

ELLEN F. ROSENBLUM  
Attorney General



FILED September 27, 2016 12:25 PM  
Appellate Court Records

FREDERICK M. BOSS  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
APPELLATE DIVISION

September 27, 2016

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

Re: *Jeff Jimerson v. Ellen F. Rosenblum*  
SC S064348

Dear Chief Justice Balmer:

Petitioners Jeff Jimerson, Marylin Shannon, and Suzanne Belatti 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 Compliance Specialist 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/ Shannon T. Reel

Shannon T. Reel  
Assistant Attorney General  
shannon.t.reel@doj.state.or.us

ST2:aft/7733282

cc: Jill O.Gibson

IN THE SUPREME COURT OF THE STATE OF OREGON

JEFF JIMERSON, MARYLIN  
SHANNON, and SUZANNE  
BELATTI,

Petitioners,

v.

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

Respondent.

Supreme Court No. S064348

RESPONDENT'S ANSWERING  
MEMORANDUM TO PETITION TO  
REVIEW BALLOT TITLE RE:  
INITIATIVE PETITION NO. 1  
(SUPREME COURT)

**I. INTRODUCTION**

Initiative Petition 01 (2016) (IP 01) proposes to prohibit the state from spending public funds for abortion. If enacted, IP 01 would add a provision to the Oregon Constitution which states: “The state shall not spend public funds for any abortion, except when medically necessary or as may be required by federal law.” The measure includes special definitions for “public funds,” “abortion,” and “medically necessary.” The last section of the measure states that the measure should not “be construed as prohibiting the expenditure of public funds to pay for health insurance as long as such funds are not spent to pay or reimburse for the costs of performing abortions.”

Petitioners Jeff Jimerson, Marylin Shannon and Suzanne Belatti seek review of the certified ballot title for IP 01. They specifically challenge the “Yes” and “No” results statements and the summary of the measure. As explained below, the certified ballot title substantially complies with ORS

250.035(2), which describes the requirements for ballot titles of initiative petitions. Therefore, this court should reject the petitioners' arguments and approve the certified ballot title without modification.

## **II. ARGUMENT**

### **A. The certified caption for IP 01 is unchallenged and therefore need not be modified.**

The caption for the ballot title of a state measure must contain no more than 15 words. ORS 250.035(2)(a). The caption also must “reasonably identify the subject matter” of the measure. *Id.* The subject matter of a measure is “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).” *McCann v. Rosenblum*, 354 Or 701, 706, 320 P3d 548 (2014) (quoting *Lavey v. Kroger*, 350 Or 559, 563, 258 P3d 1194 (2011)); ORS 250.035(2)(a). The “actual major effect” of a measure may include the “changes that the proposed measure would enact in the context of existing law.” *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011).

The caption for IP 01, as certified by the Attorney General, reads as follows:

**Amends Constitution: Prohibits spending “public funds”  
(defined) directly/indirectly for “abortion” (defined);  
exceptions; reduces abortion access**

Petitioners do not challenge the caption. Therefore, the certified caption should stand.

**B. The certified result statements for IP 01 substantially comply with ORS 250.035(2)(b), (c) and need not be modified.**

The ballot title of a state measure must also include two results statements: one for the result of a Yes vote, and one for the result of a No vote. A result statement can contain no more than 25 words. ORS 250.035(2)(b), (c). The result statements must be simple and understandable and describe “the result if the state measure is approved” and “rejected,” respectively. *Id.*

Petitioners challenge each certified result statement on different grounds, so each is addressed separately herein.

**1. The “Yes” result statement**

The “Yes” statement for IP 01, as certified by the Attorney General, reads as follows:

**Result of “Yes” Vote:** “Yes” vote amends constitution, prohibits spending “public funds” (defined) directly/indirectly for any “abortion” (defined), health plans/insurance covering “abortion”; limited exceptions; reduces abortion access.

Petitioners raise two objections to the “Yes” statement. First, they contend that the reference to health insurance is redundant and misleading. In their view, the term “directly/indirectly” is sufficient to inform voters that indirect spending on abortions (such as through the purchase of health

insurance) is prohibited. However, the average voter would not necessarily understand that the use of state funds to purchase employee benefits such as health insurance also would be included in the measure's prohibition. Therefore, we believe we are obliged to inform the voters of that significant change that would be enacted if the measure passes.

Petitioners also claim that the reference to insurance in the "Yes" statement would be both confusing to voters and "inflammatory" because it suggests that "the state would no longer be allowed to purchase insurance" at all. Petition at 4. But that claim is not logical. The reference to "insurance" in the "Yes" statement includes a qualifying phrase—"covering abortion"—that provides the necessary distinction. A reasonable voter would understand from the phrase "insurance covering abortion" that the measure prohibits the purchase of health insurance that covers abortion (and not the purchase of *any* health insurance) with public funds.

Petitioners also argue that any reference to insurance be worded to indicate that the state *may* purchase insurance under the measure. With respect, however, that would not accurately reflect the focus of the measure. IP 01 does not purport to *authorize* the purchase of health insurance by the state. Instead, it says, in Section 4: "Nothing in this Article shall be construed as prohibiting

the expenditure of public funds to pay for health insurance as long as such

funds are not spent to pay or reimburse for the costs of performing abortions.”

As an aside, that provision is ambiguous because it is not clear what the phrase “such funds” refers to. But even if it means what petitioners assume it means, stating that the measure would allow the purchase of health insurance *only* when the plan excludes abortion from its covered procedures would be both awkward and confusing. The measure itself is focused on prohibition, and it makes sense to use the same focus in describing its effect on insurance plans that are offered in public employee benefits packages.

Second, petitioners object to the phrase “limited exceptions” because, in their view, it implies a value judgment. We disagree. The word “limited” accurately refers to the fact that the measure allows only a few exceptions. It is a quantitative descriptor, not a political one. Voters of all political bents would understand that “limited exceptions” to a prohibition of any kind means a small number of exceptions. In addition, it invites the reader to consult the summary, which provides a description of each of the exceptions provided in the measure.

Despite petitioners’ criticisms, the “Yes” results statement in the certified ballot title substantially complies with ORS 250.035(2) and need not be modified.

## 2. The “No” result statement

The “No” statement for IP 01, as certified by the Attorney General, reads as follows:

**Result of “No” Vote:** “No” vote retains current law that places no restrictions on spending public funds for abortion or health plans covering abortion when approved by medical professional.

Petitioners challenge the “No” statement in two ways. First, they contend that the reference to “health plans” is misleading and potentially confusing to voters, for the same reason they object to the references to health insurance in the “Yes” statement—that is, they argue that it implies that the measure will prohibit the state from purchasing health insurance. However, the purpose of the result statements is to identify the key distinctions between current law and what the law would be if the measure passes. It is certainly a significant change in the law—one which must be communicated to voters—when beneficiaries of state-provided health insurance would no longer have coverage for abortion after the passage of a proposed measure. We fail to see how including that reference in the “No” statement is confusing or misleading, particularly when the phrase “covering abortions” modifies the term “health plans.”

Second, petitioners object to the inclusion of “when approved by medical professional” in the measure’s description of the current availability of abortion. But that phrase is accurate, given the content of current law. As the court is likely aware, there is no statute that specifically speaks to the availability of abortions using state funds. But that does not mean, as petitioners contend, that there is “no such law or limitation on state funded abortions.” Petition at 6. Laws on state funded medical assistance *do* exist, and they are equally pertinent to abortions.

The state has authority to provide health care benefits to its citizens under various programs, such as the Oregon Health Plan and other assistance programs. *See, e.g.*, ORS 414.018, 414.033, 414.705. Those programs currently allow the state to pay for abortion on the same terms as any other medical procedure—*i.e.*, when a medical professional authorizes and bills the state for it. ORS 414.065. Under OAR 410-120-1200(2), the state may not pay for services unless they are found to be medically appropriate and properly prescribed. The state’s medical assistance program requires providers to comply with administrative rules governing appropriate billing practices, as well. OAR 410-120-1280(5). *See also* OAR 410-120-1260 (provider qualifications and duties). In short, an abortion may be reimbursed by the state

only if it is conducted by a qualified provider who complies with his/her



professional duties, follows the pertinent rules, and submits a bill to the appropriate program. It is accurate to paraphrase those constraints as requiring approval by a medical professional because the system requires the exercise of professional competence and judgment, as well as approval of the services provided.

Because the “No” statement complies with ORS 250.035(2)(c), this court should approve it without modification.

**C. The certified summary for IP 01 substantially complies with ORS 250.035(2)(d) and need not be modified.**

The ballot title of a state measure must include a “concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” ORS 250.035(2)(d). The summary for IP 01, as certified by the Attorney General, reads as follows:

**Summary:** Amends constitution. Under current law, abortions may be obtained, when approved by medical professional, under state-funded health plans or under health insurance procured by or through a public employer or other public service. Measure amends constitution to prohibit spending “public funds” (defined) for “abortion” (defined) or health benefit plans that cover “abortion.” Measure defines “abortion,” in part, as “purposeful termination of a clinically diagnosed pregnancy.” Exception for ectopic pregnancy and for pregnant woman in danger of death due to her physical condition. Exception for spending required by federal law, if requirement is “found to be constitutional.” No exception for pregnancy resulting from rape or incest. Effect on spending by public entities other than the state is unclear. Measure reduces access to abortion. Other provisions.

Petitioners raise four challenges to the summary. The first and second involve the references to health insurance and medical professional approval for state funding of abortions that also appear in the results statements above. Our responses here are the same as above.

Petitioner's third objection is to the summary's statement that the measure provides no exception when a pregnancy is the result of rape or incest. Petition at 8-9. However, that is a true statement. Although the measure does have an exception for spending "required by federal law," what is actually covered by that exception is uncertain, as petitioners acknowledge, because it is conditioned on what another law provides. While federal law currently *allows* state spending in circumstances of rape or incest, it does not *require* state spending. Therefore, the measure's exception for federally required expenditures on its face does not apply to those circumstances. Even if it arguably did apply, federal requirements are subject to change. The statement that the measure does not provide an exception for providing abortions when a pregnancy results from rape or incest is accurate.

Finally, petitioners take issue with the summary's statement that the effect of the measure on other public entities is unclear. But in our view, there is an inherent contradiction between the measure's use of "the state" in section

1 of the measure and the definition of “public funds” in section 2. Although the measure would prohibit “the state” from spending public funds, those funds would include money under the control of not only the state but also “any of its political subdivisions or public officials.” Because a county, city or other governmental body could be considered a subdivision of the state, representatives of those governments would have legitimate questions about the measure’s applicability to their operations and programs. Because that question has not been addressed by an Oregon appellate court, it is unclear how that question should be answered. Voters have a right to know that the measure’s application to that circumstance is unclear, and the summary accurately describes the ambiguity.

### **III. CONCLUSION**

For the reasons discussed above, the Attorney General’s ballot title should be certified without modification.

Respectfully submitted,

ELLEN F. ROSENBLUM #753239  
Attorney General  
BENJAMIN GUTMAN #160599  
Solicitor General

/s/ Shannon T. Reel

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SHANNON T. REEL #053948  
Assistant Attorney General  
shannon.t.reel@doj.state.or.us

Attorneys for Respondent  
Ellen F. Rosenblum

**Thomas Alicia F**

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**From:** PLUKCHI Lydia <lydia.plukchi@state.or.us>  
**Sent:** Wednesday, September 07, 2016 2:10 PM  
**To:** THOMAS Alicia F  
**Subject:** FW: Initiative Petition #1 Appeal  
**Attachments:** 001cbt.pdf; 001dbt.pdf

OFFICE OF THE SECRETARY OF STATE

JEANNE P. ATKINS  
SECRETARY OF STATE  
ROBERT TAYLOR  
DEPUTY SECRETARY OF STATE



ELECTIONS DIVISION

BRENDA BAYES  
INTERIM DIRECTOR  
255 CAPITOL STREET NE, SUITE 501  
SALEM, OREGON 97310-0722  
(503) 986-1518

September 7, 2016

The Hon. Ellen Rosenblum, Attorney General  
Benjamin Gutman, Solicitor General  
Dept. of Justice, Appellate Division  
400 Justice Building  
Salem, OR 97310

**Via Email**

Dear Mr. Gutman:

In accordance with ORS 250.067(4) please file the attached comments with the court as part of the record in the ballot title challenge filed by Jill Gibson on Initiative Petition **2018-001**. Also attached are the draft and certified ballot titles with their respective transmittal letters.

Sincerely,

Lydia Plukchi  
Compliance Specialist



**DEPARTMENT OF JUSTICE**  
APPELLATE DIVISION

July 22, 2016

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

Re: Proposed Initiative Petition — Amends Constitution: Prohibits State from Spending  
“Public Funds” (Defined) for “Abortion” (Defined); Reduces Abortion Access  
DOJ File #BT-01-16; Elections Division #2018-001

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 the funding of abortion services by the state.

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,

/s/ Alicia Thomas

Alicia Thomas  
Legal Secretary

AFT/7555827

Enclosure

Jeff Jimerson  
P.O. Box 1620  
Corvallis, OR 97339

Marylin Shannon  
7955 Portland Rd. NE  
Brooks, OR 97305

Suzanne Belatti  
15413 NE Andra Pl.  
Portland, OR 97230

## **DRAFT BALLOT TITLE**

**Amends Constitution: Prohibits state from spending “public funds” (defined) for “abortion” (defined); reduces abortion access**

**Result of “Yes” Vote:** “Yes” vote amends constitution, prohibits state spending “public funds” (defined) for “abortion” (defined); state may not pay for insurance covering “abortion”; reduces abortion access; exceptions.

**Result of “No” Vote:** “No” vote retains current law allowing state to spend public funds for abortion or health insurance plans covering abortion when medical professional determines medically necessary.

**Summary:** Amends Constitution. Current law allows abortion to be provided, when determined by medical professional to be medically necessary, under public health plans available to qualified and eligible persons, or under health insurance policies obtained through a public employer or other public service. Measure amends constitution to prohibit the state from spending “public funds” (defined) to pay for any “abortion” (defined). The state may not pay for insurance benefits that cover “abortion.” Effect on spending by public entities other than the state is unclear. Measure reduces access to abortion. Measure defines “abortion” as “purposeful termination of a clinically diagnosed pregnancy.” Exceptions for payments required by federal law and for abortion to terminate ectopic pregnancy or to prevent death of pregnant woman; other exceptions. Other provisions.



**LOUIS B. DVORAK**

ATTORNEY AT LAW

64680 HORSEMAN LANE

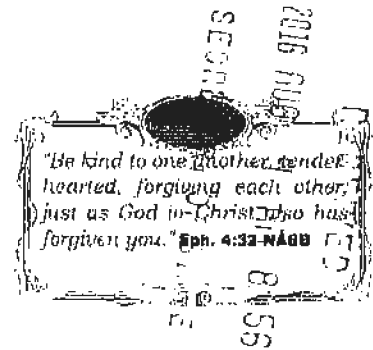
**BEND, OREGON 97703**

(541) 382-0195

FACSIMILE: (541) 382 4565

E-MAIL: louis@ykw.com

www.deschuteslaw.com



August 3, 2016

Mr. Jim Williams  
Director, Elections Division  
Office of the Secretary of State  
255 Capitol St. NE Suite 501  
Salem, OR 97310

Sent by FAX ONLY to  
(503) 373 7414

Re: Proposed Initiative Petition DOJ File #BT-01-16, Elections  
Division #2018-001  
Our file: B3113

Dear Mr. Williams:

This is an individual public comment on the Draft Ballot Title  
referred to above, submitted by the deadline of August 5.

