



**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: *Knute Buehler and Duane Ray Fletchall; Hanna Vaandering and Bethanne Darby v. Ellen Rosenblum, Attorney General, State of Oregon*  
SC S062255

Dear Chief Justice Balmer:

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

Sincerely,

/s/ Judy C. Lucas

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

JCL:aft/5314963

cc: Margaret S. Olney/without encl.  
Kevin L. Mannix/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

KNUTE BUEHLER and DUANE RAY  
FLETCHALL,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney  
General, State of Oregon,

Respondent.

Supreme Court No. S062255(Control)

HANNA VAANDERING and  
BETHANNE DARBY,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney  
General, State of Oregon,

Respondent.

Supreme Court No. S062267

RESPONDENT'S ANSWERING  
MEMORANDUM TO PETITIONS TO  
REVIEW BALLOT TITLE RE:  
INITIATIVE PETITION NO. 59  
(SUPREME COURT)

Petitioners Knute Buehler and Duane Ray Fletcher (through their attorney Kevin L. Mannix) and petitioners Hanna Vaandering and Bethanne Darby (through their attorney Margaret S. Olney) seek review of the Attorney General's certified ballot title for Initiative Petition (IP) 59 (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, as authorized pursuant to ORAP 11.30(6). For the reasons explained below, the Attorney General's ballot title for IP 59 substantially complies with ORS 250.035.

Petitioners Vaandering and Darby challenge the Attorney General's caption, "No" vote result statement, and summary. Petitioners Buehler and Fletcher challenge only the Attorney General's vote result statements.

**A. The caption**

The Attorney General certified the following caption:

Changes petition signature qualifications; authorizes lawsuits  
challenging disqualified signatures; shorter measures' text replaces  
ballot title

Petitioners Vaandering and Darby argue that the caption is underinclusive because it suggests that the measure only changes existing law as to "*whose* signature counts." In addition, they contend, the caption must reflect that the measure changes the verification or counting process, by giving voters the right to have a signature count and by requiring elections officials to treat petition signatures with the "respect and deference" accorded a voter's signature on a ballot.

The caption informs voters and petition signers of the three major effects of the measure. Given the word limits and the elaboration in both the result statements and the summary, the court should reject petitioners' arguments for lack of merit.

## **B. The “Yes” and “No” Vote Result Statements**

The two result statements are required to describe the results of approving and rejecting the measure. The statements are limited to 25 words. 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 v. Myers*, 332 Or 633, 639, 33 P3d 988 (2001). A “No” vote 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’s vote result statements provide:

**Result of “Yes” Vote:** “Yes” vote amends laws governing petition signature qualifications, verification, and counting; authorizes lawsuits challenging disqualified signatures; replaces ballot titles for shorter measures with measures’ text.

**Result of “No” Vote:** “No” vote retains existing laws allowing disqualifications of signatures unlawfully obtained, not matching voter records, signed by registered voter; all measures receive ballot titles.

### **1. Petitioners Buehler and Fletcher**

Petitioners Buehler and Fletcher contend that the language of the “No” vote result statement is “misleading, especially in the context of the Result of ‘Yes’ Vote language.” According to petitioners, the “No” vote result statement, by referring to “retain[ing] existing laws,” will lead the average reader to think that a “yes” vote “will somehow remove or weaken existing laws allowing

disqualification of signatures unlawfully obtained, not matching voter records, or not signed by registered voters.” Thus, petitioners argue, the “No” vote result statement will lead the reader to believe, incorrectly, that a “yes” vote “undercuts, somehow, substantive protections against bad signatures.” (*Id.* at 4). In fact, petitioners argue, the measure “empower[s] a voter (or Chief Petitioner) to challenge a disqualification so as to allow a court to review it,” without changing substantive standards for signature qualification. (*Id.*). In addition, petitioners assert that the “Yes” and “No” vote result statements are vague and “outright misleading.” (*Id.*).

Petitioners’ arguments lack merit. Under existing law, election officials may disqualify petition signatures by registered voters that are “unlawfully obtained” or do not match voter records. In contrast, IP 59, if approved, gives registered voters an “enforceable right” to have their signatures on petitions “counted”—and provides that it “supersedes any Oregon law that is inconsistent with this [measure].” (IP 59, § 2). Thus, the measure permits the counting of petition signatures by registered voters that are currently disqualified under existing law (for example, signatures by inactive registered voters, or signatures that are “unlawfully obtained,” or signatures that do not match voter records).

The measure substantively changes existing law by limiting enforcement of

laws disqualifying a registered voter's valid signature. The court should reject petitioners' argument to the contrary.

Petitioners fail to identify any respect in which the "Yes" vote result statement is impermissibly "vague." Therefore, the court should also reject that assertion.

## **2. Petitioners Vaandering and Darby**

These petitioners challenge only the Attorney General's "No" vote result statement. They object that the draft "No" statement's phrase, "signed by inactive/unregistered voters," has been replaced by the underinclusive phrase, "signed by registered voter." The petitioners claim the "No" vote result statement is substantially noncompliant in that it fails to identify the measure's change to counting the signatures of *inactive* registered voters. That argument lacks merit. The "No" vote result statement is not required to specify the details of all existing law that defeat of the measure would retain.

These petitioners also argue that the "No" vote result statement is inaccurate or confusing because it suggests that current law allows disqualification of signatures of registered voters even if they are not unlawfully obtained and they do match voter records. However, it is unlikely voters and potential petition signers will take that meaning from the "No" vote result

statement. The “No” vote result statement is not deficient in the ways petitioners assert.

### **C. The Summary**

Petitioners Vaandering and Darby contend that the summary fails to provide voters “with clear information about the effect of the measure on how signatures are counted.” Specifically, they claim the summary fails to tell voters the measure “effectively requires the counting of every signature by a registered voter, regardless of whether the signature was obtained unlawfully.”

That argument lacks merit. The measure does not expressly require the Secretary to count every signature by a registered voter, regardless of any deficiencies in the signature or the process by which it was obtained. The sentence petitioners want included in the summary is potentially inaccurate and speculative, and therefore could take the summary out of substantial compliance with the statute.

## CONCLUSION

Petitioners present no valid basis for requiring modification of the Attorney General's ballot title. The court should certify the Attorney General's ballot title without modification.

Respectfully submitted,

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

/s/ Judy C. Lucas

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JUDY C. LUCAS #903285  
Senior Assistant Attorney General  
judy.lucas@doj.state.or.us

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



KATE BROWN  
SECRETARY OF STATE



JIM WILLIAMS  
DIRECTOR  
255 CAPITOL STREET NE, SUITE 501  
SALEM, OREGON 97310-0722  
(503) 986-1518

May 14, 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 Margaret Olney v. Ellen Rosenblum, Attorney General, State of Oregon  
S062255, 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 #59. 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

To the Secretary of State,

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

### Type of Petition

☒ Initiative

☐ Referendum

☐ Statutory

☐ Constitutional

### Designating Chief Petitioners

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

### Chief Petitioner Information

Name (print)

Signature

1 Kroute Buehler

Residence Address, Street/Route

565 SW Bluff Drive, #410

City

Bend

State

OR

Zip Code

97702

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

2 Duane Ray Fletchall

Residence Address, Street/Route

4264 Bison Court NE

City

Salem

State

OR

Zip Code

97305

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 [Signature]

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

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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

Respect Oregon Voters Act

Signed

Date Signed

7-30-13

Signed

Date Signed

8/19/13

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.



### 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.

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SECRETARY OF THE STATE

## Respect Oregon Voters Act

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

Section 1. This 2014 Act shall be known as the Respect Oregon Voters Act. It is the intention of this Act to protect and strengthen Oregon's long and proud history of encouraging and respecting the participation of the people in the election process. This Act establishes respect for registered voters as to their signatures on a petition. It also provides that the full text of reasonably short ballot measures be presented to voters on the ballot itself, not just in the voters' pamphlet, so voters can readily see the actual full text.

