

ELLEN F. ROSENBLUM  
Attorney General



FILED March 10, 2014 04:33 PM  
Appellate Court Records

FREDERICK M. BOSS  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
APPELLATE DIVISION

March 10, 2014

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

Re: *Marie H. Bowers, Gerald C. Freeman and Robert A. Zielinski, Jr. v. Ellen Rosenblum, Attorney General, State of Oregon*  
SC S062047 (control), S062070

Dear Chief Justice Balmer:

Petitioners Marie H. Bowers, Gerald C. Freeman and Robert A. Zielinski, Jr., as well as petitioners Hanna Vaandering and Bethanne Darby, have filed ballot title challenges 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/5068969

cc: Aruna A. Masih/without encl.  
Kevin L. Mannix/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

MARIE H. BOWERS, GERALD C.  
FREEMAN and ROBERT A.  
ZIELINSKI, JR.,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney  
General, State of Oregon,

Respondent.

Supreme Court No. S062047 (Control)

HANNA VAANDERING and  
BETHANNE DARBY,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney  
General, State of Oregon,

Respondent.

Supreme Court No. S062070

RESPONDENT'S ANSWERING  
MEMORANDUM TO PETITIONS TO  
REVIEW BALLOT TITLE RE:  
INITIATIVE PETITION NO. 43  
(SUPREME COURT)

**A. Introduction**

Chief petitioners Marie H. Bowers, Gerald C. Freeman, and Robert A. Zielinski, Jr., (hereinafter, the “chief petitioners”) and petitioners Hanna Vaandering and Bethany Darby (hereinafter, “petitioners Vaandering and Darby”), separately filed petitions for review of the Attorney General’s prepared ballot title for Initiative Petition 43 (2014) (“IP 43”). Chief petitioners contend that all four parts of the prepared ballot title do not substantially comply with the requirements of ORS 250.035(2)(a) to (d). Petitioners

Vaandering and Darby challenge only whether the “yes” vote result statement

substantially complies with ORS 250.035(2)(b). For the reasons discussed below, the prepared ballot title for IP 43 substantially complies with ORS 250.035(2), and therefore, this court should certify the prepared ballot title for IP 43, without modification.

**B. The prepared caption for IP 43 substantially complies with ORS 250.035(2)(a).**

Chief petitioners first dispute whether the prepared caption substantially complies with ORS 250.035(2)(a). ORS 250.035(2)(a) provides that a ballot title must include “[a] caption of not more than 15 words that reasonably identifies the subject matter of the state measure.” The prepared caption reads:

**Amends Constitution: Exempts transfers within families  
from tax on inherited estates worth \$1 million, other taxes**

As will be explained below, the prepared caption reasonably identifies the subject matter of IP 43 and complies with ORS 250.035(2)(a).

**1. The prepared caption reasonably identifies that the actual major effect of IP 43 is to exempt family transfers of property from estate taxes and other taxes.**

To determine whether the prepared caption satisfies ORS 250.035(2)(a), this court must decide whether it reasonably identifies the “actual major effect(s)” of the measure in light of existing law. For purposes of ORS

250.035(2)(a), the “subject matter” of a measure “refers to ‘the ‘actual major effect’ of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words).’” *Buehler v. Rosenblum*, 354 Or 318, 323, 311 P3d 882 (2013) (quoting *Whitsett v. Kroger*, 348 Or 243, 247, 230 P3d 545 (2010)). “To identify the ‘actual major effect’ of a measure, this court looks to ‘the text of the proposed measure to determine the changes that the proposed measure would enact in the context of existing law’ and then evaluates whether the caption reasonably identifies those effects.” *Buehler*, 354 Or at 323 (quoting *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011)). In identifying the effects of the proposed measure, the caption cannot “overstate or understate the scope of the legal changes that the measure would enact.” *Buehler*, 354 Or at 323 (citing *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004)).

The prepared caption reasonably identifies the actual major effects of IP 43. IP 43 would amend the Oregon Constitution to include a provision that “[n]o tax shall be imposed on any gift of property from one family member to another member of the same family.” (Chief Pet Br, Ex A). Under existing law, there are no taxes for “gifts” given during a person’s lifetime, and there is only a tax on “gifts” or transfers of property upon death—for estates that are

valued at \$1 million or more. *Rasmussen v. Rosenblum*, 354 Or 344, 345, 312 P3d 529 (2013) (citing ORS 118.010, ORS 118.160, and ORS 118.160(1)(c)). Thus, an important “actual major effect” of IP 43 is that it will establish a new tax exemption for certain qualifying “gifts” or transfers to family members in estates that are valued at \$1 million or more.

In addition, the caption reasonably identifies a second major effect of IP 43, which is an exemption for “other taxes,” including any existing or potential state or local taxes. As noted above, there are no other existing state taxes that apply to “gifts” or transfers of the kind identified in IP 43, and therefore, the term “other taxes” reasonably identifies for the voter that IP 43 would prohibit such taxes. Likewise, the term “other taxes,” which is not restricted or limited to state taxes, informs the voter that the tax exemption in IP 43 is broad and would extend to local taxes as well.<sup>1</sup>

In sum, the prepared caption reasonably identifies the two actual major effects of IP43: an exemption from existing state estate taxes on family gifts;

---

<sup>1</sup> Chief petitioners argue that other state or local laws that could potentially tax the transfers at issue in IP 43, including, as examples, other future state taxes, Multnomah County’s personal income tax ordinance in 2003, the City of Portland’s “Arts Education and Access” tax. (Petition, S062047, Ex C, at 2). Given the 15-word restriction on caption length, the phrase “other taxes” reasonably identifies that the tax exemption in IP 43 would apply to such enactments, notwithstanding chief petitioners’ contrary assertion.

and a prohibition on any other taxes imposed by the state or local governmental units. Accordingly, the prepared caption complies with ORS 250.035(2)(a).

**2. Chief petitioners' claim that the phrase "transfers within families" is over-inclusive lacks merit.**

Chief petitioners object that the prepared caption's use of the term "transfers" (rather than "gifts") in the phrase "transfers within families" makes the prepared caption over-inclusive, and could include *compensated* transfers like sales or trades, and imply that this court should substitute the term "gifts" for "transfers." (Petition, S062047, 5). However, chief petitioners' argument is unpersuasive for several reasons.