I believe that in order to represent fairly and impartially what  
the amendment will do, the title needs to be revised to something  
that does not misrepresent it as a violation of Roe v. Wade, that  
"reduces abortion access", because it does not make the procedure  
unavailable to anyone who can pay for it.

Please consider the motive behind the petition. Citizens have no  
choice as to whether to pay their taxes. Most of the citizens  
view pre-born babies as human lives rather than non-human until  
they can survive outside the womb. As a result, the taxpayers see  
themselves as treated unjustly when money they cannot withhold  
from the government is used to kill 10 humans per day in Oregon  
on the average. The purpose of the initiative isn't to "reduce  
abortion access", but to stop forcing taxpayers to pay for elec-  
tive abortion which they believe is evil.

As written, the initiative gives the majority of taxpayers relief  
by keeping tax dollars from financing elective abortion through  
the Oregon Health Plan. Here's an example of how to represent its  
purpose honestly in 15 words or less:

Amends Constitution: Prohibits spending funds from tax revenue on  
medically unnecessary abortion not required by federal law.

Note that the terms in quotation marks and parentheses are elimi-

Director, Elections Division, Office of the Secretary of State  
August 3, 2016  
Page 2

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nated by saying what public funds are. Abortion doesn't need quotation marks, since it is generally known what that procedure is. This frees the voters from not voting their convictions because they don't understand the terms in the measure.

In the Result of "Yes" vote paragraph, the two instances of (defined) and the marks around "public funds" and "abortion" have the same misleading effect as in the ballot title above, since the definitions will not be on the ballot. The statement "reduces abortion access" is false. Anyone who wants an abortion and can pay for it can still get it. What it should say in order to represent the revised ballot title in 25 words is:

"Yes" vote amends constitution, prohibits state paying for abortion unless a licensed physician determines that extracting the embryo/fetus is necessary to protect the mother's life.

In the Result of "No" Vote paragraph is misleading with the language "when medical professional determines medically necessary." This condition is not in current law. It should say that the current law allows spending \$1.7 million per year in tax revenue to pay for 3,500 free or subsidized elective abortions, and that this would continue.

I hope that you find these suggestions helpful in complying with ORS 250.035 by giving the public a clear, unbiased comprehension of the initiative.

Yours very truly,

Louis B. Dvorak

SECRETARY OF STATE

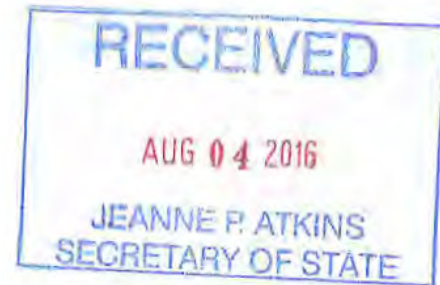
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RECEIVED



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

8/4/16



Re: Public Comment on Ballot Initiative #2018-001

Dear Mr. Williams,

My name is Michael Rossetti and on behalf of myself, as a registered voter, I am submitting comments regarding the draft ballot title for initiative #2018-001. I support this ballot initiative and, per ORS 250.035, would like to see clearer, less ambiguous and impartial language without insinuation of certain outcomes. With that said here are my comments.

**Comments:**

- In the caption:
  - Remove quote marks from words "public funds" and "abortion" and remove the word (defined), with parentheses at both occurrences.
  - Replace words 'reduces abortion access' with 'except when medically necessary'.
- At 'Results of "Yes" vote':
  - Remove quote marks from words "public funds" and "abortion" and remove the word (defined), with parentheses at both occurrences.
  - Replace words 'reduces abortion access' with 'except when medically necessary'.
  - Remove the last word 'exceptions'.
- At 'Results of "No" vote':
  - Remove the words 'when medical professional determines medically necessary'.
- At 'Summary':
  - Same issues regarding quotation marks and the word (defined) as noted in the 'caption' and 'yes' comments above.
  - Remove the sentences 'Effect on spending by public entities other than the state is unclear. Measure reduces access to abortion'.

Thank you.

Michael Rossetti  
16002 SW Red Clover Ln  
Sherwood, OR 97140  
[mdrosc307@msn.com](mailto:mdrosc307@msn.com)  
503-476-7784

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# Rebekah Millard

ATTORNEY AT LAW

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Jim Williams  
Director Elections Division  
Office of the Secretary of State  
255 Capitol St. NE, Suite 501  
Salem, OR 97310  
*sent via email: irrlistnotifier.sos@state.or.us*

Date: August 4, 2016

Re: Public Comment on Draft Ballot Title for Initiative Petition 2018-001

Dear Director Williams,

I am writing concerning the legal sufficiency of the draft ballot title for Initiative Petition 2018-001. After carefully reviewing the draft title, I must point out that it is misleading in several ways and thus fails to comply with ORS 250.035 which requires simple, concise, understandable and impartial ballot titles.

In the section entitled "Result of 'Yes' Vote" the terms "public funds" and "abortion" are presented within quotation marks ("") and are followed by "(defined)". This phrasing leads the reader to assume that these phrases are being used in a manner other than their usual, common meaning. This is not the case. While the proposed initiative defines these terms, the definitions provided are the most unexceptional uses of these very common terms. To suggest that there is an unusual or ulterior meaning to these phrases unnecessarily complicates and clouds the meaning and effect of the initiative.

The section continues, "state may not pay for insurance covering 'abortion'; reduces abortion access." The proposed measure, however, is not limited to state funding for abortion coverage of insurance. It includes any state funding for abortion. It is misleading to specifically delineate insurance. Further, the claim that the measure "reduces abortion access" is confusing and misleading. The proposed initiative has no impact whatsoever on abortion access: every woman is equally and fully entitled to obtain an abortion - just not at taxpayer expense. To assume that abortion access

would be in any way impacted must necessarily be based on conjecture at best, misinformation, at worst.

The section entitled "Result of 'No' Vote" contains a very confusing statement regarding current law. Under current Oregon law, there is no restriction on state funding for abortion, or insurance plans that cover abortion. Nor is there any restriction that there be a determination of medical necessity for the abortion. The State of Oregon pays for on an average approximately 3500 abortions per year. More than one and a half million dollars of taxpayer funds are expended for this purpose alone. Again, no determination of medical necessity is required for this spending. The "'No' Vote" section leads the reader to believe that current law restricts state spending to abortions that are determined by medical professionals to be medically necessary (a term that is not used, let alone defined in any public funding scheme).

A clear and concise "'No' Vote" section might read as follows: "'No' vote retains current law allowing state to spend public funds for abortion."

The confusion as to the state of current law is continued in the "Summary" section, and should be corrected. It is undisputed that the State makes no restrictions on the medical necessity of an abortion paid for with public funds.

Thank you for your consideration of these matters.

Sincerely,

Rebekah Millard  
1390 Walnut Road  
Springfield, OR 97477  
[bekamillard@msn.com](mailto:bekamillard@msn.com)  
541.357.9616



415 Sunrise Av.  
Medford, OR 97504  
August 5, 2016

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

Re: IP#2018-001

Dear Mr. Williams:

I am a taxpaying registered Oregon voter. I was active in two previous efforts to place measures on the ballot seeking to amend the Oregon Constitution to prohibit using public funds for abortion. In my involvement I met many other Oregonians who also believe that public funds should not be used for abortion. I write now to express the problems I noted in the **Initiative Petition 2018-001 Draft Ballot Title**. I have reviewed ORS 250.035 and I do not consider the draft to be comprised of "simple and understandable" statements as prescribed by ORS 250.035. There are multiple items that make the Ballot Title misleading.

As to the **Caption**, there is no reason to use quotation marks nor parenthetical phrases. The words so emphasized are already defined in the amendment text. As presented in the Draft, it creates the false impression that definitions other than everyday English could be expected. Also misleading is the phrase "reduces abortion access". It will not. The proposed amendment does not address closing abortion facilities, limiting access thereto, nor does it address modifications to—or set—standards of care, staffing, qualifications of providers' education or licensing, sanitation, nor locations of facilities. (Though OARs set such for veterinarian clinics and even tatoo parlors, patrons of abortion clinics have no such protections.) The choice for someone to have an abortion is not restricted in any way except as to who will pay for it. Furthermore, there are exceptions in the amendment text wording that should be acknowledged in the caption. If I may suggest, total clarity is achieved by writing:

: amends Constitution--prohibits state from spending public funds for abortion except  
when medically necessary. [12 words]

The next problematical item is with the **Result of "Yes" Vote**. For the above reasons, I suggest,  
: amends constitution--prohibits state spending public funds for abortion; state may  
not pay for insurance covering abortion; exceptions for medical necessity. [21 words]

I also find problems with the **Result of "No" Vote** in the phrase "when medical professional determines medically necessary". This is patently misleading! There are no such restrictions in Oregon. Anyone may choose an abortion at will, anytime in the life-cycle of the developing baby, for any reason! No medical professional's input is required by Oregon law. What voters should be told in order to make a knowledgeable decision about the amendment is that it affects only the budget. Oregon

currently spends \$1.7 million annually for approximately 3,500 abortions. This will continue if they vote "No". In light of budgetary woes the legislature is always whining about this should be told to voters! I suggest the wording be,

: retains current law allowing expenditure of public funds (\$1.7 million annually) for abortion or health insurance plans covering abortion (approx 3500 annually).

[22 words]

Next item is the **Summary**. Four phrases misdirect the voter(s) by implying issues not in Oregon law and other issues which are not in the amendment text: 1) "when determined by medical professional to be medically necessary"; 2) "qualified and eligible or . . . employer or . . . service"; 3) "Effect on spending by public entities other than the state is unclear"; and 4) "Measure reduces access to abortion"

These are misleading and should be stricken because: 1) no medical professional's judgment or prescription is required in Oregon for anyone to choose abortion; 2) "public funds" is defined in the text, in ordinary English, and the additional verbage is not a summary; 3) The wording of the amendment text is specific and clearly applies only to the State of Oregon, so other public entities' spending is not in question. To mention it is distracting, adds commentary about something not in the text, and therefore does not truly fit the definition of "summary"; 4) As outlined in my objections to the caption, the choice for someone to have an abortion is not restricted in any way except as to who will pay for it.

My recommendation follows:

**Summary:** Amends Constitution. Current law allows abortion to be paid for under public health plans or insurance policies available to eligible persons through a public employer or public service. Measure amends constitution to prohibit the State of Oregon from spending public funds to pay for abortion or for insurance benefits that cover abortion. Does not effect entities other than the State of Oregon. Measure defines "abortion" as "purposeful termination of a clinically diagnosed pregnancy". Measure allows exceptions for payments required by federal law, and for abortion to terminate ectopic pregnancy or to prevent death of pregnant woman. Provides that public funds may pay for health insurance as long such funds do not pay or reimburse the costs of abortions. [116 words]

(Ms) Robin Lee

# BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

GREGORY A. HARTMAN  
MICHAEL J. MORRIS  
HENRY J. KAPLAN  
NELSON R. HALL  
THOMAS K. DOYLE  
ARUNA A. MASIH  
MARGARET S. OLNEY  
TALIA Y. STOESSEL  
RICHARD B. MYERS

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

ROBERT A. BENNETT (RETIRED)

LINDA J. LARKIN

\* OF COUNSEL  
♦ ALSO MEMBER  
WASHINGTON BAR  
§ ALSO MEMBER  
NEW YORK BAR

August 5, 2016

Via email: [irrlistnotifier@sos.state.or.us](mailto:irrlistnotifier@sos.state.or.us)

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

Re. *Initiative Petition 1 (2018) - Draft Ballot Title Comments*  
Our File No. 18702-02

Dear Secretary of State Atkins:

This office represents Stacy M. Cross and Lisa A. Gardner, Oregon electors and interested parties who oppose IP 1 (2018). Stacy Cross is Chief Executive Officer of Planned Parenthood Columbia Willamette and Lisa Gardner is Chief Executive Officer of Planned Parenthood of Southwestern Oregon. We write to comment on the draft ballot title for IP 1 (2018).

## I. OVERVIEW OF INITIATIVE 1 (2018)

IP 1 (2018) is only the latest in a series of proposals filed by anti-abortion advocates to prohibit the expenditure of any public funds on abortion. See, IP 61 (2016) and IP 6 (2014). Although worded somewhat differently, all have a common goal and effect: to reduce access to abortion. Section 1 of IP 1 provides:

"The state shall not spend public funds for any abortion, except when medically necessary or as may be required by federal law."

The initiative then defines "public funds," "abortion," and "medically necessary." Section 2. "Public funds" include "money under the control or in the custody of the State of Oregon or any of its political subdivisions or public officials." The measure does not address how

this broad definition of "public funds" squares with the reference to *state* spending in Section 1. For example, would it apply to a health insurance plan offered by a local government, if that government receives any state funds? Perhaps, which means that any unqualified reference to the "state" is underinclusive and misleading. As discussed in more detail below, this lack of clarity is appropriately noted in the summary, but not early portions of the ballot title. That must be changed.

Next, IP 1 (2018) defines "abortion" to mean the "purposeful termination of a clinically diagnosed pregnancy of a woman resulting in the death of the human embryo or fetus." This definition is identical to that given in IP 61 (2016), except that IP 61 provided for limited exceptions to certain contraceptives. Thus, the definition of "abortion" in IP 1 is broader than previous definitions. Yet the ballot title suggests the opposite, by failing to note the lack of exceptions for contraceptives.

Finally, IP 1 (2018) defines "medically necessary" very narrowly. A licensed physician must determine that the woman has a *physical* disorder, injury or illness that "would place her in danger of death" unless an abortion is performed. Notably, this language departs from the language of the Hyde Amendment<sup>1</sup> and its implementing regulations, which allows federal funds to pay for an abortion when a physician has determined that "the life of the mother would be endangered if the fetus were carried to term." 42 CFR § 441.203. This definition is also inconsistent with how "medically necessary" is commonly understood in the world of insurance and health care. That is, "medically necessary" is generally used to describe when a medical expense will be reimbursed; a service is "medically necessary" when a medical professional (not just physicians) has determined that the service is justified under the appropriate standard of care. This can be seen by running a search of the term in Oregon law. Surprisingly, it is used constantly in medical and insurance related statutes and regulations, but not specifically defined. See, e.g., ORS 243B.252 (describing required external review process for determinations that service is not medically necessary.)