Section 2. Each registered voter who signs a petition shall have an individual, enforceable right to have his or her signature counted on the petition, provided the petition has been timely filed with the election official assigned to process such petition.

Section 3. The Secretary of State and elections officers shall treat the signature of a registered voter on a petition with at least the same respect and deference as the signature of a registered voter on a vote-by-mail ballot envelope.

Section 4. If the Secretary of State or an elections officer disqualifies a signature from a petition, the registered voter or a chief petitioner of the petition may bring an action in circuit court to require the counting of the voter's signature on the petition. In any action under this section, the secretary or elections officer bears the burden of proving that the signature should not be counted. The courts of this state shall give precedence to actions under this section to the extent necessary to ensure that the secretary or elections officer counts the signature within time limits prescribed by the constitution or by law.

Section 5. If a voter's signature was selected for verification as part of a signature sample as authorized by statute, and the voter's signature is required to be counted as provided by this Act or by order of any court of competent jurisdiction, the voter's signature shall be re-inserted into the results of the sample.

Section 6. For purposes of this 2014 Act:

- (a) "Petition" means an initiative, referendum, candidate nomination, formation of a political party, or recall petition;
- (b) "Count" or "Counted" means to include the registered voter's signature in the final tally as to whether the petition contains the required number of voter signatures.
- (c) "Signature" means a person's name, or a mark used by a person, to indicate that the person has signed a petition.

Section 7. Except as required by the constitution of this state, laws governing ballot titles for petitions and ballot measures do not apply to petitions and ballot measures by citizen initiative that contain 100 words or fewer of text (excluding the enacting or amendatory clause).

Section 8. Any ballot measure by citizen initiative that contains 100 words or fewer of text (excluding the enacting or amendatory clause) shall have the full text of the measure presented on the ballot immediately after the measure number and the enacting or amendatory clause. The full text of the proposed measure shall be printed on any petition sheet instead of any ballot title.

Section 9. This 2014 Act supersedes any Oregon law which is inconsistent with this Act.

Section 10. This 2014 Act is effective January 1, 2015.

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DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

March 28, 2014

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

Re: Proposed Initiative Petition — Amends Laws Governing Petition Signatures, Ballot  
Titles, and Voter Qualification; Authorizes Lawsuits Challenging Disqualified Signatures  
DOJ File #BT-59-14; Elections Division #59

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 laws governing petition signatures, ballot titles, and voter qualifications; as well as authorizing lawsuits challenging disqualified signatures.

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,

Alicia Thomas  
Legal Secretary

AFT/5136529

Enclosure

Knute Buehler  
363 SW Bluff Drive #410  
Bend, OR 97702

Duane Ray Fletchall  
4262 Bison Court NE  
Salem, OR 97305

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SECRETARY OF THE STATE

## **DRAFT BALLOT TITLE**

**Amends laws governing petition signatures, ballot titles, and voter qualification;  
authorizes lawsuits challenging disqualified signatures**

**Result of “Yes” Vote:** “Yes” vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuit to challenge disqualification of signature; requires printing entire text of short measures.

**Result of “No” Vote:** “No” vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter; all measures receive ballot titles.

**Summary:** Currently, only “qualified voters” may sign initiative/referendum, candidate nomination, political party formation, recall petitions; “qualified voters” are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure limits enforcement of laws disqualifying registered voter’s valid signature; Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally. “Petition” includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing voter or chief petitioner to bring lawsuit to contest disqualification of a signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions:

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2009 State Street  
Salem, Oregon 97301-4349  
Phone (503) 364-1913  
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March 21, 2014

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

**RE: Respect Oregon Voters Act  
Initiative Petition 59**

Ladies & Gentlemen:

This is in regard to your request for public input as to whether this initiative petition satisfies the procedural constitutional requirements for circulation as a proposed initiative petition. I am of the opinion that it does meet those requirements.

Sincerely,

Kevin L. Mannix

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SECRETARY OF THE STATE



2009 State Street  
Salem, Oregon 97301-4349  
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KATE BROWN  
SECRETARY OF THE STATE

April 10, 2014

Elections Division  
255 Capitol Street  
Salem, OR 97301

**Re: Respect Oregon Voters Act  
Initiative Petition 59**

Ladies and Gentlemen:

I am presenting this comment letter in regard to the draft ballot title on behalf of Chief Petitioners Knute Buehler and Duane Ray Fletchall, in their capacity as Oregon electors and chief petitioners on this initiative, and on behalf of myself, in my capacity as an Oregon elector.

We recognize that the Attorney General may wish to look at previous initiatives for guidance in drafting a ballot title, when previous initiatives address a similar subject. In the present case, the draft ballot title appears to be patterned after the final ballot title as to Initiative Petition 11. That ballot title was finalized following the Oregon Supreme Court decision in *Buehler v. Rosenblum*, 354 OR 318 (213). As the attorney who represented the chief petitioners in that matter, I am very much aware of the rationale behind the Supreme Court decision and the final ballot title developed by the Attorney General.

In drafting a ballot title, it is appropriate to consider a similar initiative on the same subject and to consider that ballot title. However, it is important in this case to also understand the very significant differences between Initiative Petition 11 and the current initiative. First, let us address the similarities between IP 11 and IP 59. There are three essential similarities and they constitute the primary elements of IP 59.

First, a registered voter who signs a petition or the chief petitioner of the petition may bring an action in circuit court to challenge the disqualification of the voter's signature from the petition.

Second, definitions remain the same.

Third, any ballot measure by citizen initiative that contains 100 words or fewer of text shall have the full text of the measure printed on the ballot and on any petition sheet, instead of any ballot title.



But, the differences between IP 11 and IP 59 are dramatic. The Attorney General has not recognized the substantial changes in the development of IP 59, which was designed to eliminate issues in interpretation and application as to IP 11. The following are the differences.

Sections 3, 4, 5, 6, 12, 13, and 14 from IP 11 have been deleted in their entirety in the development of IP 59. These sections provided restrictions on enforcement of laws and regulations relating to the petition process; restricted disqualification of a signature based on circulator actions; required notification to the voter as to signature qualification; and created a process where a voter's notification to the election official that the signature is valid, despite the disqualification, required counting the signature.

In addition, provisions in section 7 of IP 11 relating to award of attorney fees and relating to a requirement to include a signature, if litigation were still pending when a deadline arrived, have been deleted.

With these complex requirements in place in IP 11, we can understand how the Attorney General developed the final ballot title for IP 11, based on the Supreme Court October 3, 2013, decision in *Buehler v. Rosenblum*, supra.

With the elimination of these provisions from IP 11 in the development of IP 59, we have a very different initiative petition. The two primary active elements, other than the definitions, are the capability to bring court action to challenge signature disqualification and the change in the ballot title process so as to present the full text of measures on the petition and the ballot when the text constitutes 100 words or fewer.

With these considerations in mind, we turn to specifics as to the IP 59 draft ballot title. We have attached the text of the draft ballot title as Exhibit A and will not replicate it in the body of this comment letter.

#### THE CAPTION

The first part of the Caption is a procedural description which tells us nothing about the content of this initiative. While the phrase "Amends laws" may be allowed under the reasoning there is some amendment by implication (there is no direct amendment in this initiative), the Caption gives no clue about the new approach to ballot titles when this can be easily included in a corrected caption. We propose the following alternative Caption, which properly identifies the two major substantive changes which would be brought about by this initiative. This alternative Caption reads as follows:

**Voters may bring court challenge to petition signature disqualification;  
short measures fully printed on ballot.**

The caption is supposed to reasonably identify the subject matter of this initiative and the "subject matter" refers to the actual major effect of the initiative. Our alternative

caption presents both of the actual major effects of this initiative within the 15-word limit. Our alternative actually identifies the ballot title change, whereas the draft does not.