First, the prepared caption includes the term "transfers" (as opposed to "gifts"), because the term "gift" is misleading to voters about the potential breadth of IP 43. Section 5 of IP 43 defines a "gift," and that definition contemplates that a "gift" may be given in two distinct ways: (1) by "voluntary act"; or (2) by "operation of law"—*e.g.*, intestate succession. Significantly, a voter may not understand or consider that a transfer by "operation of law" like intestate succession is a "gift." To the contrary, a "gift" is ordinarily understood as being something given by a voluntary act. *See Webster's Third Int'l Dictionary* 956 (unabridged ed 2002) (defining a "gift" as "**2** : something

that is voluntarily transferred by one person to another without compensation \* \* \*”). Thus, a voter might incorrectly conclude that the tax exemption in IP 43 would extend only to voluntary gifts—and not gifts achieved through intestate succession or other provisions of law. Accordingly, the term “transfers” is necessary and appropriate for identifying the potential scope and breadth of the tax exemption created in IP 43. Use of the term “transfers” is entirely consistent with this court’s case law, which construed a closely similar ballot measure and approved of the use of the term “transfers” to describe the tax exemption. *See Rasmussen*, 354 Or at 348 (addressing measure that declared “[a]ll family giving is exempt from taxation,” and proposing modified caption reading “[e]xempts *transfers* within families from tax on inherited estates over \$1 million, other state taxes”) (emphasis added). Moreover, the use of the term “transfers” is not misleading or suggestive that IP 43 would apply to compensated transfers like sales or trades.<sup>2</sup>

---

<sup>2</sup> It bears noting that the tax protections in IP 43 might extend, at least partially, to transactions that voters might understand to include a “sale” or “trade” of property, *e.g.*, a transfer of property accomplished through a sale (or trade) of a fractional interest in that property and a gift of any remaining interest. (*See* Chief Petitioners’ Petition, Ex A, Section 4 defines “property” as including “any legal or equitable interest in anything of value, including real property and tangible and intangible personal property”).

**3. Chief petitioners' claim that the phrase "from taxes on inherited estates worth \$1 million, other taxes" is under-inclusive lacks merit.**

Chief petitioners also claim that the phrase "from taxes on inherited estates worth \$1 million, other taxes" is "under-inclusive" to the extent that it fails to explain that the tax exemption would apply to estates worth more (or less) than \$1 million or to "gifts between parents and children" (and not just gifts that occur after death). (Petition, S062047, 6). However, the prepared caption reasonably identifies the scope of the tax exemption in IP 43 in light of existing law, as required by ORS 250.035(2)(a). Had the ballot title informed the voters that IP 43 would exempt *all* taxes on all gifts, during lifetime or after death, it would fail to inform the voter of the concrete "actual major effect" of that provision in light of existing state law, which does not presently tax estates worth less than \$1,000,000 or gifts made during the giver's lifetime. Instead, and considering the 15-word limitation, the term "other taxes" reasonably identifies that the scope of IP 43 could extend to other existing or potential state laws that may tax family gifts made during a person's lifetime, or after death. Accordingly, the caption substantially complies with ORS 250.035(2)(a).



**C. The “yes” and “no” vote result statements comply with ORS 250.035(2)(b).**

Chief petitioners and petitioners Vaandering and Darby next challenge whether the “yes” and “no” vote result statements comply with ORS 250.085(2)(b).<sup>3</sup> ORS 250.085(2)(b) provides the ballot title must include “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is approved”; ORS 250.085(2)(c) provides that the ballot title must include “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected. \* \* \* [.]” Here, the prepared “yes” and “no” vote result statements read:

**Result of “Yes” Vote:** “yes” vote exempts transfers within families from existing tax on inherited estates worth \$1 million; prohibits taxing transfers between family members; reduces state revenue.

**Result of “No” Vote:** “No” vote retains law taxing estates worth \$1 million or more and making those to whom estate property passes liable for unpaid estate tax.

---

<sup>3</sup> Petitioners Vaandering and Darby only seek modification of the “yes” vote result statement—and not the “no” vote result statement. (Petition, S062070, 3-4). However, because challenges to result statements require this court to read the “yes” and “no” statements together, *Rasmussen*, 351 Or at 365 (citation omitted), the Attorney General addresses the parties challenges to either statement together.

As explained below, the “yes” and “no” vote result statements substantially comply with ORS 250.085(2)(b) and ORS 250.085(2)(c).

Chief petitioners and petitioners Vaandering and Darby contend that the prepared “yes” vote result statements fail to explain that the tax exemption in IP 43 would apply to local taxes—and not just state taxes. (*See* Petition, S062047, 7, chief petitioners argue that “[the “yes” and “no” vote result statements] do[] not describe the prohibition on local taxes”; Petition, S062070, 3, petitioners argue that “the [“yes” vote] result statement fails to make clear that the prohibition applies to taxation by all units of government including local taxes,” internal quotation marks omitted). In addition, chief petitioners assert that the “yes” and “no” vote result statements are flawed in two other respects: they fail to explain that IP 43 would do more than just eliminate a statutory tax on estates worth \$1 million or more; and they “improperly impl[y] that the existing ‘law taxing estates worth \$1 million or more’ will be ended by this measure.” (Petition, S062047, 7). However, none of those arguments are persuasive.

