or *certificates of nomination* * * *" or P51 could have repealed those alternative routes altogether. The drafter did neither. The DBT seems to assume that the primary ballot should include those who qualify by certificate of nomination (even though those words do not appear in P51) or alternatively, that P51 repeals wholesale many sections of elections law by implication. Neither is a sound assumption.

Implied repeals are strongly disfavored. ***Appleton v. Oregon Iron & Steel Co.***, 229 Or 81, 358 P2d 260 (1961). Legislative intent to repeal a prior act without an express statement is implied only when the subsequent statute is "repugnant to or in conflict with a prior statute." ***State v. Shumway***, 291 Or 153, 630 P2d 796 (1981). While P51 § 25 does refer to "a certificate of nomination," that reference does not state that minor parties can no longer nominate candidates to the general election. Nor does it repeal any and all certificates of nomination filed pursuant to ORS 248.009 and ORS 249.705-.850. As noted above, all of the terms of P51 can be read in *para materia* with election law statutes.

In addition, if it is assumed that all of the existing statutes regarding minor party nominations are repealed by implication, that would leave no mechanism at all for minor parties to nominate candidates for President or Vice-President. Such

an interpretation would raise very serious constitutional issues under the First Amendment and Article I, § 8, of the Oregon Constitution.

But all of the terms described can be read as consistent with P51 § 3(1), which merely states that the top-two votegetters in the "approval voting" primary advance to the general election. Surely that means the top-two votegetters among those allowed or required to compete in that primary. That primary held under P51 excludes members of minor parties from competing, because they cannot lawfully file the required forms (see discussion above), and the primary ballot described in P51 § 21 includes only those who file such forms. The later-occurring minor party nominating processes are left undisturbed (ORS 249.009), and the alternative nominating processes (ORS 249.705-.850) are left intact.

The description of the general election ballot in P51 § 9(3) also does not necessarily exclude those minor party candidates or others who are excluded from the May primary. Merely stating that two candidates from the May primary advance to the general election does not mean that those are the only two candidates who can appear on the general election ballot, and P51 never states that the general election ballot shall have only two candidates per "voter choice" office.

Because the DBT severely misinterprets P51, it should be entirely redrafted in light of the above analysis.

The remainder of our comments assume that the Attorney General disagrees with the above legal analysis, although we see no basis for such disagreement. And the Attorney General provided no basis for disagreement in adopting the CBT for P38. If the above legal analysis is rejected, then P51 is very similar to Measure 65 of 2008.

**B. THE DRAFT BALLOT TITLE DOES NOT REFLECT THE
SIMILARITY BETWEEN P51 AND MEASURE 65 OF 2008.**

P51 is a revision of Measure 65 of 2008. Most of it is verbatim from Measure 65. The differences are:

1. the precatory language (findings, statement of intent);
2. the provision in § 5 that "A voter may vote for as many of the listed candidates as the voter chooses * * *."

3. the amendments to ORS 248.008 regarding the creation and maintenance of minor parties.

As the vast bulk of P51 is the same as Measure 65, it should have basically the same ballot title. ORS 250.062 states:

If the Attorney General determines that the subject, purpose and major effect of two or more state initiative measures to be submitted at the same election are substantially similar, the Attorney General shall provide identical draft ballot titles for the measures.

While ORS 250.062 applies to two or more measures to be submitted at the same election, it indicates the principle that substantially similar measures should have very similar, if not identical, ballot titles. But the draft ballot title ("DBT") for P51 is not at all similar to the ballot title for Measure 65.

Also, the sufficiency of the Measure 65 ballot title was litigated in the Oregon Supreme Court, which found the certified ballot title erroneous and ordered it replaced. *Keisling v. Myers*, 343 Or 379, 171 P3d 345 (2007). The final, modified ballot title for Measure 65 is attached.

The Measure 65 ballot title is applicable to P51. It does not refer to any precatory language and does not delve into the creation or maintenance of minor parties. The Summary should be changed to briefly reflect the "vote for more than one candidate" feature of P51, which the chief sponsor calls "approval voting."

C. CAPTION.

ORS 250.055(2)(a) requires a "caption of not more than 15 words that reasonably identifies the subject matter of the state measure." The DBT reads:

CHANGES ELECTION NOMINATION PROCESSES; REPLACES
CURRENT PRIMARY SYSTEM WITH UNIFIED PRIMARY FOR ALL
CANDIDATES

Note that the DBT caption is different from the Measure 65 caption, which read:

CHANGES GENERAL ELECTION NOMINATION PROCESSES FOR
MAJOR/MINOR PARTY, INDEPENDENT CANDIDATES FOR MOST
PARTISAN OFFICES

**1. THE DBT CAPTION FAILS TO IMPLEMENT THE LESSON OF
KEISLING V. MYERS.**

The P51 DBT fails the basic lesson of *Keisling v. Myers*, which ruled that the AG's CBT caption for Measure 65 was underinclusive due to its failure to note that the measure would affect the "general election."