#### RESULT OF YES VOTE

The Result of Yes Vote provisions and the Result of No Vote provisions should be presented in a parallel fashion. The draft Result of Yes Vote again suffers from the mistake of simply stating that this initiative amends certain laws without describing, as much as possible within 25 words, what this means. The phrase "requires printing entire text of short measure" is nonsensical when read by someone who has not studied the text of the initiative. Where does the entire text need to be printed? It is already printed in the voters' pamphlet. There is insufficient guidance for the voter here.

#### RESULT OF NO VOTE

The problem with the Result of Yes Vote language is compounded by the Result of No Vote language. This provision says that a No vote "retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter." This language is wrong because it creates the impression that a "Yes vote" does the opposite: that is, that a Yes vote will take away such "existing laws." IP 59 does not take away such laws. It simply allows a challenge to a decision by an elections official to disqualify a registered voter's signature on a petition. This court challenge will still allow application of existing laws. There is a procedural change in that the elections official will bear the burden of proof that the signature should not be counted. This anticipates that the elections official will demonstrate how the signature was obtained or presented in a fashion which violates the existing laws. In essence, all that we do is ask the elections official to prove that the elections official properly applied existing law when the disqualification decision is challenged in court.

Similarly, the phrase "all measures receive ballot titles" is accurate in and of itself, but is misleading in the context of the nonsensical phrase as to the Result of Yes Vote, where the entire text of short measures must be printed somewhere, but we are not told where this occurs.

We propose the following alternative Result of Yes Vote language and Result of No Vote language which focuses upon the actual substantive effects of IP 59 without distortion:

**Result of "Yes" Vote:** "Yes" vote authorizes court action by voter, challenging disqualification of voter's petition signature; requires ballot to contain text of initiative of 100 words or fewer.

**Result of "No" Vote:** "No" vote maintains no authorization for special court action challenging signature disqualification; ballot contains no initiative text, regardless of length; all measures receive ballot titles.

## THE SUMMARY

The draft Summary starts with a technical description about "qualified voters." We do not think that approach is necessary since the current initiative, unlike IP 11, does not change the meaning of "qualified voters." The second sentence of the draft Summary mentions certain intentions which may exist as to the constitution, statutes, and rules, but this discussion is also unnecessary since IP 59 does not change the substance of these provisions. We also believe it is inappropriate for the summary to present the motivation or intention of the constitution, statutes, and rules with the limited language presented, which reads "to prevent fraud, forgery, improper signature gathering." One could just as easily include a statement of intention which states that these provisions "recognize valid voter signatures and count them so as to empower the citizen initiative process." We present this phrase just to point out that no one's interpretation of the intention of this entire statutory and regulatory scheme should be printed in the summary. This issue was not raised in regard to the litigation as to IP 11, and perhaps it should have been. However, as to IP 11, there truly were provisions which changed the substantive process as to signature verification and qualification and might have arguably allowed some explanation of the intention of the constitution, statutes, and rules. That argument is not applicable here.

The summary is wrong in stating that this measure "limits enforcement of laws disqualifying registered voter's valid signature." There is no limitation on enforcement. There is a new procedure to allow court action to determine whether or not the enforcement is legitimate. There is no automatic court review in IP 59. A registered voter or chief petitioner must request a court to review a disqualification decision, and the court will simply determine whether the disqualification was correct. The substantive standards are not changed. The elections official is held accountable in that the officer must demonstrate that the disqualification was proper. If the disqualification was proper, the enforcement will still occur.

Another statement is wrong: "The Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally." IP 59 contains no such provision. This provision was reflected in sections 3 and 4 of IP 11, but those sections do not exist in IP 59.

We have written an alternative Summary which properly presents the context of this initiative and focuses on the substance of the initiative without presenting any value judgments in regard to the intention of the regulatory scheme. Our summary avoids the incorrect language of the draft summary. Our summary reads as follows:

**Summary:** Current laws provide for a process to review voter signatures on citizen petitions for initiative, referendum, recall, candidate nomination, and political party formation. Elections officials may disqualify, and refuse to count, a registered voter's petition signature for many reasons, including illegibility of signature, false signature, improper address, and failure of circulator to follow procedural requirements. Measure authorizes registered voter who has signed petition, or chief petitioner of petition, to bring court action to require the counting of the voter's signature; in court, elections officer bears burden of proving that the voter signature should not be counted. Measure also requires that full text of initiatives of 100 words or fewer be printed on petitions and ballots, instead of "ballot title" prepared under government process. Other provisions.

We have attached our own alternative ballot title containing the language we have recommended in this letter, as Exhibit B to this argument. We have also attached the text of IP 11, as Exhibit C, as an aid in reference to our discussion of the sections which have been changed in the development of IP 59. For ease in reference, we have also attached, as Exhibit D, the text of IP 59.

We encourage the Attorney General to take a step back, evaluate our discussion of the substantive changes in the development of IP 59, and provide a final ballot title which addresses the concerns of the chief petitioners so as to better inform voters as to the substance of this initiative.

Sincerely,

Kevin L. Mannix  
On His Own Behalf and on  
Behalf of Chief Petitioners

Mak  
Enc

KATE BROWN  
SECRETARY OF STATE



JIM WILLIAMS  
DIRECTOR  
255 CAPITOL STREET NE, SUITE 501  
SALEM, OREGON 97310-0722  
(503) 986-1518

**For Immediate Release:**  
March 28, 2014

**Contact:** Lydia Plukchi  
Elections Division  
(503) 986-1518

The Office of the Secretary of State received a draft ballot title from the Attorney General on March 28, 2014, for initiative petition #59, proposing a statutory amendment, for the General Election of November 4, 2014.

The draft ballot title is as follows:

**Amends laws governing petition signatures, ballot titles, and voter qualification;  
authorizes lawsuits challenging disqualified signatures**

**Result of "Yes" Vote:** Yes" vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuit to challenge disqualification of signature; requires printing entire text of short measures.

**Result of "No" Vote:** "No" vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter; all measures receive ballot titles.

**Summary:** Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure limits enforcement of laws disqualifying registered voter's valid signature; Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally. "Petition" includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing voter or chief petitioner to bring lawsuit to contest disqualification of a signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

**Voters may bring court challenge to petition signature disqualification;  
short measures fully printed on ballot.**

**Result of "Yes" Vote:** "Yes" vote authorizes court action by voter, challenging disqualification of voter's petition signature; requires ballot to contain text of initiative of 100 words or fewer.

**Result of "No" Vote:** "No" vote maintains no authorization for special court action challenging signature disqualification; ballot contains no initiative text, regardless of length; all measures receive ballot titles.

**Summary:** Current laws provide for a process to review voter signatures on citizen petitions for initiative, referendum, recall, candidate nomination, and political party formation. Elections officials may disqualify, and refuse to count, a registered voter's petition signature for many reasons, including illegibility of signature, false signature, improper address, and failure of circulator to follow procedural requirements. Measure authorizes registered voter who has signed petition, or chief petitioner of petition, to bring court action to require the counting of the voter's signature; in court, elections officer bears burden of proving that the voter signature should not be counted. Measure also requires that full text of initiatives of 100 words or fewer be printed on petitions and ballots, instead of "ballot title" prepared under government process. Other provisions.

## **Our Oregon Signatures Count Act**

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

Section 1. This 2014 Act shall be known as the Our Oregon Signatures Count Act. It is the intention of this Act to protect and strengthen Oregon's long and proud history of encouraging and respecting the participation of the people in the election process.

Section 2. Each registered voter who signs a petition shall have an individual, enforceable right to have his or her signature counted on the petition, provided the petition has been timely filed with the election official assigned to process such petition.