Section 3 of IP 1 then sets out two exceptions to the complete ban. First, public funds can be spent *when required by federal law*, but only to the extent those federal requirements are found constitutional. Section 3(1). Second, public funds can be spent to terminate an ectopic pregnancy. Section 3(2). Notably, although Section 3(1) references rape and incest as

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<sup>1</sup> The "Hyde Amendment" is a restriction that has been placed on appropriation bills since 1977 prohibiting federal funds from being used to pay for abortion. Initially, it only included an exception for abortions when the pregnant woman's life is endangered, but in 1994, Congress added a provision also allowing the expenditure of funds to pay for abortions of pregnancies resulting from rape or incest, if promptly reported. The 2014 appropriations limit can be found at Pub. L. No. 113-76.

something that might be required by federal law, the measure itself does not create a specific exception for pregnancies resulting from rape and incest.

Finally, Section 4 addresses the *indirect* expenditure of public funds for abortion through health insurance plans. The reach of this section is ambiguous. At a minimum, the proposal would prohibit any public employee health insurance plan from reimbursing an insured or paying a service provider for an abortion. However, it is not clear whether public funds need to be completely segregated from other funds that might be used to pay for abortion services.

Together, these provisions make IP 1 more restrictive than earlier versions. If passed, IP 1 (2018) would mandate grossly unequal access to abortions in Oregon, based on ability to pay. Oregon women without private resources would only be assured of receiving abortion care if the pregnancy is life threatening. Because there is no Oregon exception for rape and incest, victims of sexual assault *might* be entitled to abortion services through Medicaid, depending on what federal law *requires* at that time. Moreover, if those women are covered by public employee health insurance, that insurance could not pay for an abortion, even in the case of rape or incest. In short, absent a clear federal mandate, affirmatively found to be constitutional, there is no exception for rape and incest in IP 1's broad prohibition of spending public funds for abortion. This is an important point which voters should understand.

In order to understand how the proposal works and its major effects, commenters will review the current legal and practical context and then address the ballot title language itself.

## II. CURRENT OREGON LAW

In order to identify the impact of IP 1, it is necessary to understand the myriad of ways Oregon law allows monies that may be deemed "public funds" to be spent on abortion coverage, as well as Oregon's legal and political history of ensuring equal access to this constitutionally protected medical procedure.

### A. Medicaid/Oregon Health Plan

The Oregon Health Plan is the name for Oregon's Medicaid program, public health care insurance available to low income Oregonians. Under OHP, a woman's reproductive health is a covered service. This includes family planning, prenatal care, and the termination of a pregnancy when the medical provider determines that the procedure is medically necessary. ORS 414.065; *Planned Parenthood Ass'n Inc. v. DHS*, 297 Or 562, 572 (1984). This would include cases of rape or incest, as well as when any part of a woman's health (physical or mental) is endangered by the continuation of the pregnancy (for example, if she needs cancer treatment) or if her fertility is threatened.



In addition, the state offers family planning services through a program called "C-Care" to women whose incomes fall between 100 and 185% of the federal poverty level. <http://public.health.oregon.gov/HealthyPeopleFamilies/ReproductiveSexualHealth/OregonContraceptiveCare/Pages/index.aspx> . This program does not cover abortion services, but it does provide contraceptives that may be considered "abortifacients." *See section II.D below.*

#### **B. Other Health Insurance Subsidies**

Public funds are used to subsidize private and other health insurance through a variety of programs. Historically, this included direct cash subsidies to obtain insurance through the Family Health Insurance Assistance Program and assistance obtaining insurance for high risk individuals through the Oregon Medical Insurance Pool. Under all of these programs, the publicly subsidized private healthcare plans are free to cover the full range of reproductive care, including the termination of a pregnancy and access to contraception. As a result of the Affordable Care Act, individuals receiving coverage through these programs transitioned to the open health care marketplace. Patient Protection & Affordable Care Act, [www.healthcare.gov](http://www.healthcare.gov); 42 USC § 18001. Nonetheless, the state is still involved in overseeing and stabilizing coverage for these high risk individuals. *See,* <http://www.oregon.gov/oha/OPHP/OMIP/Documents/Transitional%20Reinsurance%20Pool%20FAQ.pdf>.

In addition, Oregon participates in a health insurance marketplace. While Oregon's state based health insurance exchange, known as "Cover Oregon" was shut down in Spring 2014, the state still manages a portal to link consumers to health insurance. Thus, public funds continue to be used to support private health insurance. Plans offered on the exchange may provide abortion coverage to Oregon residents. For those Oregonians who qualify for a subsidy, federal dollars cannot be spent to purchase private insurance plans that cover abortion, although the insurance company can offer coverage through a segregated account. 42 USC § 18023.

#### **C. Public Employee Health Insurance**

As part of employee compensation, most public employers in Oregon provide health insurance benefits to employees at low or no-cost to their employees. On the state level, these plans are administered through the Public Employee Benefit Board. Benefits for most educators are provided through the Oregon Educators Benefit Board. And other public employers contract through private carriers for coverage. All of those plans can (and most do) provide

coverage for all medically necessary (as the term is understood in commonly understood) reproductive services. Of course, public funds are used to purchase the insurance.<sup>2</sup>

#### D. Contraception

Oregon is a leader in ensuring that women have access to effective contraceptives. First, Oregon law requires health insurance plans in Oregon to cover all prescribed contraceptives. ORS 743A.066. In fact, the Oregon legislature amended the statute in 2015 to require insurance companies to pay for a twelve month supply at one time. HB 3343 (2015 Legislative Session). Second, Oregon law now authorizes pharmacists to prescribe and dispense certain prescription contraceptives directly to patients, thus improving access. HB 2879 (2015 Legislative Session). Third, Oregon law requires hospitals (including publicly funded hospitals) as well as sexual assault responders to offer Emergency Contraceptives. ORS 435.250 *et seq.* Finally, Emergency Contraceptives are currently available without a prescription. Women on the Oregon Health Plan can be reimbursed for the cost of that contraceptive. *See*, Oregon Public Health Fact Sheet for Pharmacists re: Emergency Contraceptives, attached as Ex. A (also found at [https://public.health.oregon.gov/HealthyPeopleFamilies/ReproductiveSexualHealth/Documents/ec/EC\\_Fact\\_Sheet\\_for\\_Pharmacists\\_11-2014.pdf](https://public.health.oregon.gov/HealthyPeopleFamilies/ReproductiveSexualHealth/Documents/ec/EC_Fact_Sheet_for_Pharmacists_11-2014.pdf)).

While commenters do not view any of these contraceptives as "abortion," anti-abortion advocates do. That is, any birth control method or device that works by preventing implantation of a fertilized egg or otherwise causing the termination of a pregnancy is deemed an abortifacient<sup>3</sup> and therefore equivalent to "abortion." Many in the anti-abortion movement consider Emergency Contraception and certain IUD's as clearly fitting this definition and therefore a type of abortion. This is because they are believed to work, in part, by preventing implantation of a fertilized egg. *See, e.g.*, Oregon Right to Life policy statement at <http://ortl.org/policy-statements.html>. *See also*, [www.abort73.com](http://www.abort73.com), "Which Birth Control Methods Cause Abortion?" Others also view "the pill" as an abortifacient. Commenters strenuously disagree with these assertions, but the point is that IP 1 could reduce access to these birth control methods for certain Oregon residents, given the lack of any exception for contraceptives in the measure. The ballot title must identify this issue.

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<sup>2</sup> "Public funds" may also be implicated through payroll services related to Health Savings Accounts. If money in these accounts is used to pay for an abortion, it is arguable that IP 1 would prohibit that use.

<sup>3</sup> Medicinet.com defines abortifacient as "a substance that causes pregnancy to end prematurely and causes an abortion." Webster's Third New Int'l Dictionary 5 (unabridged ed 2002) defines "abortifacient" as "a drug or other agent that induces abortion."

### E. Equal Access

Oregon has a long history of protecting the right of all Oregon women to obtain an abortion. Even after the federal government restricted the use of public funds for abortions, Oregon has continued to cover women's reproductive health needs, including medically necessary abortions, under its public health plans. This is both a political and legal decision. Oregon voters have consistently rejected initiatives seeking to restrict access to abortion. *See*, Measure 7 (1978) (restricting public funding); Measure 6 (1986) (restricting public funding); Measure 8 (1990) (making abortion illegal under state law); Measure 10 (1990) (requiring parental notification); Measure 43 (2006) (requiring parental notification). In addition, Oregon courts have held that it would violate Article 1, section 20 of the Oregon Constitution (Oregon's equal privileges and immunities clause) to limit access to abortion based on ability to pay. *Planned Parenthood v. Dept. Human Services*, 63 Or App 41, 63, 663 P2d 1247 (1983), *aff'd on other grounds*, 297 Or 562, 687 P2d 785 (1984).<sup>4</sup> This decision is consistent with Oregon's long history of barring unequal treatment of its citizens, a value most recently reaffirmed by Oregon voters when they overwhelmingly passed the Equal Rights Amendment. Ballot Measure 89 (2014).

### III. CURRENT FEDERAL LAW

The question of the use of public funds in Oregon to pay for abortion arises against the backdrop of federal law. Specifically, while the U.S. Constitution currently protects a woman's right to obtain an abortion, it does not require the government to fund abortions for any reason. *Harris v. McRae*, 448 US 297 (1980). In *Harris*, the U.S. Supreme Court upheld the constitutionality of what has become known as "the Hyde Amendment," a bill passed every year by Congress to prohibit federal dollars from being spent on abortion, with the exceptions varying over time. Currently, the ban applies except in the case of rape and incest, or when necessary to prevent a woman's death, but that could change.

While federal law may allow federal Medicaid dollars (and therefore state matching funds) to be spent on certain abortions, it is unclear whether federal law requires that funding. There is certainly nothing in the Hyde Amendment or its implementing regulations clearly imposing that requirement. Moreover, while some circuit courts have held that states participating in Medicaid must fund abortions resulting from rape and incest, if federal funding is available, there are no cases from the 9<sup>th</sup> Circuit or the Supreme Court so holding. *See, e.g.*

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<sup>4</sup> In order to avoid this constitutional protection, IP 1 is drafted as a constitutional amendment. Commenters believe that in doing so, IP 1 violates the separate vote requirement articulated by the Oregon Supreme Court in *Armatta v. Kitzhaber*, 327 Or 250, 959 P2d 49 (1998), and refers the Attorney General to the procedural constitutional comments submitted by Greg Chaimov, on behalf of the ACLU.

*Hern v. Beye*, 57 F3d 905 (10th Cir), *cert denied*, 516 U.S. 1011 (1995); *see also*, Lewis Borders, *Rape and Incest Abortion Funding Under Medicaid--Can the Federal Government Force Unwilling States to Pick Up the Tab?* 35 U. Louisville J. Fam. L. 121, 138 (1997) (reviewing court decisions, including contrary analysis). Nor are there any cases expressly finding that such a requirement would be constitutional, a threshold requirement under IP 1.<sup>5</sup> Finally, even assuming that states participating in Medicaid funding must fund abortions for pregnancies resulting from rape and incest, that is not the same as an actual requirement. States could choose to forgo federal Medicaid dollars rather than spend money on these abortions. *Nay v. Department of Human Services*, 267 Or App 240, 242 (2014); *National Federation of Independent Business v. Sebelius*, 567 US \_\_\_, (2012). And while that may seem unlikely, twenty-four (24) states have turned down additional federal Medicaid dollars because of disagreement with the Affordable Care Act. *See*, <http://billmoyers.com/2014/08/14/study-shows-the-madness-of-states-refusing-to-expand-medicaid/>. In short, IP 1 contains no exception for rape and incest.

#### IV. THE DRAFT BALLOT TITLE

The draft ballot title appropriately builds on that certified for IP 61 (2016) as well as the court's decision in *Cross v. Rosenblum*, 359 Or 136, 373 P3d 125 (2016). However, as discussed below, it fails to adequately explain to voters the breadth of the prohibition. We will discuss each section in turn.

##### A. Caption

ORS 250.035(2)(a) provides that a ballot title contain "a caption 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)). It also cannot overstate or understate the scope of the legal changes the initiative would enact. "[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). Finally, the court has made clear that the "subject matter" is the "actual major effect" or effects of the measure. *Lavey v. Kroger*, 351 Or 218 (2011).

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<sup>5</sup> The constitutionality of any federal "requirement" that states use Medicaid funds to pay for any abortion was not raised or addressed in the reported cases.

The draft caption fails to meet these statutory standards. It reads:

**Amends Constitution:** Prohibits state from spending “public funds” (defined) for “abortion” (defined); reduces abortion access

There are two problems with this draft caption. First, it is misleading to refer exclusively to “state” spending, given the definition of “public funds” and potential impact on other public entities. Instead, the caption should only state what we know for certain: that “public funds” cannot be spent on any abortion. Second, this caption fails to alert voters to the fact that the ban also applies to indirect spending on health insurance plans – a major effect that is not self-evident. That is, unless specifically identified, voters reading the draft caption would have no idea that the ban applied to health insurance and not just direct payments for abortions. As done in the modified ballot title for IP 61, this significant effect must be included in the caption. *Cross v. Rosenblum, supra*, 359 Or at 141 (“We agree that the reference to health plan is necessary \* \* \*”).

To correct these problems, we propose the following alternative:

**Amends Constitution:** Prohibits spending “public funds” (defined) for “abortion” (defined), insurance covering “abortion;” reduces access to abortion.

This alternative builds on the draft caption. Specifically, it retains the word “defined,” which clearly alerts voters to the fact that the proposal provides specific definitions that differ from common understanding. Second, it includes notice to voters that the proposal reduces abortion access, an accurate statement describing the proposal’s actual major effect and subject. *Cross, supra*, 359 Or at 141 (“The Attorney General could have chosen to include in the caption a more complete explanation of the measure as reducing access to abortions, but the Attorney General did not err in failing to do so.”). We urge that it be adopted.<sup>6</sup>

#### **B. 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

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<sup>6</sup> Proponents might argue that the caption should reference the exceptions. We disagree. So long as the caption does not use the word “any” before abortion, the caption is accurate. But, if exceptions are referenced at all, the caption should include the word “any” because that is the language of the measure itself and conveys to voters the proposal’s breadth.

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). 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 constitution, prohibits state spending “public funds” (defined) for “abortion” (defined); state may not pay for insurance covering “abortion”; reduces abortion access; exceptions.

This statement, like the caption, misleadingly suggests that the measure only impacts *state spending*, when the definition of “public funds” is much broader. This must be corrected. In addition, it fails to convey the breadth of the proposal, including the fact it applies to direct and indirect spending. The statement also references the fact that there are “exceptions.” This is acceptable, but now requires inclusion of the word “any,” since that is the wording of the proposal and conveys its breadth. Finally, the statement should alert voters to the fact that funding for certain contraceptives might be limited. There is word space to do so. We propose the following:

**RESULT OF “YES” VOTE:** “Yes” vote amends constitution, prohibits spending “public funds” (defined) directly/indirectly for any “abortion” (defined), insurance covering “abortion,” certain contraceptives; reduces access to abortion; exceptions

### C. 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 issued the following draft “no” vote result statement:

**Result of “No” Vote:** “No” vote retains current law allowing state to spend public funds for abortion or health insurance plans

covering abortion when medical professional determines medically necessary.