We note one other shortcoming of the Attorney General's certified ballot title. The change that would be wrought by the proposed measure would significantly alter the appearance of the general election ballot--and, necessarily, any election held under it.

In response, the AG modified the Measure 65 caption, yes/no statements, and summary to state clearly that the measure would change "general election nomination processes."

**2. THE DBT CAPTION IS EXTRAORDINARILY VAGUE AND
RELIES UPON A TERM ("UNIFIED PRIMARY") RECENTLY
INVENTED BY THE CHIEF SPONSOR.**

The P51 DBT caption is further deficient in its extreme vagueness. It in no way explains any of the "changes," except with the undefined and unfamiliar term "unified primary." Commenters Civiletti and Woolley, along with undersigned counsel, have been involved in elections for a cumulative period of over 70 years. None of us has ever heard the term "unified primary" before, and it is certainly not a term of political science.

Instead, it is a recent invention of the chief sponsor of P51. The Wikipedia entry for it refers almost exclusively solely to Mark Frohnmayer for the "unified primary concept," which "was first publicly proposed in November 2011" by Mark Frohnmayer. A term invented 2 years ago (and apparently used only by one activist in Oregon) is not going to be familiar to most voters, if any at all.

Further, until it was revised on January 29, 2014, the Wikipedia entry was proposed for deletion as an ad for the ballot measure and not a notable and implemented election method anywhere at any time. Prior to the January 29 revision, the discussion regarding deletion, it was also noted that no academic papers have ever used the term, even though some have covered non-instant elimination round types of elections without this name. The general name for this type of an election is a "non-partisan blanket primary", the term used to refer to the most similar other systems (without "approval voting") in Washington, California, and Louisiana (and other non-U.S. jurisdictions).

"Unified primary" is thus a novel term for "non-partisan blanket primary" plus "approval voting" for (apparently) the first round only, which has never been significantly studied in the academic literature enough to give it its own name. The only reference is to Warren Smith's Monte Carlo simulations. He is an advocate of cardinal style voting systems who studied multi-round forms of cardinality systems, which P51 is mathematically similar to. But he never used the term "unified primary" academically.

If we could just make up new terms for every idea for ballot titles, our ballot titles would eventually all be neologisms rather than informative, consisting of vague, novel terms to distract voters from what the measure actually does.

D. YES/NO STATEMENTS.

ORS 250.055(2)(b) requires a "simple and understandable statement of not more than 25 words that describes the result if the state measure is approved," while ORS 250.055(2)(c) requires a similar statement describing the result if the measure is not approved.

The DBT's yes/no statements suffer the same defects as the caption:

1. They entirely misinterpret the provisions of P51, which does not preclude nominations to the general election ballot by minor parties, assemblies of electors, and individual petitioned-for candidates.
2. They are so vague as to be incomprehensible, even to election law experts.

E. SUMMARY.

ORS 250.055(2)(d) requires a ballot title summary consisting of a "concise and impartial statement of not more than 125 words summarizing the state measure and its major effect."

The DBT's summary suffers the same defects as the caption:

1. It entirely misinterprets the provisions of P51, which does not preclude nominations to the general election ballot by minor parties, assemblies of electors, and individual petitioned-for candidates.

2. It is so vague as to be incomprehensible, even to election law experts.

Further, the DBT summary incorrectly uses the term "independents" in referring to the nomination of candidates:

Currently, major parties nominate candidates to general election through party primaries; minor parties, independents nominate candidates directly to general election * * *.

This is a wrong description of the current process for candidates to achieve general election ballot access by petition. First, it is not "independents" who nominate candidates directly (through petition); it is all registered voters. Second, the DBT summary fails to define "nominate candidates directly to general election." We suggest:

Currently, major parties (Democratic and Republican) nominate candidates to general election through party primaries; minor parties nominate candidates by conventions or other methods; and individuals can be candidates on the general election ballot by collecting sufficient voter signatures.

II. COMMENTS APPLICABLE TO THE P38 CERTIFIED BALLOT TITLE.

As P51 appears effectively identical to P38, we assume that the Attorney General may adopt a CBT for P51 that is identical to the CBT for P38. Thus, we here comment on the P38 CBT and urge that it not be used as a model for the P51 CBT.