Section 3. Laws and regulations may be enacted and enforced to prevent forgery or fraud, and to maintain an orderly process in the circulation of a petition. However, such laws and regulations shall not be enforced in any manner so as to prevent the petition signature of a registered voter, who has committed no violation of law, from being included in the determination whether the petition contains the required number of signatures of voters.

Section 4. Notwithstanding ORS 250.042, the Secretary of State and elections officers may not disqualify a signature on a petition based on the failure of a circulator to comply with a law governing the circulation of petitions unless the secretary or elections officer determines that the circulator's failure was the result of a knowing and willful violation of law.

Section 5. The Secretary of State and elections officers may not disqualify the signature of a registered voter on a petition unless the secretary or elections officer notifies the voter of the proposed disqualification as provided in section 6 of this 2014 Act and the voter does not timely notify the secretary or elections officer that the signature is the signature of the voter.

Section 6. If the Secretary of State or an elections officer proposes to disqualify a signature of a registered voter on a petition, the secretary or elections officer shall post the name of the voter on the web site of the secretary or elections officer for a period of 10 business days with a notice that the secretary or elections officer will disqualify the signature if the voter does not notify the secretary or elections officer of the validity of the signature within 10 business days of the posting of the signature. If the voter notifies the secretary or elections officer that the signature is valid, the secretary or elections officer shall count the signature.

Section 7. If the Secretary of State or an elections officer disqualifies a signature from a petition, the registered voter or a chief petitioner of the petition may bring an action in circuit court to require the counting of the voter's signature on the petition. In any action under this section, the secretary or elections officer bears the burden of proving that the signature should not be counted. The court shall award attorney fees and costs to a voter or chief petitioner who prevails in an action under this section. The courts of this state shall give precedence to actions under this section to the extent necessary to ensure that the secretary or elections officer counts the signature within time limits prescribed by the constitution or by law. If a final decision has not been reached by the courts within such time limits, the voter's signature shall be counted for purposes of determining whether the petition contained sufficient voter signatures.

Section 8. If a voter's signature was selected for verification as part of a signature sample as authorized by statute, and the voter's signature is required to be counted as provided by this Act or by order of any court of competent jurisdiction, the voter's signature shall be re-inserted into the results of the sample.

Section 9. For purposes of this 2014 Act:

- (a) "Petition" means an initiative, referendum, candidate nomination, formation of a political party, or recall petition;
- (b) "Count" or "Counted" means to include the registered voter's signature in the final tally as to whether the petition contains the required number of voter signatures.
- (c) "Signature" means a person's name, or a mark used by a person, to indicate that the person has signed a petition.

Section 10. Except as required by the constitution of this state, laws governing ballot titles for petitions and ballot measures do not apply to petitions and ballot measures by citizen initiative that contain 100 words or fewer of text (excluding the enacting or amendatory clause).

Section 11. Any ballot measure by citizen initiative that contains 100 words or fewer of text (excluding the enacting or amendatory clause) shall have the full text of the measure presented on the ballot immediately after the measure number and the enacting or amendatory clause. The full text of the proposed measure shall be printed on any petition sheet instead of any ballot title.

Section 12. If a registered voter signs a petition, and the voter is deemed to be an inactive registered voter, the act of placing his or her signature on a petition shall constitute the immediate re-activation of the voter's registration at the address indicated by the voter on the petition, and the voter's signature shall be counted on that petition.

Section 13. On the date a voter registration form is signed by an otherwise eligible person, the person's signature shall be deemed active and registered for the purpose of signing any petition.

Section 14. ORS 250.052(6) is amended so the following language in italics is deleted:

(6) In addition to the templates prepared under subsections (1) to (5) of this section, for each state initiative, referendum or recall petition, the secretary shall prepare an official electronic template of a signature sheet for the petition. A template prepared under this subsection shall allow space for the signature of one elector. An elector may [*print a copy of the electronic signature sheet for a petition,*] sign the sheet and deliver the signed sheet to a chief petitioner or an agent designated by a chief petitioner. Electronic templates described in this subsection are subject to the requirements of ORS 250.045, other than ORS 250.045 (6), (9) and (10).

Section 15. It is the intent of the People that respect be shown to voters as to their signatures on petitions, and that the full text of reasonably short ballot measures be presented to voters on the ballot itself, so voters can readily see the actual full text.

Section 16. This 2014 Act supersedes any Oregon law which is inconsistent with this Act.

Section 17. This 2014 Act is effective January 1, 2015.



## **Respect Oregon Voters Act**

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

Section 1. This 2014 Act shall be known as the Respect Oregon Voters Act. It is the intention of this Act to protect and strengthen Oregon's long and proud history of encouraging and respecting the participation of the people in the election process. This Act establishes respect for registered voters as to their signatures on a petition. It also provides that the full text of reasonably short ballot measures be presented to voters on the ballot itself, not just in the voters' pamphlet, so voters can readily see the actual full text.

Section 2. Each registered voter who signs a petition shall have an individual, enforceable right to have his or her signature counted on the petition, provided the petition has been timely filed with the election official assigned to process such petition.

Section 3. The Secretary of State and elections officers shall treat the signature of a registered voter on a petition with at least the same respect and deference as the signature of a registered voter on a vote-by-mail ballot envelope.

Section 4. If the Secretary of State or an elections officer disqualifies a signature from a petition, the registered voter or a chief petitioner of the petition may bring an action in circuit court to require the counting of the voter's signature on the petition. In any action under this section, the secretary or elections officer bears the burden of proving that the signature should not be counted. The courts of this state shall give precedence to actions under this section to the extent necessary to ensure that the secretary or elections officer counts the signature within time limits prescribed by the constitution or by law.

Section 5. If a voter's signature was selected for verification as part of a signature sample as authorized by statute, and the voter's signature is required to be counted as provided by this Act or by order of any court of competent jurisdiction, the voter's signature shall be re-inserted into the results of the sample.

Section 6. For purposes of this 2014 Act:

- (a) "Petition" means an initiative, referendum, candidate nomination, formation of a political party, or recall petition;
- (b) "Count" or "Counted" means to include the registered voter's signature in the final tally as to whether the petition contains the required number of voter signatures.
- (c) "Signature" means a person's name, or a mark used by a person, to indicate that the person has signed a petition.

Section 7. Except as required by the constitution of this state, laws governing ballot titles for petitions and ballot measures do not apply to petitions and ballot measures by citizen initiative that contain 100 words or fewer of text (excluding the enacting or amendatory clause).

Section 8. Any ballot measure by citizen initiative that contains 100 words or fewer of text (excluding the enacting or amendatory clause) shall have the full text of the measure presented on the ballot immediately after the measure number and the enacting or amendatory clause. The full text of the proposed measure shall be printed on any petition sheet instead of any ballot title.

Section 9. This 2014 Act supersedes any Oregon law which is inconsistent with this Act.

Section 10. This 2014 Act is effective January 1, 2015.

## BENNETT, HARTMAN, MORRIS &amp; KAPLAN, LLP

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April 11, 2014

*Via Fax Only: (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 59 (2014) - Draft Ballot Title Comments  
Our File No. 18700-04

RECEIVED  
2014 APR 11 PM 3 12  
KATE BROWN  
SECRETARY OF THE STATE

Dear Secretary Brown:

This office represents Hanna Vaandering and BethAnne Darby, Oregon electors and interested parties in Initiative Petition 59 (2014). Hanna Vaandering is the President of the Oregon Education Association and BethAnne Darby is the Associate Executive Director for Public Affairs. We write to comment on the draft ballot title for IP 59. The Oregon Education Association is a labor organization that represents over 40,000 education employees throughout Oregon.