**2. The “yes” vote result statement explains that a major consequence of IP 43 is a specific prohibition on taxation by state or local governments.**

To begin, the “yes” vote result statement identifies that a major effect or consequence of IP 43 is a “prohibition” on any governmental action—by state

or local government—to tax gifts between family members. To comply with ORS 250.085(2)(b), the “yes” vote result statement “must set out ‘the most significant and immediate consequences’ of adoption of the proposed measure.”” *Buehler*, 354 Or at 323 (quoting *Pelikan/Tauman v. Myers*, 342 Or 383, 390, 153 P3d 117 (2007)). Here, the “yes” vote result statement identifies that IP 43 “prohibits taxing transfers between family members[.]” The statement shows that IP 43 would restrict governmental action—taxing—and without qualification or restriction.<sup>4</sup> As such, the “yes” vote result statement sufficiently informs the voters that IP 43, if approved, would prohibit taxing of gifts to family members by any unit of government, either state or local.<sup>5</sup>

**3. The “yes” vote result statement explains that IP 43 does more than eliminate a statutory tax on inherited estates worth \$1 million or more.**

---

<sup>4</sup> The unqualified and unrestricted prohibition on the act of taxation also dispels chief petitioners’ concern that the “yes” and “no” vote result statements “do[] not describe the prohibition on any form of tax – whether in the guise of a gift tax, an income tax, an inheritance tax, or an estate tax.” (Petition, S062047, 7). The reference to a prohibition on the *act* of taxing simply and understandably explains that any tax—however labeled or described—would be prohibited to the extent that it concerns the gifts or transfers identified in IP 43.

<sup>5</sup> The parties generally agree that explaining that IP 43 would prohibit “state and local” taxation is desirable. However, given the 25-word limitation for the vote result statement, it was necessary to prioritize and identify the two most significant effects of IP 43, *i.e.* its effect in light of existing tax laws, and the prohibition against all taxation on family gifts or transfers.

For the same or related reasons, IP 43 also properly explains that IP 43 does more than merely eliminate one statutory tax on certain inherited estates—as chief petitioners contend. Again, the “yes” vote result statement identifies two major consequences or effects of IP 43: it “exempts transfers within families from existing tax on inherited estates worth \$1 million”; and, it “prohibits taxing transfers between family members.” In short, the “yes” vote result statement sufficiently explains the full breadth of IP 43 as including both a change to existing state taxes and a prohibition on existing or future tax efforts by any unit of state or local government.

**4. The “yes” and “no” vote result statements do not improperly imply that IP 43 would end all taxation on estates worth \$1 million or more.**

Finally, the “yes” and “no” vote result statements, when read together, do not “improperly impl[y]” that IP 43 would end *other* existing tax laws affecting estates worth \$1 million or more. The “no” vote result statement explains that IP 43, if unapproved, “retains law taxing estates worth \$1 million or more and making those to whom estate property passes liable for unpaid estate tax.” That statement provides context for the “yes” vote result statement, which explains that IP 43, if approved, would provide the two aforementioned effects—an

exemption and prohibition on taxes for transfers between family members.

Read together, the “yes” and “no” vote result statements do not state or suggest that IP 43 would end all taxation of estates worth \$1 million or more; they instead explain two distinct changes that would affect the taxation of estates worth \$1 million or more.

In sum, the “yes” and “no” vote result statements comply with ORS 250.035(2)(b) and ORS 250.035(2)(c) by sufficiently explaining the scope of the major effects of IP 43 if it is approved or rejected.

**D. The prepared summary complies with ORS 250.035(2)(d).**

Lastly, the prepared summary substantially complies with ORS 250.035(2)(d), which requires “[a] concise and impartial statement of not more than 125 words summarizing the measure and its major effect.” The summary reads:

**Summary:** Current statutory law imposes one-time tax on deceased person’s estate when estate’s value—as determined by federal law—is \$1 million or more; if estate does not pay the tax, those to whom estate property passes are liable; current law does not otherwise tax property received as gifts or inheritance. Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of “property” (defined) from one “family member” (defined) to another member of the same family. Defines “gift” as giving property without compensation, including by operation of law, intestate succession. Measure does not prohibit or restrict ordinary property taxes imposed based on

ownership of an interest in property. Measure reduces state revenues, provides no replacement. Other provisions.

Chief petitioners argue that the prepared summary fails to summarize “the measure and its major effect” in two respects. First, chief petitioners contend that the summary improperly focuses on “one existing law – the estate tax – without covering the real range of power which is circumscribed by this amendment[,]” *i.e.* the measure’s prohibition on all state and local taxes on gifts (or transfers) between family members. (Petition, S062047, 8). Second, chief petitioners contend that the summary fails to adequately describe who a “family member” is, and should, at a minimum, explain that “family members” include those sharing a “third degree of relationship” with the person making the “gift” or “transfer.” (*Id.*). However, neither proposal is necessary to comply with ORS 250.035(2)(d).

**1. The prepared summary sufficiently summarizes the major effect of IP 43 on all state and local taxation of gifts between family members.**

First, for the reasons explained above with respect to the caption and “yes” and “no” vote result statements, the caption sufficiently summarizes the major effect that IP 43 would have on state and local taxation of gifts between family members. “The function of [the] summary is to provide voters with

enough information to understand what will happen if the proposed measure is approved, *i.e.*, to advise voters of the ‘breadth’ of a measure’s impact.”

*Whitsett v. Kroger*, 348 Or 243, 252, 230 P3d 545 (2010) (quoting *Caruthers v. Kroger*, 347 Or 660, 670, 227 P3d 723 (2010)) (brackets added in *Whitsett*).

Here, the summary explains that in addition to the aforementioned tax exemption under existing law, that the “[m]easure amends state constitution to provide that no state or local tax shall be imposed on gifts of “property” (defined) from one “family member” (defined) to another member of the same family.” Notwithstanding chief petitioners’ contrary assertion, the summary does explain “the real range of power which is circumscribed by this amendment”—a constitutional prohibition on the taxation of certain specified family giving.

**2. The prepared summary need not specifically identify the degree of kinship required for the tax exemption and prohibition in IP 43.**

In addition, the summary is not deficient for the reason that it fails to fully define who is a “family member” for purposes of the tax exemption and prohibition contained in IP 43. Chief petitioners contend that the summary “needs to describe the definition of ‘family member’” and should include at a minimum, that family members be related by a “third degree of relationship” as

a “clear line of demarcation” of the scope of the tax exemption and prohibition. (Petition, S062047, 8). However, chief petitioners do not explain why ORS 250.085(2)(d) *requires* such a definition—let alone why a “clear line of demarcation” is *required*.