We here reiterate the fact that the P38 CBT embodies an entirely incorrect interpretation of P38. It is an also entirely incorrect interpretation of P51. The terms of neither proposed measure limits the general election ballot only to the two persons receiving the most votes in the "unified" or "common" primary, for the detailed reasons stated above.

A. CAPTION.

ORS 250.055(2)(a) requires a "caption of not more than 15 words that reasonably identifies the subject matter of the state measure." The P38 CBT reads:

CHANGES GENERAL ELECTION NOMINATION PROCESS: PROVIDES ONE COMMON PRIMARY BALLOT; UNLIMITED VOTES; TOP TWO ADVANCE

This caption is somewhat better than the P51 CBT, because it does not state that the proposed measure would replace the current system "with unified primary for all candidates." As noted in the detailed legal analysis above, that would be an incorrect conclusion.

1. THE P38 CBT CAPTION IS EXTRAORDINARILY VAGUE AND RELIES UPON AN UNDEFINED TERM ("COMMON PRIMARY").

The P51 CBT caption is deficient in its extreme vagueness. It in no way explains any of the "changes," except with the undefined and unfamiliar term "common primary." Undersigned commenters have been involved in elections for a cumulative period of over 50 years. Neither of us has ever heard the term "common primary," and it is certainly not a term of political science.

2. THE P38 CBT CAPTION USES THE STRANGE CONCEPT OF "UNLIMITED VOTES".

The term "unlimited votes" is quite likely to confuse voters. It confuses us.

B. YES/NO STATEMENTS.

ORS 250.055(2)(b) requires a "simple and understandable statement of not more than 25 words that describes the result if the state measure is approved," while ORS 250.055(2)(c) requires a similar statement describing the result if the measure is not approved.

The P38 CBT states:

Result of "Yes" Vote: "Yes" vote replaces current general election nomination process for most partisan offices; all candidates listed on common primary ballot; vote one or more; two advance.

Result of "No" Vote: "No" vote retains current general election nomination processes: party primaries for major parties; no common primary ballot; vote limitations; multiple candidates on general election ballot.

The P38 CBT's yes/no statements, if applied to P51, would suffer the same defects as the caption:

1. They entirely misinterpret the provisions of P51, which does not preclude nominations to the general election ballot by minor parties, assemblies of electors, and individual petitioned-for candidates.
2. They are so vague as to be incomprehensible, even to election law experts.

The "yes" statement is incorrect in stating "vote one or more," thus eliminating the always available option of voting for none.

The "no" statement offers a standalone phrase, "vote limitations," with no context. This is highly prejudicial in favor of P38/P51 and against retaining the existing system. No one likes "vote limitations." The existence of that unexplained phrase in the "no" statement, describing the existing system, makes the P38 CBT very biased.

"Vote limitations" could mean just about anything, since all voting methods have limitations (Arrow's Theorem and Gibbard-Satterthwaite Theorem and Duggan-Schwartz Theorem):

https://en.wikipedia.org/wiki/Arrow%27s_impossibility_theorem

https://en.wikipedia.org/wiki/Gibbard%E2%80%93Satterthwaite_theorem

https://en.wikipedia.org/wiki/Duggan%E2%80%93Schwartz_theorem

The "no" statement is also underinclusive, in that it fails to mention that, under the Attorney General's interpretation, the proposed measure would eliminate all minor party-nominated and petitioned-for candidates from the general election ballot.

It would be simple to eliminate the bias and the underinclusiveness, with:

Result of "No" Vote: "No" vote retains party primaries for major parties; voter votes for one candidate per office; general election ballot includes minor party and independent candidates.

C. SUMMARY.

ORS 250.055(2)(d) requires a ballot title summary consisting of a "concise and impartial statement of not more than 125 words summarizing the state measure and its major effect."

The P38 CBT states:

Summary: Currently, voters are limited to voting for one candidate for each office in primary elections; multiple candidates may appear for each office on general election ballot. Major parties nominate candidates through party primaries with separate ballots for each. Measure replaces that system for most partisan offices, including many federal (not presidential), all state, county, city, district partisan offices. Primary ballot will list all candidates for each office. Voters may vote for as many candidates as they like for each office, regardless of party affiliation of voter/candidate. Only top two candidates will appear on general election ballot; may be from same party. Primary, general election ballots must contain candidates' party registration/endorsements. Eligible person, regardless of party, may be selected to fill vacancy. Other provisions.

The P38 CBT's summary suffers the same defects as the caption:

1. It entirely misinterprets the provisions of P51, which does not preclude nominations to the general election ballot by minor parties, assemblies of electors, and individual petitioned-for candidates.
2. It is so vague as to be incomprehensible, even to election law experts.