This statement tracks that approved by the court for IP 61, except that it refers only to "state" spending. This must be corrected. Given the potential reach of the proposal to other public entities, the statement should simple refer to the expenditure of public funds, as is done in the "no" vote result statement in the modified ballot title for IP 61. It reads:

**Result of "No" Vote:** "No" vote retains current law allowing use of public funds for abortion or health insurance plans covering abortion when medical professional determines medically necessary.

We urge that it be adopted.

#### **D. 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 Attorney General issued the following draft summary:

**Summary:** Amends constitution. Current law allows abortion to be provided, when determined by medical professional to be medically necessary, under public health plans available to qualified and eligible persons, or under health insurance policies obtained through a public employer or other public service. Measure amends constitution to prohibit the state from spending "public funds" (defined) to pay for any "abortion" (defined). The state may not pay for insurance benefits that cover "abortion." Effect on spending by public entities other than the state is unclear. Measure reduces access to abortion. Measure defines "abortion" as purposeful termination of a clinically diagnosed pregnancy." Exceptions for payments required by federal law and for abortion to terminate ectopic pregnancy or to prevent death of pregnant woman; other exceptions. Other provisions.

This summary appropriately builds on that approved by the court for IP 61. However, it fails to meet the statutory standards for four reasons. First, it does not make clear that the prohibition is on both direct and indirect spending. It also continues to refer exclusively to "state" spending. This error is corrected somewhat by inclusion of the sentence "Effect on spending by public entities other than state is unclear," but not enough. "State" should be put in quotations to signal the uncertainty.

Second, the summary's description of the exceptions is incomplete. Under IP 1, public funds may be used to pay for an abortion when (1) a physician determines that it is necessary to terminate the pregnancy to prevent the woman's death; (2) to terminate an ectopic pregnancy; and (3) as required by federal law, to the extent that requirement has been found constitutional. However, there is no exception for abortions to terminate pregnancies resulting from rape or incest, a fact that Chief Petitioners likely want to hide. Given the importance of this issue in the public debate about abortion funding, it is essential that voters understand that this proposal does *not* include an exception for rape or incest.

Third, there are no exceptions for contraceptives. Again, IP 61, section 2(3) specifically carved out exceptions for those contraceptives that work after conception. IP 1 contains starts with the identical definition of abortion, but does not include any exceptions for contraceptives. Voters must be informed of this fact.

Finally, the description of the proposal's impact on access should be more completely described. It is certainly true that the proposal "reduces access to abortion," but voters should understand who will be most impacted.

To correct these problems, we offer the following alternative. Word space was found through editorial changes. In addition, we omitted the inaccurate reference to "other exceptions." There are none. Similarly, we omitted the phrase "other provisions." It too is inaccurate because all aspects of the measure are, in fact, identified in the summary.

**Summary:** Amends constitution. Current law allows abortion to be provided, when determined by medical professional to be medically necessary, under public health plans available to qualified and eligible persons, or under health insurance policies obtained through public employer or other public service. Measure amends constitution to prohibit the "state" from spending "public funds" (defined) directly/indirectly to pay for any "abortion" (defined), including health insurance covering "abortion." Effect on spending by other public entities unclear.



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Measure defines "abortion" as "purposeful termination of a clinically diagnosed pregnancy." Exceptions for payments when abortion is necessary to prevent pregnant woman's death, terminate ectopic pregnancy, comply with federal requirements declared constitutional; no exception for rape/incest, contraceptives. Reduces access to abortion for poor women and public employees.

## V. CONCLUSION

Thank you for your careful consideration of these comments. We recognize that the task of drafting ballot titles is extremely difficult, particularly in light of time constraints and the highly charge subject of this proposal. We offer these comments in order to assist the Attorney General in certifying the best ballot title possible – one that is accurate and complete, providing voters with the information they need to cast an informed vote.

MSO:kaj  
cc: Clients

Brenda Bayes  
Interim Director, Elections Division  
Office of the Secretary of State  
255 Capitol St. NE, Suite 501  
Salem, OR 97310

Aug 5, 2016

RE: Public Comment on Initiative Petition 2018-001 Draft Ballot Title

Dear Ms Bayes,

I am writing to you in concern for the ballot title compliance for ORS 250.035, as a citizen I am concerned that this draft does not meet the guidelines set forth in that statute.

First, there is no reason to put quotes around “public funds” or “abortion” or add (defined). It implies that there is some special or abnormal meaning to these terms that should be considered. Plain language is always better to comply with ORS ‘250.035”.

Second, the statement that this law would “reduce abortion access” is false. Those that choose abortion will still be able to do so. The point of this law, is that the public will not have to pay for these procedures, any private organization or person could still pay for them.

Third, Oregon laws allow for abortion for any reason. This will not change with the passage of this proposed law on funding of these procedures.

Fourth, the proposed law says that there **are** exceptions for the funding of some abortions to save the life of the mother or as otherwise required by federal law. This needs to be clearly stated to state the true effect of this law.

Thank you for consideration of my concerns for Petition 2018-001 ballot title.

Best Regard,  
Janice Dysinger  
32235 SE Pipeline Rd.  
Gresham, OR 97080

Alicia Marks  
6290 Zena Rd NW  
Salem, OR 97304

August 5, 2016

Brenda Bayes  
Interim Director, Elections Division  
Office of the Secretary of State  
255 Capital St. NE, Suite 501  
Salem, OR 97310

Re: Draft Ballot Title for Initiative 2018-001

Dear Ms. Bayes;

As an Oregon voter and a supporter of initiative 2018-001, I want to ensure that the ballot title is written in a way that complies with ORS 250.035. After reviewing the proposed ballot title, I have some concerns.

First, the use of parenthesis and quotation marks in the ballot title caption and the ballot title "yes" section are confusing and make them hard to understand. I would suggest that you remove the quotation marks from the words, "public funds" and "abortion". Also, the word "defined" is unnecessary and confusing.

Second, I would ask that the words "with exceptions" be added to the text. This is an honest representation of the ballot initiative. There are exceptions included.

Third, in the ballot title "no" section, the words: "when medical professional determines medically necessary" appear in reference to abortion. This makes it seem as though currently abortions are being done only when a medical professional determines that it is necessary. Obviously that is not the case. Oregon is the only state in the country where there are absolutely no restrictions on abortion. The inclusion of these words must be deleted in order for an honest rendering of the current legal state to be achieved.

Thank you for your careful attention to these comments.

Sincerely,

Alicia Marks



KATHERINE McDOWELL  
Direct (503) 595-3924  
[kathenne@mrg-law.com](mailto:kathenne@mrg-law.com)

August 5, 2016

VIA EMAIL - [irrlistnotifier.sos@state.or.us](mailto:irrlistnotifier.sos@state.or.us)

The Honorable Jeanne Atkins  
Office of the Secretary of State  
Elections Division  
255 Capitol St NE, Suite 501  
Salem, OR 97310

**Re: Public Comment on Draft Ballot Title for Initiative Petition 1 (2018)**

Dear Secretary Atkins:

On behalf of Chantal Downing, a registered Oregon voter who opposes Initiative Petition (IP) 1 (2018), we are providing the following comments on the draft ballot title published for comment on July 22, 2016. Ms. Downing is program manager for Backline. Backline provides inclusive and nonjudgmental decision-making support for the full spectrum of reproductive experiences, including pregnancy, parenting, abortion, and adoption.

Ms. Downing is also a member of We are BRAVE (Building Reproductive Autonomy and Voices for Equity). BRAVE is a cohort of over 50 leaders of color and six organizations focused on reproductive justice in Oregon and advocates for non-discriminatory access to reproductive and sexual health care, including abortion. BRAVE addresses the social, economic and political power inequities that prevent full and equal access to comprehensive reproductive health care for low-income people and communities of color in Oregon.

## **I. INTRODUCTION**

IP 1 is a constitutional amendment to prohibit the expenditure of public funds for any abortion. Section 1 states:

The state shall not spend public funds for any abortion, except when medically necessary or as may be required by federal law.

This provision, as well as the remainder of IP 1, is substantially similar to IP 61 (2016), addressed in *Cross v. Rosenblum*, 359 Or 136, 373 P3d 125 (2016). The sponsors of IP 1 and IP 61 are the same;<sup>1</sup> a petitioner of both measures is Jeff Jimerson, director of Oregon Life United. According to Mr. Jimerson, the goal of IP 1, like IP 61, is “to stop taxpayer-funded abortion.”<sup>2</sup> After the Attorney General certified IP 61’s ballot title, Mr. Jimerson complained about the Oregon Supreme Court’s “confusing wording,” indicated that Oregon Life United planned to hire a “good, pro-life attorney” for 2018, and collect “sponsor signatures on two to three versions of the text in an attempt to get the best possible ballot title.”<sup>3</sup>

IP 1 reflects the petitioners’ stated strategy to obtain a different ballot title by superficially rewording its initiative to ban public funding of abortion. A comparison of the text of IP 61 and IP 1 shows that the subject, purpose and major effects are substantially the same. These similarities support a ballot title for IP 1 drafted by reference to the final certified ballot title for IP 61, as explained below. *Mabon v. Kulongoski*, 321 Or 247, 251, 896 P2d 574, 576 (1995) (approving the use of the term “pregnant woman” by relying upon a previous decision using the term in a ballot title for a similar measure); *Rogers v. Myers*, 344 Or 219, 227, 179 P3d 627, 631 (2008) (Balmer, J., dissenting) (arguing that the court should certify the ballot title for the current measure because the court had earlier certified a ballot title for another measure that was similar and no one distinguished the two measures). *See also* ORS 250.062 (requiring Attorney General to provide identical ballot titles if the subject, purpose and major effect of two measures pending during the same election are substantially similar).

In *Cross v. Rosenblum*, the Supreme Court held that the ballot title for IP 61 must reflect the “undisputed impact on access to abortion and the use of certain contraceptives.” *Cross v. Rosenblum*, 359 Or at 145, 373 P3d at 131. Instead of closely tracking the ballot title approved in *Cross v. Rosenblum*, however, the draft ballot title for IP 1 misleadingly suggests that the new measure is more narrow and clear than IP 61. In fact, IP 1 changes IP 61 only by removing some of the limiting definitions and express exceptions contained in IP 61. These changes make the scope of IP 1 broader and less clear than IP 61. To the extent that the ballot title for IP 1 differs from that approved for IP 61, it should be only as necessary to make the broader scope of IP 1 clear.

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<sup>1</sup> IP 61’s and IP 1’s chief petitioners are Jim Jimerson, Marylin Shannon, and Suzanne Belatti.

<sup>2</sup> “Abortion Initiative Moved to 2018,” Oregon Faith Report/Christian News Northwest (June 1, 2016), <http://oregonfaithreport.com/2016/06/abortion-initiative-moved-to-2018/>.

<sup>3</sup> *Id.*

## II. THE DRAFT BALLOT TITLE

IP 1's draft ballot title's caption does not adequately inform voters of the subject of the proposed law in the caption, the results of a "yes" vote, the results of a "no" vote, or the major effects of the law in the summary. These concerns are detailed below.

### 1. Caption

A ballot title's caption must "reasonably identif[y] the subject matter of the state measure." ORS 250.035(2)(a). The Court has held that the subject matter of the ballot title is the actual major effect or effects of the measure. *Lavey v. Kroger*, 350 Or 559, 563, 258 P3d 1194, 1196 (2011). The draft ballot title fails to meet this standard.

The draft caption provides:

**Amends Constitution:** Prohibits state from spending "public funds" (defined) for "abortion" (defined); reduces abortion access

IP 1, like IP 61, prohibits the expenditure of public funds to pay for health insurance covering the costs of performing abortions. *Cf.* IP 1, Section 4 and IP 61, Section 2. IP 61 prohibited health insurance expenditures under the "used to pay" definition and IP 1 prohibits the expenditures under "other provisions." Substantively, the prohibitions are indistinguishable. The caption in IP 61's ballot title included the measure's impact on health insurance and IP 1's caption should do the same. *Cross v. Rosenblum*, S063863, Order Certifying Modified Ballot Title and Appellate Judgment (July 1, 2016).

As discussed below, IP 1 bans public funding of any abortion, removing IP 61's express exceptions for privately-funded or privately-covered abortions at public facilities and for some contraceptives. Because IP 1 covers even more indirect expenditures of public funds than IP 61, the caption should retain the words "directly/indirectly" from IP 61's caption.

The following 15-word alternative caption better conveys the broad scope of the public funding prohibition and is more consistent with the final certified ballot title for IP 61:

**Amends Constitution:** Prohibits spending "public funds" directly/indirectly for "abortion" or insurance covering "abortion"; reduces abortion access.

### 2. Result of "Yes" Vote

A ballot title must provide "[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is approved." ORS 250.035(2)(b). This section should notify petition signers and voters of the result or results of the enactment of the

measure that “would have the greatest importance to the people of Oregon.” *Novick v. Myers*, 337 Or 568, 574, 100 P3d 1064, 1067 (2004).

The draft “yes” statement reads as follows:

**Result of “Yes” Vote:** “Yes” vote amends constitution, prohibits state spending “public funds” (defined) for “abortion” (defined); state may not pay for insurance covering “abortion”; reduces abortion access; exceptions.

This statement, unlike the caption, does inform voters that IP 1 covers insurance plans, but it does not go far enough. The statement fails to reflect the absence of exceptions in the measure for privately-funded or privately-covered abortions at public facilities and for some contraceptives.

First, both IP 1 and IP 61 prohibit the expenditure of public funds for “any” abortion, including indirect expenditures through health insurance coverage. But unlike IP 61, IP 1 does not exempt privately-funded or privately-covered abortion when “the private funds are expended at a medical facility that otherwise receives public funds, such as a public hospital or private community medical facility.” IP 61, Section 3. The elimination of this exception makes IP 1 broader in scope than IP 61. IP 1 does not limit its coverage to publicly-funded abortions. Instead, IP 1 prohibits the expenditure of public funds for any abortion—without exceptions for privately-funded or privately-covered abortions. “Public funds” is defined broadly as funds or money under the control or custody of the state of Oregon and any of its political subdivisions and public officials. IP 1, Section 2. The ballot title must be revised to inform voters that the measure does not exempt privately-funded or privately-covered abortions at public medical facilities.

Second, the definition of abortion in IP 1 no longer includes the express exception for pre-conception contraceptives contained in IP 61. Under IP 1, abortion “means the purposeful termination of a clinically diagnosed pregnancy of a woman resulting in the death of the human embryo or fetus.” IP 1, Section 2. IP 61 similarly defines abortion as “the use of any means to terminate the clinically diagnosed pregnancy of a woman with knowledge that the termination by those means will cause, with reasonable likelihood, the death of the embryo or fetus.” Those provisions are substantially similar, but IP 61 also stated that, “[a]bortion does not include contraceptive devices or methods used to inhibit or prevent conception...” IP 61, Section 2. IP 61’s limited exception for pre-conception contraceptives, but not for post-conception contraceptives, resulted in the ballot title explaining that the measure considered “some forms of contraceptive that work after the point of conception” to fall under the abortion definition. *Cross v. Rosenblum*, S063863, Order Certifying Modified Ballot Title and Appellate Judgment (July 1, 2016). IP 1 removed any exception for contraceptives to the abortion definition, broadening its scope.