Instead, chief petitioners’ challenge to that aspect of the summary appears to be a request that this court modify the proposed summary to their preferred summary. However, this court cannot simply choose a “better” summary, it must review whether the Attorney General’s summary is legally sufficient. *See Nesbitt v. Myers*, 328 Or 400, 405, 978 P2d 378 (1999) (“[a]n argument that the summary would be ‘better’ is not an argument that the Attorney General’s summary is legally insufficient”); *Sajo v. Roberts*, 304 Or 414, 418, 746 P2d 214, 215 (1987) ([t]his court’s task is to review the Attorney General’s ballot title, not the challenger’s alternative”). Here, chief petitioners have not articulated why a “line of demarcation” is required to comply with ORS 250.035(2)(d), what specific line of demarcation is required to comply with ORS 250.035(2)(d), or even whether their proposed summary accurately describes that line of demarcation.<sup>6</sup> In the absence of some argument or

---

<sup>6</sup> To the extent that chief petitioners contend that summary must identify the most distant familiar relationships encompassed within the tax exemption and prohibition in IP 43, petitioners’ proposed summary fails to do so given that

Page 15 -RESPONDENT'S ANSWERING MEMORANDUM TO PETITIONS TO  
REVIEW BALLOT TITLE RE: INITIATIVE PETITION NO. 43 (SUPREME  
COURT)  
MJL:aft\5068653



explanation to the contrary, this court should conclude that the prepared summary for IP 43 substantially complies with ORS 250.035(2)(d) as it sufficiently advises about the potential breadth of the tax exemption and prohibition contained in that measure.

**E. Conclusion**

For the reasons explained above, this court should certify the ballot title to the Secretary of State without modification.

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 Rosenblum, Attorney General,  
State of Oregon

---

it omits the measure's provision that a "trust for the benefit of a family member is included in the same degree of relationship as that family member."

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 3, 2014

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

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

Dear Ms. Joyce:

Pursuant to ORS 250.067(4), we transmit to you for filing with the court as part of the record in the above referenced matter, the written comments filed in this office pursuant to ORS 250.067(1), regarding initiative petition #43. We also enclose the draft and certified ballot titles with their respective transmittal letters.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lydia Finkbeiner", is written over the typed name.

Lydia Finkbeiner  
Compliance Specialist

enclosures

**Prospective Petition for State Measure****SEL 310**

Rev. 1/12, DES 250,049

**To the Secretary of State,**

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

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

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

**Chief Petitioner Information**

Name print

Signature

Residence Address, Street/Route

Gervais

State

OR

Zip Code

97026

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

503

Sponsoring Organization if any

Name print

Signature

Residence Address, Street/Route

Rickreall

State

OR

Zip Code

97371

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

503

Sponsoring Organization if any

Name print

Signature

Residence Address, Street/Route

Harrisburg

State

OR

Zip Code

97446

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

503

Sponsoring Organization if any

please read the instructions for circulators and signers on the reverse side

**SEL 310**SECRETARY OF THE STATE  
KATE BROWN

NOV 14 PM 2 46

RECEIVED

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

rev 1/12, ORS 250.045, ORS 250.165, ORS 255.165, ORS 255.185

### ● 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

NO Taxes on Family Giving

Sig

Nov. 14, 2013

Date Signed

Sig

Nov. 14, 2013

Date Signed

Sig

Nov. 14, 2013

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 255.185

### ○ 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

KATE BROWN  
SECRETARY OF THE STATE

Date Signed

Signed

2013 NOV 14 PM 2 45

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.

## NO TAXES ON FAMILY GIVING

The People of the State of Oregon enact the following new Section to be added to Article IX of the Oregon Constitution:

1. No tax shall be imposed on any gift of property from one family member to another member of the same family.
2. This means that no unit of government in Oregon, from the state government down to the smallest district, can in any fashion place any tax on any gift from one family member to another member of the same family, no matter whether the gift is made during life, upon death, or after death.
3. "Family member" or "member of the same family" means a relationship by blood, marriage, domestic partnership, adoption, or by other laws recognizing family relationships, between a giver and a recipient, within the third degree of relationship between the giver and the recipient. This includes, by example, but is not limited to, relationships within the range of spouses, domestic partners, great grandparents, grandparents, parents, children, grandchildren, great grandchildren, great uncles, great aunts, uncles, aunts, nephews, nieces, great nephews, great nieces, siblings, and cousins. A trust for the benefit of a family member is included in the same degree of relationship as that family member.
4. "Property" includes, but is not limited to, any legal or equitable interest in anything of value, including real property and tangible and intangible personal property.
5. "Gift" means to give property without compensation by voluntary act or by operation of law, including intestate succession and similar uncompensated transfers.
6. These provisions are intended to create a "safe harbor" to allow family members, at any time, to give to other family members without taxes being imposed. These provisions shall be generously construed to effectuate this intent.
7. These provisions do not cover or restrict ordinary property taxes that are imposed based upon ownership of an interest in property.

RECEIVED  
2013 NOV 14 PM 2 46  
KATE BROWN  
SECRETARY OF THE STATE

ELLEN F. ROSENBLUM  
Attorney General



FREDERICK M. BOSS  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
APPELLATE DIVISION

January 13, 2014

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

Re: Proposed Initiative Petition — Amends Constitution: Exempts Gifts Within Families  
From Tax on Inherited Estates Worth \$1 Million, Other Taxes  
DOJ File #BT-43-14; Elections Division #43

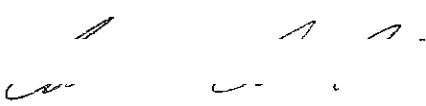
Dear Mr. Williams:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to exempting gifts made within families from taxation.

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

A copy of the draft ballot title is enclosed.

Sincerely,

  
Cameron Craft  
Legal Secretary

chc/4910702

Enclosure

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

Gerald C. Freeman  
Oak Grove Rd.  
Rickreall, OR 97371

Marie H. Bowers  
Bowers Drive  
Harrisburg, OR 97446

RECEIVED  
2014 JAN 13 PM 4 25  
KATE BROWN  
SECRETARY OF THE STATE

## **DRAFT BALLOT TITLE**

**Amends Constitution: Exempts gifts within families from tax on inherited estates worth \$1 million, other taxes**

**Result of “Yes” Vote:** “Yes” vote exempts gifts within families from existing tax on inherited estates worth \$1 million; prohibits taxing gifts between family members; reduces state revenue.