Further, the P38 CBT summary is very underinclusive in failing to note that (1) the existing system allows minor parties to nominate candidates to the general election and allows other candidates to gain access to the general election ballot by collecting sufficient valid voter signatures, and (2) the measure would eliminate all minor party and petitioned-for candidates from the general election ballot. The phrase "multiple candidates may appear for each office on general election ballot" in no way provides that needed information. We suggest:

Currently, major parties (Democratic and Republican) nominate candidates to general election through party primaries; minor parties

nominate candidates by conventions or other methods; individuals can get on the general election ballot by collecting sufficient voter signatures. Measure would eliminate all nominations by minor parties and by voter petition.

Further, the phrase "must contain candidates' party registration/endorsements" is inaccurate in failing to use the term "qualified party" with respect to endorsements. Oregon has both qualified parties (Americans Elect, Constitution, Democratic, Independent, Libertarian, Pacific Green, Progressive, Republican, and Working Families) and non-qualified parties (such as Socialist). The "other" parties currently have 21,122 registrants, according to the Secretary of State. The measure would allow only qualified parties to state their endorsements on the ballot. Further, the measure prints on the ballot only the party affiliation of candidates who are members of qualified parties, not all parties.

Thank you for considering these comments.

Dated: February 4, 2014

Respectfully Submitted,

DANIEL W. MEEK
OSB No. 79124
10949 S.W. 4th Avenue
Portland, OR 97219
503-293-9021 voice
866-926-9646 fax
dan@meek.net

Attorney for
Tom Civiletti and
Seth Woolley



Suite 2300
1300 SW Fifth Avenue
Portland, OR 97201-5630

Gregory A. Chaimov
503.778.5328 tel
503.778.6299 fax

gregorychaimov@dwt.com

February 4, 2014

VIA FACSIMILE – 503-373-7414

Elections Division
Office of the Secretary of State
255 Capitol St NE, Ste 501
Salem, OR 97310

Re: Public Comment on Proposed IP 51

Dear Secretary Brown:

RECEIVED
2014 FEB 4 PM 4 45
KATE BROWN
SECRETARY OF THE STATE

On behalf of Mark Frohnmayer, a registered Oregon voter and the chief petitioner of IP 51, we are providing the following comments on the draft ballot title.

The Secretary of State issued the following draft ballot title on January 21, 2014:

Changes election nomination processes; replaces current primary system with unified primary for all candidates

Result of "Ycs" Vote: "Yes" vote changes election nomination processes for most partisan offices; all candidates run in unified primary; top two primary candidates compete in general election.

Result of "No" Vote: "No" vote retains the current party primary election system, retains procedures for the nomination of minor political party and independent candidates to the general election.

Summary: Currently, major parties nominate candidates to general election through party primaries; minor parties, independents nominate candidates directly to general election; and multiple candidates for office may appear on general election ballot. Measure changes those nomination processes for most partisan offices, including United States Senator; Congressional Representative; Governor; Secretary of State; State Treasurer; Attorney General; State Senator; State Representative; any state,

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county, city, district office that is either partisan or for which law authorizes political party nominations. Primary ballots contain all prospective candidates; elector may vote for one or more candidates regardless of party affiliation. Top two candidates in primary compete in general election. Primary, general election ballots must contain candidates' party registration, endorsements. Eligible person, regardless of party affiliation, may fill vacancy. Other provisions.

The Secretary of State also issued the following certified ballot title for IP 38:

Changes general election nomination process; provides one common primary ballot; unlimited votes; top two advance

Result of "Yes" Vote: "Yes" vote replaces current general election nomination process for most partisan offices; all candidates listed on common primary ballot; vote one or more; two advance.

Result of "No" Vote: "No" vote retains current general election nomination processes; party primaries for major parties; no common primary ballot; vote limitations; multiple candidates on general election ballot.

Summary: Currently, voters are limited to voting for one candidate for each office in primary elections; multiple candidates may appear for each office on general election ballot. Major parties nominate candidates through party primaries with separate ballots for each. Measure replaces that system for most partisan offices, including many federal (not presidential), all state, county, city, district partisan offices. Primary ballot will list all candidates for each office. Voters may vote for as many candidates as they like for each office, regardless of party affiliation of voter/candidate. Only top two candidates will appear on general election ballot; may be from same party. Primary, general election ballots must contain candidates' party registration/endorsements. Eligible person, regardless of party, may be selected to fill vacancy. Other provisions.

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COMMENTS ON DRAFT TITLE

The draft ballot title does not satisfy the legal requirements of ORS 250.035 to the extent explained below.

Because IP 51 is substantially similar to IP 38 and the Attorney General has certified a title for IP 38, we presume that ORS 250.062 will encourage the Attorney General to certify the same title for IP 51. As a result, these comments address both the draft title for IP 51 and the certified title for IP 38.