The “yes” result statement should be modified to reflect these concerns, as follows:

**Result of “Yes” Vote:** “Yes” vote amends constitution, prohibits direct/indirect “public funds” expenditures for “abortion,” insurance covering “abortion”; no exceptions for public medical facilities, contraceptives; reduces abortion access.

### 3. 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*.

The Attorney General issued the following draft “no” result statement:

**Result of “No” Vote:** “No” vote retains current law allowing state to spend public funds for abortion or health insurance plans covering abortion when medical professional determines medically necessary.

This “no” result statement is similar to that approved by the court for IP 61, except that it is limited to “state” spending. The “no” result statement here should refer more broadly to the expenditure of public funds, like the statement in the modified ballot title for IP 61.

The “no” result statement could be modified to reflect these concerns, as follows:

**Result of “No” Vote:** “No” vote retains current law allowing expenditures of public funds for abortion or health insurance plans covering abortion when medical professional determines medically necessary.

### 4. Summary

ORS 250.035(2)(d) requires the ballot title to contain “[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” The summary should give voters enough information to understand what will happen as a result of the measure and the “breadth of its impact.” *Fred Myer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406, 409 (1989).

The Attorney General issued the following draft Summary:

**Summary:** Amends Constitution. Current law allows abortion to be provided, when determined by medical professional to be medically necessary, under public health plans available to qualified and eligible persons, or under health insurance policies obtained through a public employer or other public service. Measure amends constitution to prohibit the state from spending “public funds” (defined) to pay for any “abortion” (defined). The state may not pay for insurance benefits that cover “abortion.” Effect on



spending by public entities other than the state is unclear. Measure reduces access to abortion. Measure defines “abortion” as “purposeful termination of a clinically diagnosed pregnancy.” Exceptions for payments required by federal law and for abortion to terminate ectopic pregnancy or to prevent death of pregnant woman; other exceptions. Other provisions.

This summary fails to meet the statutory requirements for a ballot title and should be revised.

First, IP 1 allows public funds to “be spent to pay for an abortion when federal law requires states to provide funding for abortions, such as in circumstances including rape or incest.” IP 1, Section 3. But this is different from granting an exception for rape or incest. IP 1 provides an exception for whatever federal law requires. In other words, IP 1 does not have a rape or incest exception, it has a federal law exception. Federal law does not categorically require Oregon to provide abortions when a pregnancy results from rape and incest; this is a current requirement of Medicaid, which could change at any time. In addition, the requirement applies only to a state voluntarily choosing to participate in Medicaid, and Oregon’s election could change at any time. While the draft summary properly describes the exception as one related to federal law, it does not note the absence of an express rape or incest exception. The summary should include this fact to inform voters of the breadth of the impact of the measure.

Second, the summary lists the three exceptions to the abortion funding prohibition contained in IP 1 – federal law, ectopic pregnancies, and preventing the death of a pregnant women. The summary then mistakenly states that there are “other exceptions.” But the three exceptions listed cover the full universe of exceptions under IP 1. The summary should eliminate the “other exceptions” language and inform voters that exceptions to IP 1 are limited to those specifically referenced in the summary.

Third, as detailed above, the summary should include the absence of an exception to the public funding ban for privately-funded or privately-covered abortions at public medical facilities.

Fourth, as detailed above, the summary should explain that IP 1 does not provide an exception for contraceptives.

The following summary addresses these concerns and is consistent with ORS 250.035(2)(d):

**Summary:** Amends Constitution. Current law allows abortion to be provided when determined by medical professional to be medically necessary, under public health plans, or under health insurance policies obtained through a public employer or other public service. Measure reduces access to abortion by prohibiting the expenditures of “public

funds” (defined) for any “abortion” (defined) and health insurance plan that covers “abortion.” No exception for privately-funded or privately-covered abortions at medical facility that receives public funds. Effect on spending by public entities other than the state is unclear. Measure defines “abortion” as “purposeful termination of a clinically diagnosed pregnancy.” Measure provides no exceptions for contraceptives, rape or incest. Exceptions only for federal law requirements, to terminate ectopic pregnancy, or to prevent death of pregnant woman. Other provisions.

### **III. CONCLUSION**

Ms. Downing respectfully submits these proposed modifications to the ballot title for IP 1 to provide voters with a more accurate and complete explanation of the subject, results and major effects of IP 1. Thank you for your consideration of these comments.

Katherine A. McDowell



August 5, 2016

VIA EMAIL – [irrlistnotifier@sos.state.or.us](mailto:irrlistnotifier@sos.state.or.us)

The Honorable Jeanne Atkins  
Secretary of State  
Elections Division  
255 Capitol Street NE, Ste. 501  
Salem, OR 97310-0722

Re: Public Comment on Initiative Petition 1 (2018)

Dear Secretary Atkins,

I represent Jeff Jimerson, Marilyn Shannon, and Suzanne Belatti, who are the chief petitioners of IP 1 (2018) (“the measure”). Mr. Jimerson, Ms. Shannon, and Ms. Belatti are electors in the State of Oregon and wish to comment on the draft ballot title for the measure.

## **I. BACKGROUND**

The Oregon Health Plan (“OHP”), funded by the state of Oregon, provides coverage for abortions for enrollees. No state has fewer restrictions on abortions than Oregon and OHP, subsequently, covers all elective abortions. Oregon taxpayers fund approximately one-third to one-half of all abortions performed in Oregon. In fiscal year 2011, for example, the OHP funded 4,191 abortions.<sup>1</sup> It is estimated that 30 percent of these aborted pregnancies would have resulted in live births if this funding were to cease, which would have resulted in 1,257 additional births.<sup>2</sup> Chief Petitioners have filed the measure in an effort to protect those lives by reducing public funding for elective abortions.

## **II. IP 1**

The measure proposes to amend the Oregon Constitution by adding a section that prohibits the state from funding abortions except when medically necessary, in cases of ectopic pregnancies, or as required by federal law. Under federal law, the so-called Hyde Amendment, first approved by Congress in 1976, currently prohibits the use of public money to pay for abortions except in cases of rape, incest, or to save the mother’s life. Pub L. No. 113-76, 128 Stat. 409.<sup>3</sup> As such, if the measure passed, Oregon may pay for abortions in accordance with these federal exceptions.

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<sup>1</sup> State of Oregon, Division of Medical Assistance Programs. (2013). Number of Therapeutic Abortions Funded by the Oregon Health Plan, 2002-03 through 2011-12.

<sup>2</sup> *A City Club Report on IP 6: Public Funds for Abortion (2014)*; National Bureau of Economic Research, “Effects of Short-Term Variation in Abortion Funding on Pregnancy Outcomes,” at Abstract (1999).

<sup>3</sup> The Hyde Amendment is a rider attached to the appropriations bill for the US Department of Health and Human Services.

The measure is very similar to IP 61 (2016) except it does not contain language regarding contraceptive devices, private health insurance, or the phrase “used to pay.” Such language resulted in unintended consequences which are avoided in IP 1.

### **III. THE DRAFT BALLOT TITLE**

The Attorney General has proposed the following ballot title for IP 1:

**Amends Constitution: Prohibits state from spending “public funds” (defined) for “abortion” (defined); reduces abortion access**

**Result of “Yes” Vote:** “Yes” vote amends constitution, prohibits state spending “public funds” (defined) for “abortion” (defined); state may not pay for insurance covering “abortion”; reduces abortion access; exceptions.

**Result of “No” Vote:** “No” vote retains current law allowing state to spend public funds for abortion or health insurance plans covering abortion when medical professional determines medically necessary.

**Summary:** Amends Constitution. Current law allows abortion to be provided, when determined by medical professional to be medically necessary, under public health plans available to qualified and eligible persons, or under health insurance policies obtained through a public employer or other public service. Measure amends constitution to prohibit the state from spending “public funds” (defined) to pay for any “abortion” (defined). The state may not pay for insurance benefits that cover “abortion.” Effect on spending by public entities other than the state is unclear. Measure reduces access to abortion. Measure defines “abortion” as “purposeful termination of a clinically diagnosed pregnancy.” Exceptions for payments required by federal law and for abortion to terminate ectopic pregnancy or to prevent death of pregnant woman; other exceptions. Other provisions.

#### **A. CAPTION**

ORS 250.035(2)(a) provides that a ballot title must contain a “caption of not more than 15 words that reasonably identifies the subject matter of the state measure.” The “subject matter” of a ballot title is “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).” *Lavey v. Kroger*, 350 Or 559, 563, 258 P3d 1194 (2011) (citation omitted). To identify the “actual major effect” of a measure, we consider the “changes that the proposed measure would enact in the context of existing law.” *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011).

The draft caption does not comply with statutory standards because it is grossly under-inclusive, to the point of rendering it inaccurate. The caption states that the measure prohibits the state from spending public funds for abortion, which implies that *all* funding for *all* abortions would be prohibited. This is incorrect. The measure expressly allows the state to pay for

abortions in several instances: 1) when medically necessary; 2) in cases of ectopic pregnancies; and 3) when required by federal law, which includes cases of rape, incest, and to protect the mother's life. These exceptions are actual major effects of the measure yet are not identified in the caption. As a result, voters will likely mistakenly believe that the measure would eliminate state funding for all abortions, which is simply incorrect.

Perhaps for this reason, the certified caption for IP 61 alerted voters to these exceptions. *See Cross v. Rosenblum*, 359 Or 136 (2016). In *Cross*, the Oregon Supreme Court suggested the following ballot title for IP 61: "Amends Constitution: Prohibits using 'public funds' directly/indirectly for 'abortion,' insurance, health plans covering 'abortion'; certain exceptions," and the Court subsequently certified an almost identical ballot title. Just as the caption for IP 61 recognized the actual major effect of these important exceptions, so too should the caption for IP 1.

This information easily can be conveyed to voters within fifteen words by removing the word "(defined)" following the terms "public funds" and "abortion." It is unnecessary to include the modifier "(defined)" because the use of quotation marks already alerts voters that the terms are defined by the measure. Indeed, the Court suggested a caption for IP 61 that specifically excluded the word "defined." *See Cross*, 359 Or at 142. After the Court referred the ballot title back to the Attorney General, she accepted the Court's suggestion and deleted the word "defined." Additionally, the terms "public funds" and "abortion" have been changed in IP 1 to reflect the common understanding of those terms; thus there is no need to put the terms in quotation marks because the measure does not give the terms special or unusual definitions.

Finally, the phrase "reduces abortion access" should be omitted from the caption because including it leaves insufficient room to identify the significant exceptions of the prohibition. In *Cross*, the Court stated that the Attorney General "could have chosen to include in the caption a more complete explanation of the measure as reducing access to abortions, but the Attorney General did not err in failing to do so." *Cross*, 359 Or at 141. However, "the caption" the Court was referring to had already clearly identified for voters that the abortion funding prohibition had exceptions. It would be a fallacy to take the Court's statement out of context and conclude that the Court would make the same statement regarding a caption that did not identify the exceptions. Moreover, while the Court stated it is was not err to exclude information about "access to abortions," the Court clearly thought information about the exceptions was required because the Court included such language in its suggested caption: "Prohibits using 'public funds' directly/indirectly for 'abortion,' insurance, health plans covering 'abortion'; certain exceptions." Thus, the Court believed the exceptions were subject matters of IP 61 that must be identified in the caption.

We respectfully suggest the following caption:

**Amends Constitution: Prohibits state from spending public funds for abortions  
except when medically necessary, other exceptions**

## **B. RESULT OF “YES” VOTE STATEMENT**

ORS 250.035(2)(b) requires that a ballot title contain a “simple and understandable statement,” no more than 25 words long, explaining what will happen if the measure is approved. The purpose of this portion of the ballot title is to “notify petition signers and voters of the results of enactment that would have the greatest importance to the people of Oregon.” *Novick v. Myers*, 337 Or 568, 574 (2004).

The “yes” statement contains the same deficiencies as the caption. Additionally, the phrase “state may not pay for insurance covering ‘abortion’” is misleading and redundant. Phrased in this manner, it is not clear that abortion coverage would be carved out of insurance plans and that the state would continue to pay for non-abortion services. The phrase is also redundant because the first part of the statement already states that the measure prohibits the state from spending public funds for abortion, and the second phrase essentially repeats that. The only interpretation that avoids redundancy is the interpretation that the state cannot pay for insurance, in addition to not being able to pay for abortions, which is contrary to Section 4. Moreover, Section 4 is simply a clarification that the state may pay for health insurance and does not impose a separate prohibition. To the extent the “yes” statement seeks to mention this clarification, it should do so in a way that states that the stay *may* pay for insurance, not that it “may not pay for insurance”.

We respectfully suggest the following “yes” statement:

**Result of “Yes” Vote:** “Yes” vote amends constitution, prohibits state from spending public funds for abortions except when medically necessary, other exceptions; state may fund insurance excluding abortion coverage.

## **C. RESULT OF “NO” VOTE STATEMENT**

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

The draft “no” statement is incorrect because publicly funded abortions in Oregon are not limited to “when medical professional determines medically necessary.” There is no such law or limitation on state funded abortions. A similar requirement was contained in former OAR 461-14-052(1)(a), but this rule was declared invalid in *Planned Parenthood v. Department of Human Resources*, 297 Or 562, 687 P2d 785 (1984), because it exceeded the statutory authority of the state agency that promulgated the rule.

We suggest the following “no” statement:

**Result of “No” Vote:** “No” vote retains current laws requiring state to spend public funds for elective abortions under public health plans without limit.

#### **D. SUMMARY**

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

In addition to the deficiencies described above, the draft summary inappropriately includes the sentence, “Effect on spending by public entities other than the state is unclear.” This statement is irrelevant and inappropriate because the measure only prohibits, and only seeks to prohibit, the state from spending public money for abortions. The measure does not seek to prohibit any other public entities. Therefore, this sentence unfairly and unnecessarily casts the measure in a negative light because it implies that the measure is ambiguous or ineffective in some way. Also, the quoted definition of “abortion” is incorrect because it omits half of the definition. Finally, identifying the effect of reducing access to abortion is slanted unless it is accompanied by a statement that the measure would also reduce the number of abortions. The summary must be “impartial;” however, only focusing on reduced access is not impartial because it casts the measure in a negative light.

We suggest the following summary:

**Summary:** Amends Constitution. Current law requires state to spend public funds to provide unlimited abortions under public health plans, or under health insurance provided by a public employer. Measure amends constitution to prohibit the state from spending public funds to pay for any abortion except in cases of medical necessity, ectopic pregnancies, or when required by federal law (currently in cases of rape and incest). “Abortion” is defined as “purposeful termination of a clinically diagnosed pregnancy of a woman resulting in the death of the human embryo or fetus.” The state may pay for insurance benefits that do not cover “abortion.” Measure reduces number of abortions and reduces access. Other provisions.