## 1. INTRODUCTION

Initiative Petition 59 (2014) is a statutory proposal that would make multiple changes to Oregon election laws. Dubbed the "Respect Oregon Voters Act," it is substantially similar to IP 11, filed by the same Chief Petitioners. The essential elements are:

- A registered voter has a "right" to have his/her signature "counted" (defined) on a petition, provided the petition has been timely submitted. Section 2.<sup>1</sup> This means that current laws and administrative rules designed to prevent

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<sup>1</sup> "Petitions" are defined to include petitions for citizens' initiatives, referenda, candidate nomination, formation of a political party and recall petition. Section 6(a).

The Honorable Kate Brown  
Vaandering/Darby IP 59 (2014) DBT  
April 10, 2014  
Page 2

fraud or forgery cannot be enforced in a manner which requires rejecting a signature sheet collected in violation of the law.

- A registered voter or chief petitioner can bring file a private lawsuit to require a signature to be counted, with the Secretary of State bearing the burden of proving that the signature should not be counted. Section 4.
- Eliminates ballot titles for petitions that contain 100 words or fewer. Instead, the full text of the measure shall be printed on the petition and ballot. Section 17 and 8.
- The Secretary of State or elections officer must treat the signature on a petition sheet with at least the same "respect and deference" as a signature on a vote-by-mail ballot. Section 3. The measure does not define "respect and deference" but it likely means that a petition signature that does "not match" must be treated the same as a ballot signature that "does not match." That is, before a signature is disqualified, the elections officer must take affirmative steps to contact the voter and determine whether the signature is valid. 2014 Vote-by-Mail Manual, p. 44-45.

The primary difference between IP 59 and IP 11 is in drafting.<sup>2</sup> IP 11 contained additional details, but the ultimate effect is the same. For example, IP 11 explicitly prohibited the enforcement of anti-fraud laws by disqualifying signature sheets collected unlawfully. IP 59 does not contain that express prohibition, but it is a necessary result of the provision giving registered voters a right to have their signature count, a right that can be asserted by Chief Petitioners as well as an individual voter.

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<sup>2</sup> The general concepts proposed by both IP 59 and IP 11 are familiar. The concept of creating a "right" to have one's signature counted has been the subject of multiple measures and Oregon Supreme Court cases. See, IP 12 (2012), *Rasmussen v. Kroger*, 350 Or 271, 253 P3d 1037 (2011); IP 43 (2010), *Caruthers v. Kroger*, 347 Or 660, 227 P3d 723 (2010) (*Caruthers I*, rejecting certified ballot title); 348 Or 63, 228 P3d 549 (2010) (*Caruthers II*, rejecting modified ballot title), 348 Or 269, 230 P3d 923 (2010) (*Caruthers III*, certifying second modified ballot title); see also IP 1 (2008), IP 32 (2008), IP 19 (2006) and IP 115 (2004). The key message in those cases is that the actual subject of these proposals is to "prevent the application of laws intended to prevent forgery or fraud in the circulation of initiative and referendum petitions." *Rasmussen*, 350 Or at 273.

The Honorable Kate Brown  
Vaandering/Darby IP 59 (2014) DBT  
April 10, 2014  
Page 3

Because the initiatives are substantially identical, the Attorney General correctly used the ballot title certified for IP 11 as the starting point for this initiative.<sup>3</sup> However, it can be improved as discussed below.

Amends laws governing petition signature verification, circulator accountability; eliminates ballot titles/requires full text for certain initiatives; authorizes lawsuits challenging disqualified signatures.

## 2. LEGAL FRAMEWORK

As set forth in detail in the Court's opinions regarding IP 12 (2012) and IP 43 (2010), current law contains a myriad of laws and regulations designed to prevent fraud and forgery and to ensure compliance with Article IV, section 1b of the Oregon Constitution ("Measure 26") and ORS 260.569. *Rasmussen*, 350 Or at 276; *Caruthers I*, 347 Or at 664-665. Specifically, once a petition is submitted to the elections official for verification, signature sheets are first reviewed for compliance with rules relating to signature gathering and circulator verification. As authorized by ORS 250.042, sheets that do not meet the legal requirements are pulled and are not included as part of the statistical sample.<sup>4</sup> By giving Chief Petitioners and individuals the right to go to court to require that each signature on a sheet count, IP 59 effectively prohibits elections officials from pulling signature sheets that are unlawfully obtained. It thus eliminates the most effective mechanism for enforcing these anti-fraud and anti-forgery provisions.

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<sup>3</sup> Chief Petitioners and *Amicus*, Dan Meek challenged most aspects of the Attorney General's ballot title. The court agreed with petitioners on two points – the measure did not expressly "repeal" current law, nor did it prohibit anti-fraud and forgery laws themselves, just the enforcement of them. *Buehler v. Rasmussen*, 354 Or 318, 326-27 (2013). The court otherwise rejected Chief Petitioner's arguments, including challenges to the phrase "signatures unlawfully rejected" and "authorizes lawsuits challenging disqualified signatures."

<sup>4</sup> Sheets can be pulled for a variety of defects, including: (1) The sheet is not verified by the person who circulated it or contains no verification at all (ORS 250.042, OAR 165-014-0030(3)(c), OAR 165-014-0270)); (2) a paid circulator was not registered at the time of circulation (ORS 250.048) or was unable to show proof of registration (OAR 165-014-0280(5)(c)); (3) the Chief Petitioner's right to collect signatures was suspended based upon failure to provide certain "account" information (ORS 260.262(6)(b)); and (4) the petition differs from the approved version (OAR 165-014-0030(3)(a)).

The Honorable Kate Brown  
Vaandering/Darby IP 59 (2014) DBT  
April 10, 2014  
Page 4

Once the initial “sort” is complete and the elections officials determine that there are sufficient signatures to begin the process of signature verification, the Secretary then verifies signatures identified in the statistical sampling process. OAR 165-014-0030(5) – (16). Signatures that do not “match” those contained in the voter registration records (determined after multiple levels of review) are excluded. While there is no process for “curing” a determination that a signature does not match, the process used to verify signatures ensures consistency, protects petitioner’s rights, and serves important administrative and regulatory interests in efficiency, particularly in light of short deadlines. *Lemons v. Bradbury*, 538 F3d 1098, 1104-1105 (9<sup>th</sup> Cir. 2008)<sup>5</sup>

IP 59 changes this verification process in at least two ways. First, it requires the Secretary of State or elections official to “treat the signature of a registered voter on a petition with at least the same respect and deference as the signature of a registered voter on a vote-by-mail ballot envelope. This means that the elections official must

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<sup>5</sup> The Ninth Circuit explained:

“Oregon’s interests in detecting fraud and in the orderly administration of elections are weighty and undeniable. Requiring the state to provide thousands of petition signers with individual notice that their signatures have been rejected and to afford them an opportunity to present extrinsic evidence during the short thirty-day verification period would impose a significant burden on the Secretary and county elections officials. In contrast to the significant weight of the state’s interests, plaintiffs’ interest in the additional procedures they seek is slight. First, the verification process is already weighted in favor of accepting questionable signatures, in part because only rejected signatures are subject to more than one level of review by county elections officials. Providing notice and allowing individuals to contest a determination that a signature did not match would further skew the process in favor of accepting invalid signatures, as there would be no corresponding notice to those whose signatures were erroneously deemed to match. Second, as previously noted, the Secretary’s procedures already allow chief petitioners and members of the public to observe the signature verification process and challenge decisions by county elections officials. The value of additional procedural safeguards therefore is negligible, and the burden on plaintiffs’ interests from the state’s failure to adopt their proposed procedures is slight at most.”