The Attorney General should not certify the title for IP 38 as the title for IP 51 because the title for IP 38 does not comply with ORS 250.035. Following ORS 250.062 for IP 51 would cause the Attorney General to duplicate an error.

CAPTION

The draft caption provides:

Changes election nomination processes; replaces current primary system with unified primary for all candidates

The certified caption for IP 38 provides:

Changes general election nomination process; provides one common primary ballot; unlimited votes; top two advance

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 "cornerstone for the other portions of the ballot title." *Greene v. Kulongoski*, 322 Or 169, 175, 903 P2d 366 (1995). As the "headline" for the ballot title, the caption "provides the context for the reader's consideration of the other information in the ballot title." 322 Or at 175. A caption complies substantially with the requirements of ORS 250.035(2)(a) if the caption identifies the subject matter of the proposed measure in terms that will not confuse or mislead * * * voters. 322 Or at 174-75.

The "subject matter" of a measure, as that term is used in ORS 250.035(2)(a), must be determined with reference to the "significant changes" that would be brought about by the measure. *Phillips v. Myers*, 325 Or 221, 226 (1997).

As explained in the attached comments to IP 38, the substance of which is incorporated for IP 51, for the most part, the draft caption complies with ORS 250.035. The

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caption certified for IP 38, however, suffers from the following problems that then flow through other sections of the draft title. The Attorney General should not change the draft caption to track the certified caption for IP 38.

First, replacement of the term "unified" with the adjective "common" causes the same problem the Attorney General attempted to address through the change in terms. Voters will not understand that "common" is used in the sense of communal or shared; instead, voters may consider "common" to be pejorative.

The term "common" conveys many different meanings in many different contexts, and there is no context in which "common" modifies "primary." *Webster's Third New Int'l Dictionary* 458 (unabridged ed. 2002). A voter who searches for the meaning of the term "common primary" will not, unlike with "unified primary," find "common primary" defined anywhere. In fact, a voter who searches for the term "common primary" will obtain results that use "common" in the sense of "occurring frequently." *Webster's Third New Int'l Dictionary* 458. The most frequently occurring primary, as a search discloses, is the type of primary—closed—that current law prescribes. As a result, voters are most likely to think that the measure does not change the current closed primary system in a material way.

A problem inherent with adjectives is that they *describe* a concept rather than *explain* the concept and, in doing so, risk conveying value judgments. That is the case here: People use the term "common" to convey the concept of "unclean or unfit." *Webster's Third New Int'l Dictionary* 458.

PGE v. Bureau of Labor and Industries, 317 Or 606, 611, 859 P2d 1143 (1993), held that, in the first step of construction of a law, "words of common usage typically should be given their plain, natural, and ordinary meaning." Common, used in that very sentence, is used in its own common meaning—a meaning different than the meaning the Attorney General appears to intend for the term.

The use of the word "unified" suffers none of these defects: the term is accurate—literally—when paired with primary to describe the measure under all common definitions of the word "unified": made united, uniform and whole. That Oregon voters (as ascertained by an OregonLive poll) favor such a system versus a divided primary system should not be cause for the Attorney General to make the title less accurate and less descriptive:

Should Oregon adopt an open primary?

Yes, all voters should have an opportunity to pick the nominees for the general election. 61.21% (273 votes)

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No, if you want to choose the Democratic or Republican nominee,
you should register in the party. 35.65% 159 votes)

http://www.oregonlive.com/mapes/index.ssf/2014/01/with_major_parties_losing_regi.html#incart_river.

Second, the touchstone of any ballot title is an accurate description of the measure. *Girod v. Kroger*, 351 Or 563, 568, 273 P3d 92 (2012). The addition of the term "unlimited votes" is inaccurate and should not be in the title.

The votes an elector may cast under the measure is not unlimited. An elector may vote for one or more candidates, but the number of votes an elector may cast is limited by the number of candidates.

In addition to being inaccurate, the term "unlimited votes" is likely to confuse, and thus mislead, voters. From the context, an elector cannot tell if the measure proposes to permit an elector to cast an unlimited number of votes per candidate. This point of confusion should not be permitted because there are voting systems in place in the United States in which electors may, in fact, cast more than one vote per candidate. See, e.g., http://www.thirdworldtraveler.com/Political/Preference_Voting.html.

Likewise, the term "unlimited votes" is also susceptible of the interpretation that there will be multiple elections, each one eliminating a candidate. This point of confusion, too, should not be permitted because there are voting systems in place in the United States in which candidates that do not receive enough votes are eliminated from voting rounds. See, e.g., <http://www.fairvote.org/reforms/instant-runoff-voting/instant-runoff-voting-faq/>.