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

August 5, 2016

**VIA EMAIL— [irrlistnotifier.sos@state.or.us](mailto:irrlistnotifier.sos@state.or.us)**

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

**Re: Public Comment on 2018 Initiative Petition 1**

Dear Secretary Atkins:

On behalf of Kimberly McCullough (Legislative Director, ACLU of Oregon), Michele Stranger Hunter (Executive Director, NARAL Pro-Choice Oregon), and Kara Carmosino (Training Manager, APANO), registered Oregon voters, we are providing the following comments on the draft ballot title for 2018 Initiative Petition 1 ("IP 1").

The Secretary of State notified the public of the following draft ballot title July 22, 2016:

**Amends Constitution: Prohibits state from spending "public funds" (defined) for "abortion" (defined); reduces abortion access**

**Result of "Yes" Vote:** "Yes" vote amends constitution, prohibits state spending "public funds" (defined) for "abortion" (defined); state may not pay for insurance covering "abortion"; reduces abortion access; exceptions.

**Result of "No" Vote:** "No" vote retains current law allowing state to spend public funds for abortion or health insurance plans covering abortion when medical professional determines medically necessary.

**Summary:** Amends Constitution. Current law allows abortion to be provided, when determined by medical professional to be medically necessary, under public health plans available to

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qualified and eligible persons, or under health insurance policies obtained through a public employer or other public services. Measure amends constitution to prohibit the state from spending “public funds” (defined) to pay for any “abortion” (defined). The state may not pay for insurance benefits that cover “abortion.” Effect on spending by public entities other than the state is unclear. Measure reduces access to abortion. Measure defines “abortion” as “purposeful termination of a clinically diagnosed pregnancy.” Exceptions for payments required by federal law and for abortion to terminate ectopic pregnancy or to prevent death of pregnant woman; other exceptions. Other provisions.

### COMMENTS ON DRAFT TITLE

#### CAPTION

The draft caption provides:

**Amends Constitution: Prohibits state from spending “public funds” (defined) for “abortion” (defined); reduces abortion access**

ORS 250.035(2)(a) provides that the ballot title caption must contain “not more than 15 words that reasonably identif[y] the subject matter of the state measure.” The caption is the “cornerstone for the other portions of the ballot title.” *Greene v. Kulongoski*, 322 Or 169, 175, 903 P2d 366 (1995). As the “headline” for the ballot title, the caption “provides the context for the reader’s consideration of the other information in the ballot title.” 322 Or at 175. A caption complies substantially with the requirements of ORS 250.035(2)(a) if the caption identifies the subject matter of the proposed measure in terms that will not confuse or mislead potential petition signers and voters. 322 Or at 174-75.

The “subject matter” of a measure, as that term is used in ORS 250.035(2)(a), must be determined with reference to the “significant changes” that would be brought about by the measure. *Phillips v. Myers*, 325 Or 221, 226 (1997). The changes must be evaluated in the context of current law so that the caption does not suggest that the measure proposes changes that are not, in fact, changes, but instead restatements of current law. *See Lavey v. Kroger*, 350 Or 569, 564 (2011).

The caption complies with ORS 250.035(2)(a) except in one respect: the failure to alert voters to the inconsistency between the prohibited actor—the “state” only—and the prohibited funds—funds in the custody of political subdivisions of the state and public officials. Simply alerting voters that the term “public funds” is defined does not alert voters to the potential effect on local

government authority. With two words remaining before reaching the statutory word limit, the Attorney General should be able to add information to address this part of the subject matter.

### **RESULT OF “YES” VOTE**

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

The draft yes statement reads as follows:

**Result of “Yes” Vote:** “Yes” vote amends constitution, prohibits state spending “public funds” (defined) for “abortion” (defined); state may not pay for insurance covering “abortion”; reduces abortion access; exceptions.

The draft yes statement does not comply with ORS 250.035(2)(b) first because the yes statement carries over the problem of the caption.

Second, IP 1 proposes an additional change to Oregon law that is sufficiently important to voters to include in the yes result statement: The absence of an exception to the ban on state spending for abortion for pregnancies caused by rape or incest. Section 3 (1) of IP 1 provides:

Public funds may be spent to pay for an abortion when federal law requires states to provide funding for abortions, such as in circumstances including rape or incest, in which case this Article shall be applied consistent with federal law to the extent the federal requirement is found to be constitutional.

Most voters will believe section 3 (1) to be a reference to the federal Hyde Amendment; the title should ensure voters are not misled by the measure.

This supposed exception is not an exception. Not only does no federal law require a state to provide funding for abortions, but the federal government may not require a state to provide funding for abortion. The federal Hyde Amendment, which has been the law of the United States for 40 years, generally *prohibits* states from spending *federal* funds to provide abortions, then *permits* a state to spend the federal funds to terminate a pregnancy “if the pregnancy is the result of an act of rape or incest[.]”

The exception section 3 (1) purports to provide is even more ephemeral than a typical voter will realize. As a constitutional principle, Congress cannot force states to spend money. That is why Congress enforces laws through threats of loss of funds the federal government would otherwise provide. *See generally South Dakota v. Dole*, 483 US 203, 206–07, 107 S Ct 2793, 97 L Ed 2d 171 (1987). Congress may condition a state's receipt of Medicaid funds on the state's using the funds to permit a woman to terminate pregnancy caused by rape or incest. *See, e.g., Hern v. Beye*, 57 F3d 905 (10<sup>th</sup> Cir), *cert denied*, 516 US 1011, 116 S Ct 569, 133 L Ed 2d 494 (1995). Congress may not, however, require a state to participate in the Medicaid program. *National Federation of Independent Business v. Sebelius*, 567 US \_\_\_, 132 S Ct 2566, 183 L Ed 2d 450 (2012). Thus, there is not and will not be a federal law requiring Oregon to spend money to provide an abortion.

Besides avoiding misleading voters, there is another compelling reason to inform voters that IP 1 presents the question whether to ban state funding for abortions caused by rape or incest: the question is controversial. Whether to ban abortions caused by rape or incest and whether the public should pay for those abortions—*i.e.* whether to have no exceptions to a ban—are subjects of fervent debate around the country. *See, e.g.,* <http://www.rollcall.com/news/policy/house-pushes-abortion-bill-amid-controversy>; <https://nwlc.org/blog/latest-controversy-over-inadequate-rapeincest-exception/>; <http://www.newsworks.org/index.php/local/thats-history/43832-abortion-controversy>; and [http://www.salon.com/2015/06/18/south\\_carolinas\\_dangerous\\_20\\_week\\_abortion\\_ban\\_lawmakers\\_remove\\_exceptions\\_for\\_rape\\_incest/](http://www.salon.com/2015/06/18/south_carolinas_dangerous_20_week_abortion_ban_lawmakers_remove_exceptions_for_rape_incest/)

The yes statement is also not “written so that, to the extent practicable, the language of the two statements is parallel” as required by ORS 250.035 (3). The yes statement does not alert voters that a key result of the measure will be to change the meaning of the term “medically necessary.” First, the term “medically necessary” is defined in statutory law to incorporate the standard in a health benefit plan. ORS 743A.190 (3)(a). By providing a specific definition of “medically necessary” that applies to health insurance paid for even in part with public funds, IP 1 overrides health insurers’ definitions of “medically necessary.”

Next, and more importantly, the Oregon courts define “medically necessary” in the context of an abortion to mean when an abortion “is required, in a physician's opinion, because specified medical problems may be caused or aggravated by the pregnancy endangering the health of the woman.” *Planned Parenthood Ass'n. v. Department of Human Resources*, 63 Or App 41, 48, 663 P2d 1247 (1983), *aff'd on other grounds*, 297 Or 562, 687 P2d 785 (1984).

An avowed purpose of IP 1 is to narrow the courts’ concept of medical necessity. A specific objection to the courts’ concept of medical necessity is that an abortion can be available to protect the “health of the woman,” a standard the proponents of IP 1 consider to be too permissive. [http://www.oregonlifeunited.org/what\\_is\\_medically\\_necessary](http://www.oregonlifeunited.org/what_is_medically_necessary). That is why IP 1

provides its own definition of “medically necessary” that limits publicly funded abortion to a woman “in danger of death”:

[A] condition in which a licensed physician determines that the pregnant woman suffers from a physical disorder, physical injury, or physical illness that would place her in danger of death unless an abortion is performed, including a life-endangering physical condition caused by or arising from the pregnancy itself.

IP 1 also narrows the courts’ definition of the condition that may serve as a basis for an abortion. Under the current standard, an abortion can be justified by any “specified medical problem[,]” which would include a mental health crisis. IP 1 limits grounds for an abortion to “physical” conditions.

Without this information in the yes statement, voters will not know about this significant result.

Finally, besides for abortions that are “medically necessary,” and the phantom exception for victims of rape or incest, IP 1 excepts only the termination of an ectopic pregnancy—a pregnancy so different medically from and rare compared to the common understanding of pregnancy that to describe the measure as having “exceptions” without more is to mislead voters into believing that the measure covers far fewer abortions than the measure does.

### **RESULT OF “NO” VOTE**

The Attorney General issued the following draft no statement:

**Result of “No” Vote:** “No” vote retains current law allowing state to spend public funds for abortion or health insurance plans covering abortion when medical professional determines medically necessary.

ORS 250.035(2)(c) requires the no statement to “us[e] the same terms” as the yes statement “to the extent practical.” ORS 250.035(3) reinforces the requirement by requiring that the no and yes statements “be written so that, to the extent practicable, the language of the two statements is parallel.” However, the no statement should not simply rephrase, in the negative, the yes statement. See *Terhune v. Myers*, 342 Or 136, 143, 149 P3d 1139 (2006). The no statement should endeavor to describe the current state of the law.

The draft no statement does not comply with ORS 250.035(2)(c) because the statement refers only to “state” spending of “public funds.” As explained in the commenters’ separate comments on the IP 1’s failure to comply with constitutional procedural requirements, the Constitution currently confers plenary power to local governments over the use of those local governments’ funds. Because IP 1’s unusual definition of “public funds” could be read to override that local

authority, the no statement should refer to the retention of spending authority by local governments.

### SUMMARY

The Attorney General issued the following draft summary:

**Summary:** Amends Constitution. Current law allows abortion to be provided, when determined by medical professional to be medically necessary, under public health plans available to qualified and eligible persons, or under health insurance policies obtained through a public employer or other public services. Measure amends constitution to prohibit the state from spending “public funds” (defined) to pay for any” abortion” (defined). The state may not pay for insurance benefits that cover “abortion.” Effect on spending by public entities other than the state is unclear. Measure reduces access to abortion. Measure defines “abortion” as “purposeful termination of a clinically diagnosed pregnancy.” Exceptions for payments required by federal law and for abortion to terminate ectopic pregnancy or to prevent death of pregnant woman; other exceptions. Other provisions.

The summary carries forward the problems of the previous portions of the ballot title and raises other problems under ORS 250.035(2)(d) as set forth below.

Like the caption and yes statement, the summary does not alert voters that IP 1 has the effect of banning abortions in cases of rape or incest; instead, the summary states the measure’s fiction that federal law could require payments for abortion.

At most, IP 1 purports to provide three exceptions to the ban on state funding for abortions, the three exceptions listed in the clause that reads: “Exceptions for payments required by federal law and for abortion to terminate ectopic pregnancy or to prevent death of pregnant woman[.]” The following clause “other exceptions” is, therefore, inaccurate.

Although the summary identifies “prevent[ing] death” of a woman as a reason that allows the state to pay for an abortion, the summary does not link that statement to the current law IP 1 seeks to change: the scope of the concept of medical necessity. Without that correlation, voters cannot appreciate the significance of the change IP 1 makes for a woman whose health a pregnancy endangers.

The statement “Effect on spending by public entities other than the state is unclear” is insufficient notice to voters of the lack of clarity of the scope of the measure, *i.e.*, the breadth of how the measure could be interpreted. In other words, what reasonably could the measure mean

for a local government? We appreciate that the Attorney General is not to speculate on the meaning of a proposed measure; however, voters need some discussion of the lack of clarity or they will not know in what respect the measure is unclear. At first blush, it is not readily apparent how the state could spend funds in the custody of, for example, a county (to be prohibited from doing so). Does the measure mean the state may not transfer funds to a county if the state knows the county will spend to provide an abortion? Does the measure mean a local government may not spend money for an abortion with funds that originated with the state? The Attorney General need not answer those questions, but voters need to know what the questions are.

There are several definitions of “political subdivision” and “public official” in current law, with different entities and individuals covered by the scope of the definition. *Compare* ORS 271.005 (3) (any local government with the power to tax) with ORS 279C.800 (5) (treating political subdivision of the state as a state entity distinct from a local government) and ORS 171.725 (11) (includes members-elect of public agencies) with ORS 244.020 (15) (does not include members-elect but, unlike ORS 171.725, includes “First Partner” and “appointed officials”).

As a matter of grammar, the measure is also not clear whether the “public official” who may have custody of funds is a state official or any public official. The measure modifies “political subdivisions” with the possessive “its” to refer to political subdivisions of the state; however, the measure does not include a limiting possessive before “public officials.” This ambiguity ought to be made clear to voters.

The measure uses the term “health insurance” without defining the term, an important omission because “health insurance” is a concept defined in statutory law more narrowly than the measure may mean. Health insurance is only one means through which the state may spend money for an abortion. When intending to express the range of means through which an abortion could be paid, the legislative term is “health care coverage,” of which “health insurance” is a subset. ORS 657.885.

At a minimum, the title should alert voters that these undefined terms are undefined and, therefore, may carry meanings different than voters might expect from current law.

With respect to the definitions the measure does provide: the title should alert voters that the definitions may have an unexpected elasticity. A defined term does not carry the stated definition if “the context requires otherwise.” The Office of Legislative Counsel warns that: “[s]ome drafters drop that phrase because it offers a wider possibility of meaning than they wish to allow.” Bill Drafting Manual, p. 7.3 (Leg Counsel 2014).

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Thank you for your consideration.

Very truly yours,

GAC/jan

August 5, 2016

**VIA EMAIL– [irrlistnotifier.sos@state.or.us](mailto:irrlistnotifier.sos@state.or.us)**

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

Re: Public Comment on 2018 Initiative Petition 1 – Procedural Requirement

Dear Secretary Atkins:

On behalf of Kimberly McCullough (Legislative Director, ACLU of Oregon), Michele Stranger Hunter (Executive Director, NARAL Pro-Choice Oregon), and Kara Carmosino (Training Manager, APANO), registered Oregon voters, we are providing the following statement on whether 2018 Initiative Petition #1 (“IP 1”) complies with procedural constitutional requirements for submission to voters. It does not.

We appreciate the Secretary of State permitted the circulation of a similar measure, 2016 Initiative Petition 61 (“IP 61”); however, despite IP 1’s being shorter than IP 61, IP 1 proposes more changes than IP 61—additional changes that are not closely related to the central goal of banning state funding for abortion services.