538 F3d at 1104-1005 (citations and footnote omitted).

The Honorable Kate Brown  
Vaandering/Darby IP 59 (2014) DBT  
April 10, 2014  
Page 5

notify the voter of the disqualification and a new voter registration card. The voter then has an opportunity to update his/her registration with a new card or otherwise prove that the signature was valid. *See*, 2014 Voter-by-Mail Manual, p. 45. Separately, a registered voter or Chief Petitioner can file a private lawsuit challenging exclusion of a signature. Section 4.

In addition to changing the laws regarding how signatures are collected and verified, IP 59 also changes *which* signatures may be counted. Currently, only "qualified voters" may sign a petition. Article IV, section 1. To be "qualified," a voter's registration must be "active." This means that the voter must have voted in the past five years or, where there is a change in registration information (such as address), confirmed that the new information is correct. ORS 247.013.<sup>6</sup> With regard to registration, individuals who sign a voter registration card must wait until the registration card is turned in to sign a petition. Until then, they are not "qualified" to vote. Section 2 of the proposal effectively eliminates the "active registration" requirement for purposes of petition signatures.

The last significant area of change relates to ballot titles. Under current law, all measures receive a ballot title in order to provide voters with an impartial and accurate description of the proposals' subject and how it works. ORS 250.0035. That process allows interested parties to comment on draft ballot titles and seek review by the Oregon Supreme Court, if necessary. ORS 250.085. As reflected in case law, often the true subject of a proposal -- that is, the significant change brought on by the passage -- is

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<sup>6</sup> ORS 247.013 provides, in pertinent part:

"(6) The registration of an elector shall be considered inactive if:

"(a) The county clerk has received evidence that there has been a change in the information required for registration under this chapter or the elector has neither voted nor updated the registration for a period of not less than five years; and

"(b) The county clerk has mailed the notice described in ORS 247.563.

"(7) The registration of an elector shall not be moved to an inactive file during the 60-day period prior to any election because the elector has neither voted nor updated the registration for a period of not less than five years.

"(8) The inactive registration of an elector must be updated before the elector may vote in an election. [1993 c.713 §8; 1999 c.410 §7; 1999 c.824 §2; 2001 c.965 §44]"

The Honorable Kate Brown  
Vaandering/Darby IP 59 (2014) DBT  
April 10, 2014  
Page 6

not reflected in the actual language of the measure. Under IP 59, initiative petitions of 100 words or fewer would not receive a ballot title. Rather, the text of the initiative itself would be printed on the signature petitions as well as on the ballot. Thus, voters would be deprived of a key tool to understand what they are signing or to cast an informed vote.

### 3. 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 caption is the "headline" or "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." *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004) (quoting *Greene v. Kulongoski*, 322 Or 169, 174-75, 903 P2d 366 (1995)). As the court recently emphasized, the "subject matter" is the "actual major effect" or effects of the measure. *Lavey v. Kroger*, 350 Or 559, 563, 285 P3d 1194 (2011). "To identify the 'actual major effect' of a measure, this court examines the text of the proposed measure to determine the changes that the proposed measure would enact in the context of existing law and then examines the caption to determine whether the caption reasonably identifies those effects." *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011).

The draft caption reads:

**Amends laws governing petition signatures, ballot title,  
and voter qualification; authorizes lawsuits challenging  
disqualified signatures**

This caption is identical to that certified for IP 11. Overall, this is the correct approach. The two initiatives are substantially the same, which means the ballot title should be as well. Otherwise, petitioners can attempt to engineer "better" ballot title language by changes in drafting that have little substantive difference in the actual effect of the measure. However, commenters believe that the ballot titles needs to be revised slightly to eliminate the reference to "voter qualification." This is because the changes around "inactive/active" voter registration only concern petition signatures, and not voting. The following alternative more accurately signals that change (and is consistent

The Honorable Kate Brown  
Vaandering/Darby IP 59 (2014) DBT  
April 10, 2014  
Page 7

with the draft "yes" vote result statement). It also gives additional detail about the actual change made concerning ballot titles. We propose:

**Amends laws governing petition signature qualification,  
verification, counting; eliminates certain ballot titles;  
authorizes lawsuits.**

#### 4. RESULT OF "YES" VOTE

ORS 250.035(2)(b) requires that a ballot title contain a "simple and understandable statement of not more than 25 words that describes the result if the state measure is approved." 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, 100 P3d 1064 (2004). Where the enforcement scheme is new and not just "mere procedural details," that enforcement scheme becomes one of the "major changes" or "results of enactment" that must be described to voters as high up in the ballot title as possible. *Greenberg v. Myers*, 340 Or 65, 70, 127 P3d 1192 (2006); *Sizemore v. Myers/Terhune*, 342 Or 578, 157 P3d 188, (2007). Typically, the "yes" vote result statement builds on the caption.

The Attorney General issued the following draft "yes" vote result statement:

**RESULT OF "YES" VOTE: "Yes" vote amends laws  
governing petition signature qualification, verification, and  
counting; authorizes lawsuit to challenge disqualification of  
signature; requires printing entire text of short measures.**

Again, as with the caption, the Attorney General used the "yes" vote result statement certified for IP 11 as her starting point. She appropriately chose to include detail about authorizing lawsuits, although we would also make clear that both Chief Petitioners and voters can bring the lawsuits. The last phrase however, fails to adequately identify for voters the fact the proposal eliminates ballot titles for certain short measures. While it is true that the proposal requires that the text of short measures be printed on the ballot, the more substantive change is the elimination of the ballot title process in its entirety for those short measures. As a review of ballot title



The Honorable Kate Brown  
Vaandering/Darby IP 59 (2014) DBT  
April 10, 2014  
Page 8

cases reveal, it is all too common for the true subject of a measure not to be obvious from the words of the measure itself. Accordingly, we propose the following:

**RESULT OF "YES" VOTE:** "Yes" vote amends laws governing petition signature qualification, verification, counting; authorizes lawsuits by chief petitioner or voter challenging disqualified signatures; eliminates ballot titles for short measures.

#### 5. RESULT OF "NO" VOTE:

ORS 250.035(2)(c) requires that the ballot title contain a "simple and understandable statement" of up to 25 words, explaining "the state of affairs" that will exist if the 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). Finally, it is generally impermissible for the "no" result statement to simply state that a "no" vote rejects the "yes" vote. *Nesbitt v. Myers*, 335 Or 424, 431, 71 P3d 530 (2003).

Here, the Attorney General proposed the same "no" vote result statement as that certified for IP 11. This is the correct approach, as the relevant current law is the same. It should not be modified at all.

**RESULT OF "NO" VOTE:** "No" vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voters; all measures receive ballot titles.

#### 6. SUMMARY

ORS 250.035(2)(d) requires that the ballot title contain a summary 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 reads:

The Honorable Kate Brown  
Vaandering/Darby IP 59 (2014) DBT  
April 10, 2014  
Page 9

**Summary:** Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure limits enforcement of laws disqualifying registered voter's valid signature; Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally. "Petition" includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing voter or chief petition to bring lawsuit to contest disqualification of a signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

Like the rest of the draft ballot title, the draft summary tracks that certified for IP 11. Again, this is the correct approach given the similarity of the measures. However, in one area, the draft summary needs to be modified to more clearly describe Section 3 of IP 59. This section states that petition signatures must be treated with at least the same "respect and deference" as signatures on vote-by-mail ballot envelopes. We propose that the phrase be quoted, but that voters also be told that it is undefined. Word space for this concept was found by making editorial changes and by deleting the definition of "petition." This is acceptable, so long as the opening sentence continues to make the various types of petitions.

We propose the following:

**Summary:** Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature

The Honorable Kate Brown  
Vaandering/Darby IP 59 (2014) DBT  
April 10, 2014  
Page 10

gathering. Measure limits enforcement of those laws; every signature of a registered voter on any timely filed petition must be counted, even if gatherer/circulator obtains the signature illegally. Elections officers must treat petition signatures with "at least the same respect and deference" (undefined) as signatures on vote-by-mail ballot envelopes. Measure authorizes signing voter or chief petitioner to bring lawsuit challenging signature disqualification. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

## 7. CONCLUSION

Thank you for your careful consideration of these comments.