Finally, a title may not overstate or understate the effect of a measure. *Girod*, 351 Or at 568. By the omission of a reference to "partisan" elections, the draft caption for IP 51 and certified caption for IP 38 could both mislead voters to conclude that the measure is broader than it is, affecting nonpartisan elections as well as partisan elections. Adding "partisan" to the caption would also make the caption consistent with the result of yes statements.

A caption that addresses these problems reads:

**Changes partisan elections; unified primary for all candidates;
top two approved compete in general election**

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Alternatively, should the Attorney General stand on the removal of unified, the following caption conveys similar meaning:

Changes partisan elections; primary ballot contains all candidates; top two approved compete in general election

If the Attorney General would prefer to mirror the result of yes statements, the caption could read:

Changes most partisan elections: primary ballot contains all candidates; top two approved for general election

Or:

Changes most partisan elections: primary ballot contains all candidates; top two approved compete in general

RESULT OF "YES" VOTE

The draft yes statement reads as follows:

Result of "Yes" Vote: "Yes" vote changes election nomination processes for most partisan offices; all candidates run in unified primary; top two primary candidates compete in general election.

The certified yes statement for IP 38 provides:

Result of "Yes" Vote: "Yes" vote replaces current general election nomination process for most partisan offices; all candidates listed on common primary ballot; vote one or more; two advance.

"ORS 250.035(2)(b) and (c) require 'simple understandable' statements of not more than 25 words that describe the result if voters approve the proposed measure and if they reject it." *Wyant/Nichols v. Myers*, 336 Or 128, 138 (2003). The purpose of this section of the ballot title is to "notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon." *Novick v. Myers*, 337 Or 568, 574 (2004). The yes statement builds upon the caption. *Hamilton v. Myers*, 326 Or 44, 51 (1997).

As explained in the attached comments to IP 38, the substance of which is incorporated for IP 51, for the most part, the draft yes statement complies with ORS 250.035.

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The yes statement certified for IP 38, however, suffers from the problem of the certified caption for IP 38 pertaining to the use of the term "common primary."

To address the concern about the yes statement, we suggest:

Result of "Yes" Vote: "Yes" vote replaces current general election nomination process for most partisan offices: all candidates listed on unified primary ballot, vote one or more; two advance.

Or alternatively, should the Attorney General reject the use of the more descriptive term "unified," the following would also work:

Result of "Yes" Vote: "Yes" vote replaces current general election nomination process for most partisan offices: all candidates listed on one primary ballot, vote one or more; two advance.

RESULT OF "NO" VOTE

The Attorney General issued the following draft no statement:

Result of "No" Vote: "No" vote retains the current party primary election system, retains procedures for the nomination of minor political party and independent candidates to the general election.

The certified no statement for IP 38 provides:

Result of "No" Vote: "No" vote retains current general election nomination processes; party primaries for major parties; no common primary ballot; vote limitations; multiple candidates on general election ballot.

ORS 250.035(2)(c) requires the no statement to "us[e] the same terms" as the yes statement "to the extent practical." ORS 250.035(3) reinforces the requirement by requiring that the no and yes statements "be written so that, to the extent practicable, the language of the two statements is parallel."

As explained in the attached comments to IP 38, the substance of which is incorporated for IP 51, for the most part, the draft no statement complies with ORS 250.035.

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The no statement certified for IP 38, however, suffers from the problems of the certified caption for IP 38: the use of the term "common primary" and the reference to "vote limitations."

We appreciate that the Attorney General likely included the term "vote limitations" as a means of making the no statement parallel with the caption. If the term "unlimited votes" is not in the certified title, then the term "vote limitations" need not be in the certified title. In addition, an elector will be confused and misled by the reference to there being "vote limitations" in current law. In common parlance, limitations on votes will suggest to electors that current law limits who may vote when, not the number of votes to be cast.

One way to capture current law would be:

Result of "No" Vote: "No" vote retains current general election nomination processes: party primaries for major parties on separate ballots; vote for one; multiple candidates on general election ballot.

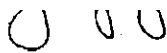
SUMMARY

Both the draft summary and the certified summary for IP 38 satisfy the requirements of ORS 250.035.

Thank you for your consideration.

Very truly yours,

Davis Wright Tremaine LLP


Gregory A. Chaimov

GAC/jan



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

February 20, 2014

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KATE BROWN
SECRETARY OF THE STATE

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

Re: Proposed Initiative Petition — Changes General Election Nomination Process: Provides Single Primary Ballot; Vote One or More; Two Advance
DOJ File #BT-51-14; Elections Division #51

Dear Mr. Williams:

We have reviewed the comments submitted on the draft ballot title for the above-referenced initiative petition. We provide the enclosed certified ballot title. We have revised the caption, the “yes” result statement, and the summary of the draft ballot title.