The Secretary of State should not permit the circulation of IP 1 because the measure proposes more than one amendment in violation of Article XVII, section 1. *See Armatta v. Kitzhaber*, 327 Or 250, 959 P2d 49 (1998).

IP 1 proposes multiple substantive changes to the Constitution that are not closely related. The changes represent distinct policy choices that voters would want to vote on separately. IP 1 does not propose only a single “addition to \* \* \* [without] affect[ing] any existing provision in the Oregon Constitution.” *Lincoln Interagency Narcotics Team v. Kitzhaber*, 341 Or 496, 509, 145 P3d 151 (2006). Instead, the proposed measure adds an entire new Article to the Constitution that, despite its separate placement, alters rights across the Constitution. IP 1 makes several different and unrelated substantive changes to the Constitution and effectively alters multiple constitutional articles and sections within articles.

To determine whether a proposed constitutional amendment violates the separate-vote requirement of Article XVII, section 1, “the proper inquiry is to determine whether, if

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adopted, the proposal would make two or more changes to the constitution that are substantive and that are not closely related.” *Armatta*, 327 Or at 277.

A change is “substantive” if the change alters the scope of existing constitutional provisions. *Meyer v. Bradbury*, 341 Or 288, 298, 142 P3d 1031 (2006). IP 1 proposes to add an entire new Article to the Constitution and to change the scope of multiple constitutional provisions. By eliminating certain women’s rights to obtain abortions and different government’s authorities to provide abortions and related services, IP 1 changes at least the following constitutional provisions in the following substantive ways:

- Overriding Article I, section 1 by eliminating the right of some women to obtain an abortion.

Article I, section 1 provides:

We declare that all men, when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.

This section preserves from government interference “the area of human procreation.” *Sterling v. Cupp*, 44 Or App 755, 761, 607 P2d 206 (1980), *modified*, 290 Or 611, 615, 625 P2d 123 (1981).<sup>1</sup>

- Overriding Article I, section 20, which requires the governments to provide medically necessary abortions to women who cannot afford them, by prohibiting the State from providing the abortions. *Planned Parenthood v. Dept. Human Services*, 63 Or App 41, 63, 663 P2d 1247 (1983), *aff’d on other grounds*, 297 Or 562, 687 P2d 785 (1984).

The measure goes even further than 2016 IP 61 to ban public funding for abortions for women who have been victims of crime (rape or incest).

- Overriding Article I, section 21, which, in pertinent part, prohibits the adoption of laws “the taking effect of which shall be made to depend upon any authority,” such as a decision by another government. Section 3 of IP 1 creates an exception

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<sup>1</sup> In *Committee to Defend Reproductive Rights v. Myers*, 172 Cal Rptr 866, 625 P2d 779, 29 Cal 3d 252 (1981), the court held that budgetary limitations that had the effect of excluding funds for payment of abortions were unconstitutional intrusions on the fundamental rights of California’s analogue to Article I, section 1.

to Article I, section 21 by authorizing a law that spends public funds to terminate a pregnancy caused by rape or incest to become effective when a court finds a federal law requiring the expenditure is constitutional.

- Overriding Article I, section 21 in a second way — by excepting from the protection of the Contracts Clause agreements between health insurers and insureds. IP1 requires a specific definition of “medically necessary” in contracts of insurance between health insurers and public employees and other individuals whose insurance the State provides or subsidizes regardless of whether an existing contract provides a different definition. This is the kind of change in a contract that would otherwise be unconstitutional under *Moro v. State*, 357 Or 167, 196, 351 P3d 1 (2015).
- Overriding Article I, section 46, which guarantees women equality under the law, including to publicly funded abortions, by prohibiting the State from providing the abortions.

Although the courts have not had an opportunity to construe the scope of the new Equal Rights Amendment, some opponents of the amendment based their opposition on the amendment’s protection of public funding for abortions: “the measure may be construed by future Oregon courts to mandate the State to pay for abortions.” Sen. Doug Whitsett, “Vote NO on Ballot Measure 89,” Oregon Catalyst (Oct. 12, 2014), <http://oregoncatalyst.com/28721-vote-ballot-measure-89.html>.<sup>2</sup> The concern about the scope of Article I, section 46 was occasioned by the New Mexico Supreme Court’s interpreting that state’s substantially identical Equal Rights Amendment to require governments to pay for abortions. *New Mexico Right to Choose v. Johnson*, 126 NM 788, 975 P2d 841 (1998).

- Overriding Article IV, section 1(1), which grants plenary state legislative power to the Legislative Assembly, by prohibiting the Legislative Assembly from providing funding for abortions. *Towers v. Myers*, 341 Or 357, 363, 142 P3d 1040 (2006) (“legislature has plenary power to enact statutes unless limited by the state constitution”; internal citation omitted).
- Overriding Article IV, section 1(2), which grants plenary state legislative power to the people through the initiative, by prohibiting the people from providing funding for abortions. *Smejkal v. State ex rel DAS*, 239 Or App 553, 363, 561, 246 P3d 1140 (2010) (initiative measure represented exercise of plenary power).

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<sup>2</sup> In the same publication, the argument was made that Article I, section 46 protects rights Article I, section 20 does not: “the proposed addition of sex as a specific class of citizen, in the proposed new Section 46, may open the ‘equality’ determination to sex-specific conditions such as pregnancy.”

- Overriding Article IV, section 1(5), which grants the power of the initiative, without substantive limitation, to the electors of a city, by including city funds among the public funds the State may not spend.
- Overriding Article IV, section 1(5), which grants the power of the initiative, without substantive limitation, to the electors of a district, by prohibiting the electors of a district from providing funding for abortions, by including district funds among the public funds the State may not spend.
- Overriding Article VI, section 10, which grants counties and the electors of counties the power to make spending decisions for county funds, by including county funds among the public funds the State may not spend. *See GTE Northwest v. Oregon PUC*, 179 Or App 46, 52, 39 P3d 201 (2002) (counties have “plenary legislative powers” over matters of county concern).
- Overriding Article XI, section 2, which grants plenary power to cities in matters of municipal concern, by including local government funds among the public funds the State may not spend. *See Dodds v. City of West Linn*, 222 Or App 129, 134, 193 P3d 24 (2008) (“within constitutional limits, the city’s power is plenary”).
- Overriding Article XI, section 14, which grants a metropolitan service district power of matters of metropolitan concern, by including metropolitan service district funds among the public funds the State may not spend.
- Overriding Article XV, section 11, which tasks the Oregon Home Care Commission with “[e]nsuring that high quality, comprehensive home care services are provided to \* \* \* people with disabilities who receive personal care services in their homes[.]” by prohibiting the Commission from providing funding for abortions or abortion services to individuals with disabilities.

The test for whether substantive changes are closely related involves an evaluation of whether the measure proposes to affect “separate constitutional rights, granted to different groups of persons.” *Armatta*, 327 Or at 283. A measure that proposes to limit both the rights of individuals and the power of governments proposes changes that are not closely related. *E.g.*, *League of Oregon Cities v. State of Oregon*, 334 Or 645, 673-74, 56 P3d 892 (2002) (invalidating measure that limited individuals’ rights to free expression and government’s authority to regulate land uses without paying compensation). Likewise, a measure that proposes to limit the power of different governments proposes changes that are not closely related. *E.g.*, *Lehman v. Bradbury*, 333 Or 231, 251, 37 P3d 989 (2002) (measure could not impose term limits on officials of state and federal governments).

IP 1 proposes far more changes affecting far more individuals and governments than did the measures at issue in *League of Oregon Cities* or *Lehman*. IP 1 affects a woman's right to procreative privacy under Article I, section 1. IP 1 affects the right of a woman of modest means to obtain the rights to equal privileges guaranteed by Article I, section 20. IP 1 affects women's rights to equal treatment under Article I, section 46 by eliminating coverage from public employee health plans. IP 1 affects the rights of the legislative bodies and voters of most of the State's different forms of governments to decide to provide abortions to women under the conditions the governments consider appropriate under the circumstances. IP 1 affects the ability of the Oregon Home Care Commission to provide care related to abortions to persons with disabilities. "[W]hen the affected constitutional provisions confer separate rights on different groups of people, that is a strong indication that those provisions are not 'related' for purposes of the separate-vote requirement." *Lehman*, 333 Or at 246 n 9.

IP 1 carves out different exceptions from laws otherwise prohibited by Article I, section 21. Under Article I, section 21, the legislative power of this State cannot be used to delegate to another decision-maker, such as a private entity, another government, or a future group of lawmakers, whether a measure is to become law. *See, e.g., General Electric Co. v. Wahle*, 207 Or 302, 330, 296 P2d 635 (1956) (Legislative Assembly's adoption of Fair Trade Act violated Article I, section 21, by permitting covered businesses to "say whether or not there shall be a law controlling [a] price"). Whether a measure becomes law is the sole province of the present-day lawmakers—the people or their representatives—who adopt the measure. *See Marr v. Fisher*, 182 Or 383, 388, 187 P2d 966 (1947) ("It is the constitutional function of the legislature to declare whether there is to be a law"). Section 3 of IP 1 creates an exception to this prohibition by allowing a law—specifically, a law providing funding to terminate a pregnancy caused by rape or incest—to become effective if a court (presumably, federal) upholds a federal law that requires the state to provide the funding.

In addition, IP 1 would override the protection in Article I, section 21 against the impairment of contracts by banning some State payments for health insurance even though the prohibition would interfere with valid and existing contracts of insurance between insurers and insureds and valid and existing public employment agreements.

That IP 1 may have a unifying goal—stopping public funding of abortions—does not matter for purposes of compliance with Article XVII, section 1. As the Supreme Court has cautioned, a measure does not comply with Article XVII, section 1 "simply [by having] a unifying thread [or] a common theme, thought, or purpose[.]" *Meyer*, 341 Or at 296–97. IP 1 does not comply with Article XVII, section 1, because IP 1 proposes to amend too many existing provisions of the Constitution. A voter who might favor limiting the State's authority to pay for abortions might feel differently about payment by the voter's local government—and vice versa. A voter who might favor limiting funding of abortion services might not want to limit those services to individuals with disabilities—and vice versa. A voter who might favor ending the State's authority to pay for abortions might not want to make the effectiveness of an exception to the

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prohibition dependent upon decisions of the federal government. Article XVII, section 1 exists to protect voters in this very situation.

Thank you for your consideration.

Very truly yours,

~ Gregory A. Chaimov  
On behalf of ACLU Foundation of Oregon

GAC/jan



**DEPARTMENT OF JUSTICE**  
APPELLATE DIVISION

August 22, 2016

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

Re: Proposed Initiative Petition — Amends Constitution: Prohibits spending “Public Funds” (Defined) Directly/Indirectly for “Abortion” (Defined); Exceptions; Reduces Abortion Access  
DOJ File #BT-01-16; Elections Division #2018-001

Dear Mr. Williams:

We have reviewed the comments submitted on the draft ballot title for the above-referenced initiative petition. We received comments from the following persons:

- Jeff Jimerson, Marilyn Shannon and Suzanne Belatti, chief petitioners (through counsel Jill Gibson)
- Louis B. Dvorak
- Michael Rossetti
- Rebekah Millard
- Robin Lee
- Janice Dysinger
- Alicia Marks
- Kimberly McCullough, Michele Stranger Hunter, and Kara Carmosino (through counsel Gregory A. Chaimov)
- Chantal Downing (through counsel Katherine McDowell)
- Stacy Cross and Lisa Gardner (through counsel Margaret S. Olney).

This letter summarizes the comments we received, our responses to those comments, and the reasons we agreed or declined to make some of the suggested 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.

**NOTE:** Procedural constitutional requirements: In a separate letter, Mr. Chaimov raises the issue of whether the proposed measure violates Article XVII, section 1, of the Oregon Constitution, by proposing substantive amendments to provisions of the constitution that are not closely related. That issue is beyond the scope of the ballot title drafting process. *See* OAR 1650-14-0028 (providing for separate review process by Secretary of State to determine whether

measure complies with constitutional procedural requirements for proposed initiative measures). Accordingly, we do not address it here.

The enclosed certified ballot title reflects our changes to the draft ballot title's caption, result statements, and summary.

## **A. The Caption**

The ballot title must include “[a] caption of not more than 15 words that reasonably identifies the subject matter of the state measure.” ORS 250.035(2)(a). The “subject matter” is “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).” *Lavey v. Kroger*, 350 Or 559, 563, 258 P3d 1194 (2011). To identify the “actual major effect” of a measure, the Attorney General must consider the “changes that the proposed measure would enact in the context of existing law.” *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011). The draft caption reads as follows:

**Amends Constitution: Prohibits state from spending “public funds”  
(defined) for “abortion” (defined); reduces abortion access**

Commenters raised several issues with regard to the caption, which are described and responded to separately, below.

### **1. Use of the word “state”**

Commenters McCullough, Hunter and Carmosino (represented by Chaimov), Cross and Gardner (represented by Olney) and Downing (represented by McDowell) take issue with our use of the word “state” in the draft caption. In their view, the measure’s effects are not limited to actions by the state because “public funds” may include funds maintained by other public bodies and does not limit the spending prohibition to “state funds.” As defined in the measure, “public funds” includes “funds and moneys under the control or in the custody of the State of Oregon or any of its political subdivisions or public officials.”

Other commenters take the opposite view. Commenter Jimerson et al. states that “the measure only prohibits, and only seeks to prohibit, the state from spending public money for abortions.” Gibson letter at 5. Commenter Lee similarly states that the measure “clearly applies only to the State of Oregon.” Lee letter at 2. But we believe that the measure could be interpreted to affect the ability of *any* public entity, not just “the state,” to spend public funds for abortions, based on the measure’s definition of public funds. Therefore, we have removed the reference to “the state” in the caption, even though the measure itself uses the term. Doing so reflects the possibly broad scope of the measure and communicates the ambiguity that is inherent in the measure, as written.

### **2. No references to “indirect” spending, health insurance**

Commenters Cross and Gardner (represented by Olney) and Downing (represented by McDowell) also contend that the caption should include a reference to the effect of the measure on *indirect* spending of public funds for abortion or for health insurance. We agree that voters should be informed of the prohibition on the indirect use of public funds in providing abortion,

so we have added the phrase “direct/indirect” to the caption. The issue of insurance is addressed in the Yes statement.

### **3. Under-inclusive language**

Commenters Jimerson, Shannon and Belatti (represented by Gibson) contend that the caption is inaccurate because it implies that “*all* funding for *all* abortions would be prohibited” and does not acknowledge exceptions to the spending prohibition. (Gibson letter at 2). Commenter Marks believes the phrase “with exceptions” must be added to the caption.

We believe our revisions to the draft caption adequately address this criticism by adding a reference to exceptions.

### **4. Effect on access to abortion**

Commenters Jimerson, *et al.*, as well as individuals Dvorak, Rossetti, Millard, Lee, and Dysinger, all object to the phrase “reduces abortion access” in the caption. Individual commenters Dvorak, Lee, Millard and Dysinger contend that that phrase is false because abortions will still be available to anyone who can pay for one. For example, Dvorak contends that “[a]nyone who wants an abortion *and can pay for it* can still get it.” Dvorak letter at 2 (emphasis added).