**Result of “No” Vote:** “No” vote retains law taxing estates worth \$1 million or more and making those to whom estate property passes liable for unpaid estate tax.

**Summary:** Current statutory law imposes one-time tax on deceased person’s estate when the estate’s value—as determined by federal law—is \$1 million or more; if the estate does not pay the tax, those to whom the estate property passes are liable; current law does not otherwise tax property received as gifts or inheritance. Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of “property” (defined) from one “family member” (defined) to another member of the same family. Defines “gift” as giving property without compensation, including by intestate succession. Measure does not prohibit or restrict ordinary property taxes imposed based on ownership of an interest in property. Measure reduces state revenues, provides no replacement. Other provisions.

RECEIVED  
2014 JAN 13 PM 4 25  
KATE BROWN  
SECRETARY OF THE STATE



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

January 28, 2014

Office of the Secretary of State  
Elections Division  
255 Capitol St. NE  
Suite 501  
Salem OR 97310

RE: Initiative Petition 43  
(No Taxes On Family Giving)

Ladies and Gentlemen:

This letter is in regard to your request for public input on whether this proposed initiative petition satisfies the procedural constitutional requirements for circulation as a proposed initiative petition.

This initiative is a constitutional amendment which provides a prohibition against any Oregon tax on a gift from one family member to another member of the same family. It relates to this single subject and is appropriate for a separate vote. Accordingly, it meets the procedural constitutional requirements.

Thank you for your consideration.

Sincerely,

Kevin L. Mannix  
Attorney at Law  
Representing myself as an Oregon elector and on behalf of Chief Petitioners Marie H. Bowers,  
Gerald C. Freeman, and Robert Z. Zielinski, Jr.

KLM/agg

RECEIVED  
JAN 28 PM 3 28  
KATE BROWN  
SECRETARY OF THE STATE





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

January 28, 2014

Office of the Secretary of State  
Elections Division  
255 Capitol St. NE  
Suite 501  
Salem OR 97310

RECEIVED  
2014 JAN 28 PM 3 28  
KATE BROWN  
SECRETARY OF THE STATE

RE: Draft Ballot Title, Initiative Petition 43

Ladies and Gentlemen:

This letter presents comments in regard to the draft ballot title prepared by the Attorney General for Initiative Petition 43 (No Taxes on Family Giving). I present these comments on behalf of myself, as an Oregon elector, and as an attorney on behalf of Marie H. Bowers, Gerald C. Freeman, and Robert A. Zielinski, Jr., all Oregon electors and the three Chief Petitioners on this citizen initiative.

#### Overview of the Initiative

Initiative Petition 43 presents a proposed amendment to the Oregon Constitution. The amendment would add a new Section to Article IX of the Constitution (references to "the amendment" are to the proposed new Section as presented in this initiative).

The amendment addresses the taxing power of the state and every other unit of government in Oregon. This amendment provides, at the outset: "1. No tax shall be imposed on any gift of property from one family member to another member of the same family."

The amendment focuses on the parties to the transaction (family members) and the nature of the transaction (gifting property). The type of any tax is not as significant as the parties and the act of giving.

The timing of the protected act of giving is broad: a gift from one member of a family to another member of the same family is protected from any tax "no matter whether the gift is made during life, upon death, or after death." Subsection 2 of the amendment.

The amendment defines "family member" or "member of the same family" in a broad, inclusive fashion. Relationships which are included are those "by blood, marriage, domestic partnership, adoption, or by other laws recognizing family relationships, between a giver and a recipient, within the third degree of relationship between the giver and the recipient." Subsection 3 of the

amendment. While this language is fairly straightforward, it also represents noteworthy inclusiveness.

For purposes of simplicity, in this letter I shall use the phrase “family gift” to mean a gift from one member of a family to another member of the same family, as covered by the amendment.

The definitions of “Property” (Subsection 5 of the amendment) are straightforward and likely require no additional explanation.

It is significant that the purpose of the amendment is clearly stated: “These provisions are intended to create a ‘safe harbor’ to allow family members, at any time, to give to other family members without taxes being imposed.” Subsection 6 of the amendment.

### Context of the Initiative

Oregon first enacted a Gift Tax statute in 1933. Or. Laws 1933, Spec. Sess., Ch. 427. This Gift Tax remained in effect, with changes over the years, until it was repealed in 1997. Or. Laws 1997, Ch. 99. So, for 64 years, Oregon statutes had a Gift Tax in place. The power to reinstitute a gift tax remains in place.

Oregon has had an Inheritance Tax or an Estate Tax, in various forms, since the first statutory enactment in 1903. Or. Laws 1903, p.49 et seq. In 2011, the Legislative Assembly significantly revised the statutory scheme, eliminating references to “death taxes” and “inheritance” taxes, and clarifying that the current system is essentially an estate tax. Or. Laws 2011, Ch. 526. While exemption or deduction amounts have changed over the years (e.g. Or. Laws 2003, Ch. 806), the most recent iteration has a \$1 million deduction before the estate tax kicks in. ORS 118.010.

Units of government can presently enact income, estate, inheritance or gift taxes. Generally, they have not yet done so. But there are unique local tax efforts.

For example, Multnomah County enacted a three-year personal income tax in 2003. Measure 26-48, May 20, 2003. Multnomah County has a Business Income Tax. Multnomah County, Oregon, Municipal Code Vol. 1, Sec. 12.

The City of Portland now has an “Arts Education and Access” tax. Portland, Oregon, Municipal Code Sec. 5.73.

The city of Eugene recently attempted to adopt an income tax, which was put to the voters and defeated. Ballot Measure 20-182, City of Eugene Temporary Income Tax for Schools, which failed during the May 17, 2011 Eugene special election.

So, the prospect of local taxes being imposed on family gifts remains.

Then, consider the Oregon income tax. ORS Ch. 316. This presently could be amended to treat gifts or inheritances as income.

This amendment changes all of the above. A safe harbor is established for all family gifts, and this cannot be evaded by state or local governments absent a subsequent constitutional amendment.

All of the above provides a context for evaluating the draft ballot title.