Sincerely,

Bennett, Hartman, Morris & Kaplan, LLP

Margaret S. Olney  
Of Counsel

MSO:kaj  
cc: Clients

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2014 APR 11 PM 3 12  
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SECRETARY OF THE STATE



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

April 28, 2014

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

RECEIVED  
2014 APR 28 PM 3 00  
KATE BROWN  
SECRETARY OF THE STATE

Re: Proposed Initiative Petition — Changes Petition Signature Qualifications; Authorizes  
Lawsuits Challenging Disqualified Signatures; Shorter Measures' Text Replaces Ballot  
Title  
DOJ File #BT-59-14; Elections Division #59

Dear Mr. Williams:

We have reviewed the comments submitted on the draft ballot title for the Initiative Petition #59 (IP 59). We provide the enclosed certified ballot title. We have revised all parts of the draft ballot title.

We received two comment letters from (1) Hanna Vaandering and BethAnne Darby (through counsel Margaret S. Olney); and (2) Knute Buehler, Duane Ray Fletchall, (through counsel, Kevin L. Mannix), chief petitioners for IP 59, and Kevin L. Mannix (on his own behalf). This letter summarizes the comments we received, our responses to those comments, and the reasons we made or 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:

**Amends laws governing petition signatures, ballot titles, and voter qualification; authorizes lawsuits challenging disqualified signatures**

**1. Commenters Vaandering and Darby**

Commenters Vaandering and Darby state that the caption, as a general matter, appropriately tracks the ballot title language that the Attorney General used for another recent ballot title measure, IP 11 (2014). However, they submit that the caption is deficient in one material respect. They argue that the phrase "[a]mends laws governing \* \* \* voter qualification" inaccurately suggests that IP 59 changes how voters may qualify to vote in an election (as

opposed to when a registered voter's signature may be counted on specified petitions). Vaandering and Darby also propose that the caption should explain that IP 59 "eliminates certain ballot titles" (*i.e.* those that contain text of 100 words or fewer).

## **2. Commenters Buehler, Fletchall, and Mannix**

Commenters Buehler, Fletchall, and Mannix contend that the caption fails to recognize "substantial changes" between IP 11 and IP 59, and argue that phrase "[a]mends laws governing petition signatures, ballot title, and voter qualifications" is too vague, and "tells us nothing about the content of this initiative." Through a proposed caption, they argue that the caption should identify two effects of IP 59: (1) that voters may bring a lawsuit to challenge the disqualification of a signature on a petition; and (2) that short measures (of 100 words or fewer) will be printed on a ballot.

## **3. Our responses to the comments**

We agree with Vaandering and Darby that the term "voter qualification" is incorrect as IP 59 does not purport to change how a voter qualifies to vote in an election (as opposed to how or when a registered voter's signature on a petition may be counted), and have revised the caption accordingly. Although we also agree that IP 59 "eliminates" ballot titles for specified measures (those containing text of 100 or fewer words), the phrase "eliminates certain ballot titles," may be misleading to the extent that it does not describe related changes, that is, that the measure would require printing the entire text of certain short measures on ballots and petition sheets (instead of a ballot title). We have revised the caption to identify that, for certain measures, the text of the measure will "replace" a ballot title. We believe that text more accurately and reasonably identifies that particular effect of the measure.

In response to the comments from Buehler, Fletchall and Mannix, we disagree that the caption fails to identify the actual major effects of the measure, or that their proposed caption accurately does so. We agree that the measure would make the two changes they identify in their proposed caption, however, those changes are not the actual major effect of the measure (and, more importantly, leave out other important information that is necessary to avoid making the caption misleading or under-inclusive). For example, their proposed caption explains that the measure would permit "voters" to file certain lawsuits (but omits any reference as to whether a "chief petitioner" of an initiative could do so). Another example is that their proposed caption explains that the measure would require printing of the text of certain measures on ballots, but fails to explain that the text would be printed on ballots *and* petition sheets, and fails to explain that such measures would no longer include a ballot title. Lastly, the proposed caption fails to address a significant change IP 59 would make on existing law: allowing registered voters with an "inactive" registration status to validly sign petitions.

Given the 15-word limitation for the caption, it is impossible to reasonably identify every individual effect if the measure is approved. Instead, we believe that the modified caption reasonably identifies all of the actual major effects of the measure.

Accordingly, we certify the following caption:

**Changes petition signature qualifications; authorizes lawsuits challenging disqualified signatures; shorter measures' text replaces ballot title**

**B. The "Yes" vote result statement**

The draft ballot title's "Yes" vote result statement reads:

**Result of "Yes" Vote:** "Yes" vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuit to challenge disqualification of signature; requires printing entire text of short measures.

**1. Commenters Vaandering and Darby**

Commenters Vaandering and Darby state that the "Yes" vote result statement should make clear that the measure would authorize both a registered voter, and a chief petitioner, to initiate a lawsuit to challenge the disqualification of the registered voter's signature on a petition. They also contend that the "Yes" vote result statement, like the caption should explain that IP 59 "eliminates ballot titles for certain short measures."

**2. Commenters Buehler, Fletchall, and Mannix**

Commenters Buehler, Fletchall and Mannix argue that the "Yes" vote result statement, like the caption, fails to describe the results of the measure if it is approved. They posit that the phrase "amends laws governing petition signature qualification, verification, and counting" does not specify "what" results would occur if the measure is approved. They further suggest that the phrase "requires printing entire text of short measure" is "nonsensical" and fails to inform voters about precisely *where* the "entire text" would need to be printed. They argue that the statement should explain that the measure: (1) "authorizes court action by voter, challenging disqualification of voter's petition signature"; and (2) "requires ballot to contain text of initiative of 100 words or fewer."

**3. Our responses to the comments**

We disagree with Vaandering and Darby concerning their argument that the "Yes" vote result statement must identify *who* may commence civil actions to challenge disqualified signatures. We believe that the creation of the civil action to challenge the disqualification of a signature is the important effect of the measure, and that it is not necessary to identify who may initiate such civil actions.

We also disagree with Vaandering and Darby that the "Yes" vote result statement must state that the measure would "eliminate" certain ballot titles. We agree that the measure does "eliminate" certain ballot titles, however, it is necessary to explain that something else will "replace" the eliminated ballot titles. We have modified the language of the "Yes" vote result

statement to explain that the measure would allow for the replacement of ballot titles for certain measures with the text of the measure instead. That modified language, along with the “No” vote result statement (“all measures receive ballot titles”) fairly identifies that ballot titles for shorter measures will be replaced with the text of the measures instead. So modified, we believe that the “Yes” vote result statement reasonably identifies that ballot titles for certain shorter initiatives would be “eliminated” if the measure is approved.

With respect to the comments by Buehler, Fletchall, and Mannix, we disagree that the “Yes” vote result statement is too vague, or, that it fails to explain the results should the measure be approved by voters. We also disagree that the “Yes” vote result statement must be clarified to identify “where” the text of shorter measures will be printed (*e.g.*, on the ballot or on a petition sheet) and note that the Oregon Supreme Court rejected a similar objection that Buehler and Fletchall made to the “Yes” vote result statement in IP 11. *Buehler v. Rosenblum*, 354 Or 318, 328 n 2, 311 P3d 882 (2013).

Accordingly, we certify the following “Yes” vote result statement:

**Result of “Yes” Vote:** “Yes” vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuits challenging disqualified signatures; replaces ballot titles for shorter measures with measures’ text.

**C. The “No” vote result statement**

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

**Result of “No” Vote:** “No” vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter; all measures receive ballot titles.