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

A. The caption

The draft ballot title’s caption reads:

Changes election nomination processes; replaces current primary system with unified primary for all candidates

Commenter Kyle Markley comments that, “[g]iven the very small differences” between the proposed measures in initiative petitions #38 and #51, initiative petition #51 should be given the same certified ballot title as initiative petition #38. *See* ORS 250.062.¹ We do not agree, because we find merit in some of the other comments we received, as explained below.

¹ ORS 250.062 provides:

If the Attorney General determines that the subject, purpose and major effect of two or more state initiative measures to be submitted at the same election are substantially similar, the Attorney General shall provide identical draft ballot titles for the measures.

Commenter Frohnmayer (through his attorney Gregory Chaimov) also comments that proposed measure #38 and proposed measure #51 are substantially similar. He objects, however, to adoption of the ballot title for initiative petition #38, asserting that the certified ballot title for #38 does not comply with ORS 250.035. With regard to the caption specifically, Frohnmayer objects to replacing “unified” with “common”—the term used in the certified caption for initiative petition #38. Our changes to the certified caption eliminate that concern.

Frohnmayer also objects to the term “unlimited votes,” which appears in the certified caption for initiative petition #38. We agree, and we have changed the caption accordingly.

Commenter Frank Dixon notes that the measure’s text is substantially the same as the text of Measure 65 (2008), except that this measure allows primary voters to cast votes for more than one candidate for a single office. He points out that the Supreme Court approved the following caption for Measure 65 (2008): “Changes General Election Nomination Processes for Major/Minor Party, Independent Candidates for Most Partisan Offices.” *Keisling v. Myers*, 343 Or 379, 171 P3d 345 (2007). Dixon asserts that the use of similar language for the present initiative’s caption, “rather than the creation of misleading and inaccurate terminology,” is in keeping with the intent of ORS 250.035(2)(a). We agree that this measure is very similar to Measure 65 (2008). We believe, however, that the caption we certify better identifies the subject matter of the measure. *See* ORS 250.035(2)(a).

Commenters Tom Civiletti and Seth Woolley (through their attorney Dan Meek) assume that the Attorney General will revise the draft ballot title to be the same as the certified ballot title for initiative petition #38. They assert, however, that ORS 250.062 is not controlling, because that statute applies only to draft ballot titles, and not to certified ballot titles. We need not address that argument, because the caption we certify is not identical to the caption for proposed measure #38. They also argue that the certified ballot title for initiative petition #38 is incorrect. Like commenter Dixon, these commenters suggest that the Attorney General should adopt the ballot title approved by the Supreme Court for initiative petition #65 (2008). We reject that suggestion for the reasons stated above.

Accordingly, our certified caption reads as follows:

Changes general election nomination process: provides single primary ballot; vote one or more; two advance

B. The “yes” result statement

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

Result of “Yes” Vote: “Yes” vote changes election nomination processes for most partisan offices; all candidates run in unified primary; top two primary candidates compete in general election.

Commenter Dixon objects to the “yes” result statement for the same reasons he objects to the caption. We have addressed his comments, above.

Commenter Frohnmayer does not object to the draft “yes” statement, but he does object to adopting the term “common primary” from the certified ballot title for initiative petition #38. We do not agree with his objection.

Commenters Civiletti and Woolley assert that both result statements misinterpret the provisions of the proposed measure and are “so vague as to be incomprehensible.” We believe the certified result statements address their concerns.

We thereby certify the following “yes” result statement:

Result of “Yes” Vote: “Yes” vote replaces current general election nomination process for most partisan offices; all candidates listed on common primary ballot; vote one or more; two advance.

C. The “no” result statement

The draft ballot title’s “no” result statement reads:

Result of “No” Vote: “No” vote retains the current party primary election system, retains procedures for the nomination of minor political party and independent candidates to the general election.

Commenter Dixon objects that the draft “no” statement is not fair and accurate, because it fails to mention retention of the general election system and retention of the system to fill vacancies with members of the same party. The “no” statement we certify addresses the first of those concerns. His suggestion to include the retention of the current system for filling vacancies contravenes the statutory admonition to “us[e] the same terms in both statements, to the extent practical.” ORS 250.035(2)(c). Therefore, we do not adopt it. That information is, however, included in the summary.

As with the “yes” statement, commenter Frohnmayer opposes adopting “common primary” from the “no” statement from the certified ballot title for initiative petition #38. We reject that objection.

Commenters Civiletti and Woolley renew their objections to the “yes” statement, which we addressed above.