### The Caption

Pursuant to ORS 250.035(2)(a), the ballot title shall contain a caption “of not more than 15 words that reasonably identifies the subject matter of the state measure.” The caption must identify the measure’s subject matter “in terms that will not confuse or mislead potential petition signers and voters.” *Greene v. Kulongoski*, 322 OR 169, 174-175, 903 P2d 366 (1995). The caption cannot “overstate or understate the scope of the legal changes that the proposed measure would enact. *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004).

The Supreme Court has recognized that it is appropriate that a constitutional amendment which ultimately would have a “broader and more lasting effect of prohibiting the legislature in the future from enacting laws” imposing taxes have “a caption that focused on that broad constitutional change, without mentioning the specifics of the existing laws” that would be changed. *Rasmussen v. Kroger*, 351 Or. 195, 200, 262 P3d 777 (2011) (emphasis in original).

Understanding that the amendment in Initiative Petition 43 restricts the power of the legislature, and all other units of government, as to estate taxes, inheritance taxes, gift taxes, or income taxes, we now turn to the language of the draft Caption:

#### **Amends Constitution: Exempts gifts within families from tax on inherited estates worth \$1 million, other taxes**

This caption apparently is tied to the current \$1 million deduction in the current statute establishing the estate tax. The phrase “from tax on inherited estates worth \$1 million” is woefully under-inclusive and misleading. The amendment exempts gift within families from all taxes, whether currently in place or devised in the future. Adding the clumsy phrase “other taxes” at the end is also woefully under-inclusive, as it can easily be read to imply that the amendment does not exempt gifts within families from all taxes.

Here is an alternative Caption, which meets the statutory requirements and is neither under-inclusive nor over-inclusive:

#### **Amends Constitution: Prohibits state, local taxes on gift from family member to another member of same family**

The above Caption says it all, in Plain English.

We now turn to the draft “Yes” and “No” Result statements, recognizing two points.

First, the statute requires a simple and understandable statement of not more than 25 words that describes the result if the state measure is approved, and a simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected. ORS 250.035(2)(b) and (c).

Second, the Supreme Court has recognized that the statements describing the “Yes” and “No” results should be read together. See *Rasmussen v. Kroger*, 351 Or. 358, 266 P3d 87 (2011).

So, let us look at the draft Results statements:

**Result of “Yes” Vote:** “Yes” vote exempts gifts within families from existing tax on inherited estates worth \$1 million; prohibits taxing gifts between family members; reduces state revenue.

**Result of “No” Vote:** “No” vote retains law taxing estates worth \$1 million or more and making those to whom estate property passes liable for unpaid estate tax.

Under the “Yes” provision, there is one clean and correct statement: “prohibits taxing gifts between family members.” Unfortunately, the rest of the statement muddies this clear language. The reference to exemption of “gifts within families from existing tax on inherited estates worth \$1 million” is confusing. It tells the reader that a specific exemption occurs, suggesting that other exemptions do not occur.

First, the amendment is not an exemption. It is a prohibition: “No tax shall be imposed on any gift of property from one family member to another member of the same family.” Subsection 1 of the amendment.

Second, even if this were interpreted to be an exemption, it is an “exemption” not only of an “existing” tax but of any future tax, state or local.

Third, this is not just an exemption as to “inherited estates worth \$1 million.” It is an exemption as to inherited estates of any value. We recognize that the Attorney General has included the reference to the “existing” tax, but no regular reader other than an attorney, judge, or English professor will understand that the word “existing” limits the entire following phrase. In any event, the entire reference to the “existing” tax is under-inclusive, as explained above.

The “No” statement compounds the errors noted above. It leads the reader to think that this amendment is only about a statutory tax on inherited estates with a value of \$1 million or more.

It does not describe the prohibition on local taxes.

It does not describe the prohibition on any form of tax – whether in the guise of a gift tax, a transfer tax, an income tax, an inheritance tax, or an estate tax.

We offer as an alternative the following “yes” and “no” statements. They are neither over-inclusive nor under-inclusive; they are understandable and they are not misleading:

**Result of “Yes” Vote: “Yes” vote prohibits any kind of state, local tax on any gift from one family member to another member of the same family; reduces state revenue.**

**Result of “No” Vote: “No” vote maintains existing power of legislature and local governments to impose taxes on gifts from one family member to another member of same family.**

### The Summary

The draft Summary gets off on the wrong foot by discussing current statutory law as to one tax – the estate tax.

The Summary must contain a concise and impartial statement summarizing the state measure and its major effect. ORS 250.035 (2) (d); *Whitsett v. Kroger*, 348 Or. 243, 230 P3d 545 (2010).

The function of the summary of the ballot title for a proposed initiative measure to amend the state constitution is to provide voters with enough information to understand what will happen if the proposed measure is approved – that is, to advise voters of the breadth of a measure’s impact. See *Whitsett v. Kroger*, *supra* at 252.

One accurate sentence in the draft Summary states: “Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of ‘property’ (defined) from one ‘family member’ (defined) to another member of the same family.” This provides a partial basis for understanding the real meaning of the amendment. But the first portion of the draft Summary inappropriately focuses on one existing law – the estate tax – without covering the real range of power which is circumscribed by this amendment. In addition, the Summary needs to describe the definition of “family member.” It need not use the “includes but is not limited to” listing of family members, due to the limited number of words available. But it should include the basic definition, including the reference to “third degree of relationship,” as this is a clear line of demarcation. It is also important to clearly describe the range of existing tax powers, or else the Summary is under-inclusive.

Accordingly, we recommend the following alternative, which overcomes the problems with the draft:

**Summary:** Currently, state and local governments have general power to impose taxes such as income, gift, estate, and inheritance taxes. Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of “property” (defined) from

one "family member" to another member of the same family, whether gift is made during life, upon death, or after death. Measure defines "family member" to mean "a relationship by blood, marriage, domestic partnership, adoption, or by other laws recognizing family relationships" within the third degree of relationship. Measure defines "gift" as giving property without compensation, including by interstate succession. State presently has an estate tax, with \$1 million deduction. Effect of measure includes restriction on imposition of existing estate tax. Measure reduces state revenues.