**1. Commenters Vaandering and Darby**

Vaandering and Darby do not challenge the “No” vote result statement.

**2. Commenters Buehler, Fletchall, and Mannix**

Buehler, Fletchall, and Mannix contend that the phrase “retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by inactive/unregistered voter” is inaccurate “because it creates the impression that a “Yes” vote would “take away such ‘existing laws.’” They contend that IP 59 does not change existing laws regarding signature disqualification and instead, merely provides a procedural mechanism—a civil action by a registered voter—to challenge a disqualified signature. They also argue that the phrase “all measures receive ballot titles,” when read in context with the “Yes” vote result statement (*i.e.* the phrase “requires printing entire text of short measures”), is misleading because it does not describe “where” the text of such measures would be printed.

### 3. Our responses to the comments

We disagree that the “No” vote result statement is inaccurate to the extent that it implies that the measure would change whether election officials may disqualify “unlawfully obtained” signatures or signatures that do not match voter records. Under existing law, election officials may disqualify signatures from registered voters that are “unlawfully obtained” or do not match voter records. In contrast, IP 59, if approved, gives registered voters an “enforceable right” to have their signatures on petitions “counted”—and provides that the “supersedes any Oregon law that is inconsistent with this [measure].” Thus, the measure permit the counting of petition signatures by registered voters that are currently disqualified under existing law (for example, signatures by inactive registered voters, or signatures that are “unlawfully obtained” or do not match voter records).

We agree that the measure does not change how elections officials may disqualify, verify, or count petition signatures signed by unregistered voters. We have modified the “No” vote result statement accordingly.

Lastly, we disagree that the measure does not change existing laws governing who may validly sign petitions, or how petition signatures may be verified or counted. For the reasons explained above with respect to the “Yes” vote result statement, we disagree that the “No” vote result statement must be revised to identify where the text of short initiatives will be printed. *Buehler*, 354 Or at 328 n 2.

Accordingly, we certify the following “No” vote result statement:

**Result of “No” Vote:** “No” vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by registered voter; all measures receive ballot titles.

### D. The summary

The draft ballot title’s summary reads:

**Summary:** Currently, only “qualified voters” may sign initiative/referendum, candidate nomination, political party formation, recall petitions; “qualified voters” are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure limits enforcement of laws disqualifying registered voter’s valid signature; Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally. “Petition” includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing voter or chief petitioner to bring lawsuit to contest disqualification of a signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.



### **1. Commenters Vaandering and Darby**

Vaandering and Darby contend that the summary should be modified “to more clearly describe Section 3 of IP 59[,]” which provides that “[t]he Secretary of State and elections officers shall treat the signature of a registered voter on a petition with at least the same respect and deference as the signature of a registered voter on a vote-by-mail ballot envelope.” They suggest that the phrase “at least the same respect and deference” should be quoted and noted as being undefined, and which may mean that elections officials must undertake affirmative efforts to contact a registered voter before disqualifying that registered voter’s signature. They propose that the summary should include the following statement: “Elections officers must treat petition signatures with ‘at least the same respect and deference’ (undefined) as signatures on vote-by-mail envelopes.”

### **2. Commenters Buehler, Fletchall, and Mannix**

Buehler, Fletchall, and Mannix raise several objections to the summary. They contend that the summary includes unnecessary descriptions about “qualified voters” and the “motivation or intention” of existing laws affected by or related to the measure, (*e.g.*, “to prevent fraud, forgery, improper signature gathering”). They also argue that the phrase “limits enforcement of laws disqualifying registered voter’s valid signature” is inaccurate in that the measure would not limit the enforcement of such laws. Relatedly, they argue that the following statement—“[t]he Secretary of State must count every signature of a registered voter on any timely filed petition, even if gatherer/circulator obtains the signature illegally”—is inaccurate because such provisions were included in IP 11, but not included in IP 59.

### **3. Our responses to the comments**

We agree with Vaandering and Darby that the summary should be modified to identify that elections officers must treat signatures of registered voters with “at least the same respect and deference” as signatures on vote-by-mail envelopes. We revise the summary to reflect that addition.

We also agree with Buehler, Fletchall, and Mannix to the extent that the summary should be modified to exclude the “motivation or intention” of existing laws affected by or related to the measure. However, we believe that the description of “qualified voters” is necessary to identify which petition signatures may be counted under existing law, *i.e.* signatures from active registered voters.

We disagree with Buehler, Fletchall, and Mannix concerning their argument that the measure would not limit the enforcement of laws that disqualify a registered voter’s valid signature. The measure provides registered voters who sign a petition a “right to have his or her signature counted on the petition”—that is, “to include the registered voter’s signature in the final tally as to whether the petition contains the required number of voter signatures.” If IP 59 is approved, a registered voter who signs a petition that is otherwise “unlawfully obtained” (and therefore subject to disqualification from a signature count under existing law) could initiate a

civil action “to require the counting of the voter’s signature on the petition.” Thus, the measure does “limit the enforcement of laws that disqualify a registered voter’s signature.

Lastly, we agree with Buehler, Fletchall, and Mannix, with respect to their assertion that the measure does not direct that the Secretary of State “must count every signature of a registered voter on any timely filed petition.” We have removed that statement from the summary.

Considering all of those comments, and upon further review of the measure itself, we certify the following summary.

**Summary:** Currently, only “qualified voters” may sign initiative/referendum, candidate nomination, political party formation, recall petitions; “qualified voters” are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting. Measure limits enforcement of laws disqualifying registered voter’s valid signature and provides a right to have petition signature counted. Elections officers must treat petition signatures with “at least the same respect and deference” (undefined) as signatures on vote-by-mail envelopes. “Petition” includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing registered voter or chief petitioner to bring lawsuit to contest a disqualified signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

We certify the attached ballot title.

Sincerely,

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

MJL:af/5243751

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## BALLOT TITLE

**Changes petition signature qualifications; authorizes lawsuits challenging disqualified signatures; shorter measures' text replaces ballot title**

**Result of "Yes" Vote:** "Yes" vote amends laws governing petition signature qualification, verification, and counting; authorizes lawsuits challenging disqualified signatures; replaces ballot titles for shorter measures with measures' text.

**Result of "No" Vote:** "No" vote retains existing laws allowing disqualification of signatures unlawfully obtained, not matching voter records, signed by registered voter; all measures receive ballot titles.

**Summary:** Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting. Measure limits enforcement of laws disqualifying registered voter's valid signature and provides right to have petition signature counted. Elections officers must treat petition signatures with "at least the same respect and deference" (undefined) as signatures on vote-by-mail envelopes. "Petition" includes initiative, referendum, candidate nomination, formation of political party, recall petition. Measure authorizes signing registered voter or chief petitioner to bring lawsuit to contest a disqualified signature. Measure eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

RECEIVED

2014 APR 28 PM 3 06

KATE BROWN  
SECRETARY OF THE STATE

## **NOTICE OF FILING AND PROOF OF SERVICE**

I certify that on May 19, 2014, I directed the original Respondent's Answering Memorandum to Petitions to Review Ballot Title Re: Initiative Petition No. 59 (Supreme Court) to be electronically filed with the Appellate Court Administrator, Appellate Records Section; and served upon Margaret S. Olney, attorney for petitioners Bethanne Darby and Hanna Vaandering, by using the court's electronic filing system.

I further certify that on May 19, 2014, I directed the Respondent's Answering Memorandum to Petitions to Review Ballot Title Re: Initiative Petition No. 59 (Supreme Court) to be served upon Kevin L. Mannix, attorney for petitioners, by mailing a copy, with postage prepaid, in an envelope addressed to:

Kevin L. Mannix  
Kevin L. Mannix PC  
2009 State Street  
Salem, OR 97301

/s/ Judy C. Lucas

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