We therefore certify the following “no” result statement:

Result of “No” Vote: “No” vote retains current general election nomination processes: primaries for major parties; no common primary ballot; one vote/office; multiple candidates on general election ballot.

D. The summary

The draft ballot title's summary reads:

Summary: Currently, major parties nominate candidates to general election through party primaries; minor parties, independents nominate candidates directly to general election; and multiple candidates for office may appear on general election ballot. Measure changes those nomination processes for most partisan offices, including United States Senator; Congressional Representative; Governor; Secretary of State; State Treasurer; Attorney General; State Senator; State Representative; any state, county, city, district office that is either partisan or for which law authorizes political party nominations. Primary ballots contain all prospective candidates; elector may vote for one or more candidates regardless of party affiliation. Top two candidates in primary compete in general election. Primary, general election ballots must contain candidates' party registration, endorsements. Eligible person, regardless of party affiliation, may fill vacancy. Other provisions.

Commenter Dixon objects that the draft summary fails to inform voters of "five profound changes in the way Oregon voters participate in elections." We believe that the certified summary we adopt provides that information.

Commenter Frohnmayer does not object to the draft summary.

Commenters Civiletti and Woolley object to the use of the word "independents." We have eliminated that word from the certified summary. We reject their argument that the summary misinterprets the measure, for the same reason we rejected them with regard to the ballot title for initiative petition #38.

Accordingly, the certified summary reads:

Summary: Currently, voters are limited to voting for one candidate for each office in primary elections; multiple candidates may appear for each office on general election ballot. Major parties nominate candidates through party primaries with separate ballots for each. Measure replaces that system for most partisan offices, including many federal (not presidential), all state, county, city, district partisan offices. Primary ballot will list all candidates for each office. Voters may vote for as many candidates as they like for each office, regardless of party affiliation of voter/candidate. Only top two candidates will appear on general election ballot; may be from same party. Primary, general election ballots must contain candidates' party registration/endorsements. Eligible person, regardless of party, may be selected to fill vacancy. Other provisions.

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E. Conclusion

After reviewing the comments we received, and after further reviewing the proposed measure, we have modified revised the caption, the "yes" result statement, and the summary of the draft ballot title. We certify the attached ballot title under ORS 250.067(2).

Sincerely,

Senior Assistant Attorney General
matthew.j.lysne@doj.state.or.us

MJL:aft/5003863

Enclosure

Mark Frohnmayer
1263 W. 5th Ave
Eugene, OR 97402

Kyle Markley
c/o Caitlin Mitchel, P.C.
P.O. Box 3223
Hillsboro, OR 97123

Frank Dixon
232 NE 9th Ave
Portland, OR 97232

Daniel Meek
10949 SW 4th Ave
Portland, OR 97219

Gregory Chaimov
Davis Wright Tremaine LLP
1300 SW 5th Ave Ste 2400
Portland, OR 97201

BALLOT TITLE

Changes general election nomination process: provides single primary ballot; vote one or more; two advance

Result of "Yes" Vote: "Yes" vote replaces current general election nomination process for most partisan offices; all candidates listed on common primary ballot; vote one or more; two advance.

Result of "No" Vote: "No" vote retains current general election nomination processes: primaries for major parties; no common primary ballot; one vote/office; multiple candidates on general election ballot.

Summary: Currently, voters are limited to voting for one candidate for each office in primary elections; multiple candidates may appear for each office on general election ballot. Major parties nominate candidates through party primaries with separate ballots for each. Measure replaces that system for most partisan offices, including many federal (not presidential), all state, county, city, district partisan offices. Primary ballot will list all candidates for each office. Voters may vote for as many candidates as they like for each office, regardless of party affiliation of voter/candidate. Only top two candidates will appear on general election ballot; may be from same party. Primary, general election ballots must contain candidates' party registration/endorsements. Eligible person, regardless of party, may be selected to fill vacancy. Other provisions.

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KATE BROWN
SECRETARY OF THE STATE

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on March 26, 2014, I directed the original Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 51 (Supreme Court) to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and served upon Roy Pulvers, attorney for petitioner Frank Dixon, by using the court's electronic filing system.

I further certify that on March 26, 2014, I directed the Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 51 (Supreme Court) to be served upon Mark Frohnmayr, chief petitioner, by mailing a copy, with postage prepaid, in an envelope addressed to:

Mark Frohnmayr
Blair Blvd
Salem, OR 97402

/s/ Matthew J. Lysne

MATTHEW J. LYSNE #025422
Senior Assistant Attorney General
matthew.j.lysne@doj.state.or.us

Attorneys for Respondent
Ellen F. Rosenblum, Attorney
General, State of Oregon