It is helpful to define "gift" to some extent. But, compared to the draft we have left out the discussion of ordinary property taxes, as this is a technical distinction not necessary to an understanding of the meaning of the amendment. We also do not think it is necessary to discuss no replacement of the reduced state revenues, as there is no suggestion that the measure enacts any additional taxes.

Thank you for your consideration.

Sincerely,

Kevin L. Mannix  
Attorney at Law

KLM/alk

**BENNETT, HARTMAN, MORRIS & KAPLAN, LLP**

GREGORY A. HARTMAN  
MICHAEL J. MORRIS  
HENRY J. KAPLAN  
NELSON R. HALL  
THOMAS K. DOYLE  
ARUNA A. MASIH  
SHARON MAYNARD  
TALIA Y. STOESEL

ATTORNEYS AT LAW  
SUITE 500  
210 S.W. MORRISON STREET  
PORTLAND, OREGON 97204-3149  
(503) 227-4600  
FAX (503) 248-6800  
[www.bennetthartman.com](http://www.bennetthartman.com)

ROBERT A. BENNETT (RETIRED)  
LINDA J. LARKIN  
MARGARET S. OLNEY  
PATRICIA A. ARJUN  
\* OF COUNSEL  
\* ALSO MEMBER  
WASHINGTON BAR  
\* ALSO MEMBER  
NEW YORK BAR

January 28, 2014

*Via Fax No. 1-503-373-7414*

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

*Re. Initiative Petition 43 (2014) - Draft Ballot Title Comments*  
Our File No. 4815-1163

RECEIVED  
2014 JAN 28 PM 4 07  
KATE BROWN  
SECRETARY OF THE STATE

Dear Secretary Brown:

This firm represents Hanna Vaandering, an Oregon elector and President of the Oregon Education Association, and BethAnne Darby, an Oregon elector and Assistant Executive Director for Public Affairs of the Oregon Education Association. We write in response to your January 14, 2014, News Release which invites comments to the draft ballot title for Initiative Petition 43 (2014).

**1. INTRODUCTION.**

Initiative Petition 43 (2014) ("IP 43") is the latest attempt by Gerald Freeman, Robert Zielenski, Jr., and Marie Bowers/Wayne Brady to gut Oregon's inheritance tax on estates valued at \$1 million or greater and to prohibit the State and its subdivisions from taxing income-producing property transfers between family members. See e.g. Initiative Petition 12 (2014) ("IP 12") and Initiative Petitions 13, 14, 15, and 18 (2012). Like its predecessor IP 12, IP 43 artfully uses the words "gift" and "family member" to define the transaction being exempted from taxation. However, the fact remains that Oregon does not have a gift tax and does not tax estates valued at less than \$1 million, whether going to family members or otherwise. See ORS 118.010; ORS 118.160 (State estate tax). Accordingly, the practical effect of IP 43 and IP 12 is the same—they allow a broad category of "family members" with large estates and income-producing property to transfer such property among themselves in an effort to shield such property from taxation, resulting in significant loss of revenue for the State and local jurisdictions.

In fact, other than that IP 43 is a constitutional proposal and IP 12 a statutory one, the operative provisions of the two initiatives are almost identical. IP 43 sections 1 and 2 parallel IP 12 sections 3 and 7 to exempt from taxation and prohibit the State or any other unit of government from taxing any transfers of "property" between "family members" which meet the definition of "gift" or "family giving" made during life, upon death, or after death.

Honorable Kate Brown

Re. IP 43 (2014) – Draft Ballot Title Comments

January 28, 2014

Page 2

The definition of “property” provided in section 4 of IP 43 is almost identical to the definition of “property” in IP 12, section 5. Similarly, the definition of “family member” in IP 43, section 3 matches-up with the definition of the same term in section 4 of IP 12. Finally, the definitions of “gift” in IP 43, section 5 and “family giving” in IP 12, section 6 are also unsurprisingly similar.

Both initiatives call for a generous and expansive construction of the exemption (*compare* IP 43, section 6 and IP 12, section 8), and both initiatives expressly provide that they “do not cover or restrict ordinary property taxes that are imposed based upon ownership of an interest in property” (*see* IP 43, section 7 and IP 12, section 7).

For this reason, the Attorney General is correct to model the draft ballot title for IP 43 after the modified ballot title for IP 12 certified by the Oregon Supreme Court recently in *Rasmussen v. Rosenblum*, 354 Or 344, 312 P3d 529 (2013). In fact, given that the subject, purpose and major effect of the two initiatives are substantially similar, the Attorney General should exercise its authority under ORS 250.062 to prevent ballot title shopping and provide IP 43 an identical ballot title to IP 12 with the sole addition of the “Amends Constitution” language required by ORS 250.035(2)(a).

## 2. The Caption

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

Here, as outlined above, the scope of the legal changes the initiative would enact are substantially similar to those of IP 12. Although the Attorney General’s draft caption for IP 43 is patterned appropriately after the IP 12 modified ballot title, it is still different and deficient in a significant way. The draft ballot title reads:

**Amends Constitution: Exempts gifts within families from tax on inherited estates worth \$1 million, other taxes**

Specifically, the draft ballot title’s use of the word “gifts” instead of the word “transfers” recommended by the Oregon Supreme Court (*see Rasmussen*, 354 Or at 348) is problematic. That is the case because the term “gift” is defined in a particular way in the initiative which would not be apparent to the voter. For example, a transfer of property by “operation of law” is included within IP 43’s definition of “gift” and was also included in IP 12’s definition of “family giving.” However, such a transfer is not something the average voter would recognize as a “gift.” It is likely for this reason that the Oregon Supreme Court chose instead to recommend use of the more general term



Honorable Kate Brown

Re. IP 43 (2014) – Draft Ballot Title Comments

January 28, 2014

Page 3

“transfers” which would cover all variety of exchanges of property falling within IP 12’s definition of “family giving,” which is almost identical to IP 43’s definition of “gift.”

Other than following the approach already approved by the Oregon Supreme Court, the only other way to correct this deficiency would be to use the term “gift” in quotes followed by the modifier (defined). See e.g., *Martin/Bendl v. Myers*, 340 Or 569, 572, 135 P3d 315 (2006) (certifying ballot title using phrase from measure identified by quotation marks and modified by word “undefined” in parentheses); *Hunnicut v. Myers*, 340 Or 83, 86, 127 P3d 1182 (2006) (approving ballot title’s use of words from measure modified by word “defined” in parentheses). However, that would require removal of other information already deemed repeatedly by the Oregon Supreme Court to be essential.

Therefore, to correct the above deficiency and to prevent ballot title shopping, we propose that the Attorney General simply certify a caption which is identical to the modified ballot title for IP 12 certified by the Oregon Supreme Court with the addition of the statutorily required “Amends Constitution” language as follows:

**Amends Constitution: Exempts transfers within families from tax on inherited estates worth \$1 million, other taxes**

### 3. The Results Statements

ORS 250.035(2)(b)-(c) require that a ballot title contain a simple understandable statement of not more than 25 words that describes the result if the state measure is approved or rejected. Typically, the “yes” vote result statement builds on the caption. The purpose of the “yes” vote result statement is to “notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon.” *Novick v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). In contrast, the “no” vote result statement must explain to voters “the state of affairs” that will exist if this initiative is rejected, that is, the *status quo*. It is also essential that the law described in the “no” vote result statement concern the subject matter of the proposal. Otherwise, the description could mislead voters about the effect of their vote. *Nesbitt v. Myers*, 335 Or 219, 223, 64 P3d 1133 (2003). See also, *Nesbitt v. Myers*, 335 Or 424, 431, 71 P3d 530 (2003)(review of modified ballot title). “[T]o comply with [\*\*\*] statutory requirements, the Attorney General may have to go beyond the words of a measure in order to give the voters accurate and neutral information about a proposed measure.” *Caruthers v. Myers*, 344 Or 596, 601, 189 P3d 1 (2008).

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

**Result of "Yes" Vote:** "Yes" vote exempts gifts within families from existing tax on inherited estates worth \$1 million; prohibits taxing gifts between family members; reduces state revenue.

**Result of "No" Vote:** "No" vote retains law taxing estates worth \$1 million or more and making those to whom estate property passes liable for unpaid estate tax.

Honorable Kate Brown

Re. IP 43 (2014) – Draft Ballot Title Comments

January 28, 2014

Page 4

Again, although the “yes” vote result statement is patterned after the modified IP 12 “yes” vote result statement, it still uses the term “gifts” instead of the term “transfers.” For the reasons outlined above, the term “transfers” should be used or at a minimum, the term “gift” in quotations with the modifier (defined) should be used instead. In addition, the Supreme Court approved “yes” vote result statement for IP 12 makes clear that the prohibition applies to taxation by all units of government including local taxes. This information is helpful and should be included to clarify the breadth of the measure. Finally, the changes to the “no” vote result statement (i.e., replacing “certain estates” with the more specific “estates worth \$1 million or more”) are appropriate and should be retained.

To correct the deficiencies, to the “yes” vote result statement, we respectfully propose that the Attorney General certify language identical to that approved by the Oregon Supreme Court for IP 12, which reads as follows:

**Result of "Yes" Vote:** “Yes” vote exempts property transfers within families from existing tax on inherited estates worth \$1 million, other state and local taxes; reduces state revenue.

#### 4. Summary

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

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

**Summary:** Current statutory law imposes one-time tax on deceased person's estate when the estate's value-as determined by federal law-is \$1 million or more; if the estate does not pay the tax, those to whom the estate property passes are liable; current law does not otherwise tax property received as gifts or inheritance. Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of "property" (defined) from one "family member" (defined) to another member of the same family. Defines "gift" as giving property without compensation, including by intestate succession. Measure does not prohibit or restrict ordinary property taxes imposed based on ownership of an interest in property. Measure reduces state revenues, provides no replacement. Other provisions.

Although the summary does not follow the modified summary for IP 12 word for word, the changes made are acceptable with the exception of the exclusion of the reference to “by operation of law” from the definition of the term “gift.” As noted above, this is something which would not be apparent to the voter and is expressly included in the initiative’s definition of the term and therefore, must be included in the summary. The modified summary for IP 12 approved by the Oregon Supreme Court also included that information.

Honorable Kate Brown

*Re. IP 43 (2014) - Draft Ballot Title Comments*

January 28, 2014

Page 5

To correct this deficiency, we propose the following alternative:

**Summary:** Current statutory law imposes one-time tax on deceased person's estate when estate's value-as determined by federal law-is \$1 million or more; if estate does not pay tax, those to whom estate property passes are liable; current law does not otherwise tax property received as gifts or inheritance. Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of "property" (defined) from one "family member" (defined) to another member of the same family. Defines "gift" as giving property without compensation, including by operation of law and intestate succession. Measure does not prohibit or restrict ordinary property taxes imposed based on ownership of an interest in property. Measure reduces state revenues, provides no replacement. Other provisions.

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

Sincerely,

BENNETT, HARTMAN, MORRIS & KAPLAN LLP

Aruna A. Masih

AAM

G:\OEA\OEA Main 4815\4815-1163 IPs 2014\IP #43 (2014)\IP 43 comments.docx

cc: Clients

## NOTICE OF FILING AND PROOF OF SERVICE

I certify that on March 10, 2014, I directed the original Respondent's Answering Memorandum to Petitions to Review Ballot Title Re: Initiative Petition No. 43 (Supreme Court) to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and served upon Aruna A. Masih, attorney for petitioners Bethanne Darby and Hanna Vaandering, by using the court's electronic filing system.

I further certify that on March 10, 2014, I directed the Respondent's Answering Memorandum to Petitions to Review Ballot Title Re: Initiative Petition No. 43 (Supreme Court) to be served upon Kevin L. Mannix, attorney for petitioners Marie Bowers, Gerald C. Freeman, and Robert Zielinski, by mailing a copy, with postage prepaid, in an envelope addressed to:

Kevin L. Mannix # 742021  
Kevin L. Mannix PC  
2009 State St  
Salem, OR 97301

Telephone: (503) 364-  
Email: kevin@mannix irm.com

/s/ Matthew J. Lysne

---

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

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