We disagree that the challenged phrase is false. By making abortion accessible only to women who can pay for it, the measure reduces or eliminates access to poor women. By qualifying their arguments to discount a woman’s ability to pay, commenters are acknowledging that a reduction in state funding will have the effect of reducing access to abortion. Furthermore, as the petitioners themselves acknowledge, the very purpose of the measure is to reduce the number of abortions performed in Oregon. *See* Gibson letter at 1 (noting that without state funding, there would have been “1,257 additional births” in 2011 and that the measure was filed to “protect those lives”).

In any event, the question of whether a ban on public abortion funding could be described as reducing access to abortion was presented in a recent ballot title, which the Supreme Court addressed in *Cross v. Rosenblum*, 359 Or 136 (2016). The court explained that, in identifying the subject matter of Measure 61 (2016), the certified caption properly stated that it “preclude[d] the expenditure of public funds for abortion” and could have stated, but was not required to state, that the measure “reduc[ed] access to abortion.” *Id.* at 141. Because the use of that language was approved (though not required) previously for a similar measure, we believe it remains appropriate here.

### **5. Use of quotation marks and “defined” for two terms.**

Commenters Jimerson, *et al.*, as well as individual commenters Dvorak, Rossetti, Millard, Lee, Dysinger and Marks, all advocate removing the quotation marks and the designation “(defined)” after the terms “abortion” and “public funds” in the caption. We reject both suggestions. In our view, voters need to be informed that both terms are specifically defined in the measure and thus may not have the meaning they would otherwise assume. The



use of quotation marks, coupled with “defined” in parentheses, previously has been approved for use in ballot titles to alert the voters to precisely this circumstance.

Taking all the comments and our conclusions into consideration, we have amended the caption. The certified caption reads:

**Amends Constitution: Prohibits spending “public funds” (defined) directly/indirectly for “abortion” (defined); exceptions; reduces abortion access**

**B. The “Yes” result statement**

A 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 250.035(2)(b). The “Yes” vote result statement should identify “the most significant and immediate” effects of the measure. *Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). The draft “Yes” vote result statement provides:

**Result of “Yes” Vote:** “Yes” vote amends constitution, prohibits state from spending “public funds” (defined) for “abortion” (defined); state may not pay for insurance covering “abortion”; reduces abortion access; exceptions.

The comments on the “Yes” statement and our responses to those comments are described below as to each issue raised.

**1. Use of “state”**

Commenters Cross and Gardner and commenters McCullough, Hunter and Carmosino make the same arguments about “the state” with regard to the “Yes” statement as for the caption (above). Our response is the same. Therefore, the state is no longer a subject of the revised “Yes” statement.

**2. No references to “indirect” spending, health insurance**

Commenters Cross and Gardner contend that the “Yes” statement should include a reference to the effect of the measure on *indirect* spending of public funds, as they do for the caption (above). Our response is the same in this context. Therefore, we have added the phrase “direct/indirect” to the “Yes” statement.

**3. Inadequate or absent explanations regarding exceptions**

Several commenters are not satisfied with the “Yes” statement’s description of exceptions, or lack thereof, to the spending prohibition. Commenter Downing contends that the statement should note the absence of exceptions for post-conception contraceptives or for privately funded abortions at public facilities. Commenters McCullough *et al.* note that the measure does not include an exception for funding abortions resulting from rape or incest and believes that voters should be so informed. McCullough *et al.* also believe that voters should be

told that the measure would adopt a narrow meaning of “medically necessary” in allowing an exception to save the life of the mother. Commenters Lee and Rossetti suggest adding a phrase to the yes statement regarding the availability of an exception for medical necessity, and commenters Marks and Dysinger simply want the statement to acknowledge the existence of exceptions.

In response, we initially note that the 25-word limit for a “Yes” statement does not allow the detailed discussion of exceptions that the commenters collectively advocate. In addition, the exceptions are not easily explained. Section 1 of the proposed measure provides exceptions for “medically necessary” abortions and for those “required by federal law,” section 2 provides a lengthy definition of “medically necessary,” and section 3 provides additional information about the federal law exception, as well as an exception for a “clinically diagnosed ectopic pregnancy.” When everything is viewed together, it appears to us that the exceptions provided in the measure are fairly narrow or at least are unclear. And although we agree that some exceptions should be explained in more detail, we do not have the same concern as commenter Downing about the absence of an exception for privately funded abortions at public facilities. Voters will already know that there are very few exceptions to the prohibition and do not need to be told of other exceptions that do not exist, unless they are significant. We don’t believe this one is. Nor do we believe additional attention to contraceptives is needed because the measure’s definition of abortion makes is sufficiently clear when the use of contraceptives would constitute abortion—*i.e.*, when they are prescribed and used for the purpose of terminating a clinically diagnosed pregnancy.

We have chosen to highlight the issue of exceptions by including the phrase “limited exceptions” in the “Yes” statement and providing more detail in the summary. We also agree with McCullough *et al.* that the measure’s reference to exceptions “required” under federal law does not necessarily mean that a rape/incest exception will be available if this measure is passed. Therefore, we note (in the summary) that no such exception is provided by the measure.

#### **4. Reference to insurance**

Commenters Jimerson *et al.* criticize the draft “yes” statement on the grounds that its reference to health insurance is “misleading and redundant.” They assert that the wording does not make clear that “abortion would be carved out of insurance plans and that the state would continue to pay for non-abortion services.” With respect, however, that is not what the measure says. It says, in Section 4: “Nothing in this Article shall be construed as prohibiting the expenditure of public funds to pay for health insurance as long as such funds are not spent to pay or reimburse for the costs of performing abortions.” It is not clear how that would work; nor is it clear whether “such funds” refers to state funds directly or to health insurance funds accumulated from policy premiums paid by the state. Jimerson *et al.* also advocate that the effect on insurance be worded as insurance the state *may* purchase, rather than insurance the state *may not* purchase, but doing so is both awkward and confusing. The measure is focused on prohibition, and it makes sense to us that we use the same focus in describing its effect on insurance.

Commenter Millard also objects to the reference to insurance in the “yes” statement, contending that it is “misleading to specifically delineate insurance” when the measure already prohibits state funding. However, we believe that the average voter would not necessarily

understand that the use of state funds to purchase employee benefits such as health insurance also would be included in the measure's prohibition. Therefore, we believe we are obliged to so inform the voters of that significant change that would be enacted if the measure passes.

## **5. Reference to abortion access**

Commenter Dvorak, Millard and Dysinger object to the same statement regarding reduced access to abortion, and our response is the same.

The certified "yes" result statement reads:

**Result of "Yes" Vote:** "Yes" vote amends constitution, prohibits spending "public funds" (defined) directly/indirectly for any "abortion" (defined), health plans/insurance covering "abortion"; limited exceptions; reduces abortion access.

## **C. The "No" result statement**

A 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." ORS 250.035(2)(b). The "No" vote result statement "should 'address[] the substance of current law *on the subject matter of the proposed measure*' and 'summarize [ ] the current law accurately.'" *McCann v. Rosenblum*, 354 Or 701, 707, 320 P3d 548 (2014) (quoting *Novick/Crew*, 337 Or at 577) (emphasis added in *Novick/Crew*). The draft "No" vote result statement provides:

**Result of "No" Vote:** "No" vote retains current law allowing state to spend public funds for abortion or health insurance plans covering abortion when medical professional determines medically necessary.

The comments on the "No" statement and our responses to those comments are described below as to each issue raised.

### **1. Use of "state"**

Commenters Cross *et al.* and McCullough *et al.* repeat their objection to using the term "the state," as they do for the caption. Our response is the same as for the caption. Therefore, the amended "No" statement does not use that term.

### **2. Description of current law and "medically necessary"**

Commenters McCullough, Hunter and Carmosino state that, in addition to issues noted in other portions of the ballot title, the "No" statement fails to accurately convey the current state of the law, particularly with regard to how the phrase "medically necessary" is currently applied and who can make that determination. Commenters Jimerson *et al.*, Dvorak, Lee, Rossetti, Millard, and Marks also object to the term "medically necessary" in the "No" statement, which they contend presents an inaccurate interpretation of current law. Both criticisms are based on the same phrase—"medically necessary"—which has one meaning in current law and another

meaning in the proposed measure. To avoid confusion, we have replaced that phrase with “approved by a medical professional” to describe current law. We believe that will adequately notify voters that such approval is currently required for using state funds in providing abortions.

Consistent with our modifications to the caption and “Yes” result statement, we modified the “No” result statement to address concerns about various other terms and phrases. On our own account, we also removed the word “allowing” because there is, in fact, no law that specifically authorizes state spending on abortion. Instead, the law allows spending on health care, and there are no current restrictions on that spending which are specific to abortion. We think the amended “No” statement is more accurate (although admittedly more wordy) on that point.

The certified “No” result statement reads:

**Result of “No” Vote:** “No” vote retains current law that places no restrictions on spending public funds for abortion or health plans covering abortion when approved by medical professional.

#### **D. The summary**

A ballot title must include “[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” ORS 250.035(2)(d). “The purpose of a ballot title’s summary is to give voters enough information to understand what will happen if the initiative is adopted.” *McCann*, 354 Or at 708. The draft summary provides:

**Summary:** Amends Constitution. Current law allows abortion to be provided, when determined by medical professional to be medically necessary, under public health plans available to qualified and eligible persons, or under health insurance policies obtained through a public employer or other public service. Measure amends constitution to prohibit the state from spending “public funds” (defined) to pay for any “abortion” (defined). The state may not pay for insurance benefits that cover “abortion.” Effect on spending by public entities other than the state is unclear. Measure reduces access to abortion. Measure defines “abortion” as “purposeful termination of a clinically diagnosed pregnancy.” Exceptions for payments required by federal law and for abortion to terminate ectopic pregnancy or to prevent death of pregnant woman; other exceptions. Other provisions.

The comments on the summary and our responses to those comments are described below as to each issue raised.

##### **1. Treatment of “exceptions”**

Most of the commenters’ suggestions about the summary involve exceptions to the measure’s otherwise broad prohibition on the public funding of abortion. The measure excepts only ectopic pregnancies, those “required” to be funded under federal law, and abortions that are “medically necessary.” The measure does not mention any exception for pregnancies that result

from rape or incest. However, the exception for spending that may be “required” by federal law does incorporate that concept. *See* Section (3) of the measure (spending public funds will be allowed “when federal law requires states to provide funding for abortions, such as in circumstances including rape or incest”). But federal law only *allows*, rather than requires, state spending for such abortions, and the extent to which it does so is subject to agency rule changes. The reference to federal law may be confusing to voters, so we have clarified that the measure does not include a separate exception for pregnancies that result from rape or incest.

## **2. Uncertainty in measure**

Commenters Jimerson *et al.* object to any implication that the measure is “ambiguous or ineffective” with regard to its effect on public entities other than the state. Gibson letter at 5. But as explained above, with regard to the use of “state” in the caption, we disagree that the measure is clear. To the extent the summary reflects any ambiguity in the measure, we believe it is accurate.

## **3. Reduction in abortion access**

In addition to the comments made with regard to the phrase “reduces abortion access” in other parts of the ballot title, commenters Jimerson *et al.* also contend that the phrase introduces bias into the measure and that balance can be restored by also noting that the measure will reduce the number of abortions. We do not believe it is necessary to insert those additional words because the existing language already conveys that reduction.

## **4. Incomplete definition of abortion**

Commenters Jimerson *et al.* object to the summary’s inclusion of an excerpt from the measure’s definition of “abortion.” Gibson letter at 5. The draft summary includes the part of the definition that states “purposeful termination of a clinically diagnosed pregnancy” but omits the remaining part—*i.e.*, “of a woman resulting in the death of the human embryo or fetus.” In the commenters’ view, omitting the second half of the definition makes the use of the first half “incorrect.” We agree that the definition is incomplete, but disagree that it is incorrect. The portion that is included in the summary accurately tells voters what they need to know about how the word “abortion” is defined in the measure in order to make an informed decision about the measure. The omitted language does not add anything that would materially affect a voter’s understanding. However, in an effort to not mislead voters that the quoted material is the complete definition in the measure, we have added language to indicate that the quotation is only partial.

The commenters made various other suggestions for the summary that parallel suggestions that we declined to adopt for the caption and result statements. For the same reasons, our response to those suggestions with respect to the summary is the same as for the other portions of the ballot title.

The certified summary reads:

**Summary:** Amends constitution. Under current law, abortions may be obtained, when approved by medical professional, under state-funded health plans or under health insurance procured by or through a public employer or other public service. Measure amends constitution to prohibit spending “public funds” (defined) for “abortion” (defined) or health benefit plans that cover “abortion.” Measure defines “abortion,” in part, as “purposeful termination of a clinically diagnosed pregnancy.” Exception for ectopic pregnancy and for pregnant woman in danger of death due to her physical condition. Exception for spending required by federal law, if requirement is “found to be constitutional.” No exception for pregnancy resulting from rape or incest. Effect on spending by public entities other than the state is unclear. Measure reduces access to abortion. Other provisions.

## **F. Conclusion**

Upon further review of the proposed measure, and in response to the comments we received, we have modified the draft ballot title’s caption, result statements, and summary. We certify the attached ballot title under ORS 250.067(2).

Sincerely,

/s/ Karla H. Ferrall

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Karla H. Ferrall  
Senior Assistant Attorney General  
karla.h.ferrall@doj.state.or.us

KHA:aft/7637673

Enclosure

Jeff Jimerson  
P.O. Box 1620  
Corvallis, OR 97339

Gregory A. Chaimov  
Davis Wright Tremaine LLP  
1300 SW 5<sup>th</sup> Ave., Ste. 2400  
Portland, OR 97201

Louis B. Dvorak  
64680 Horseman Ln.  
Bend, OR 97701

Katherine A. McDowell  
McDowell Rackner & Gibson PC  
419 SW 11<sup>th</sup> Ave., Ste. 400  
Portland, OR 97205

Michael Rossetti  
16002 SW Red Clover Ln.  
Sherwood, OR 97140

Marylin Shannon  
7955 Portland Rd. NE  
Brooks, OR 97305

Jill Odell Gibson  
Gibson Law Firm LLC  
121 SW Morrison St.  
Portland, OR 97204

Robin Lee  
415 Sunrise Ave.  
Medford, OR 97504

Rebekah Millard  
1390 Walnut Rd.  
Springfield, OR 97477

Suzanne Belatti  
15413 NE Andra Pl.  
Portland, OR 97230

Margaret S. Olney  
Bennett Hartman Morris  
210 SW Morrison St., Ste. 500  
Portland, OR 97204

Alicia Marks  
6290 Zena Rd. NW  
Salem, OR 97304

Janice Dysinger  
32235 SE Pipeline Rd.  
Gresham, OR 97080

## **BALLOT TITLE**

**Amends Constitution: Prohibits spending “public funds” (defined) directly/indirectly for “abortion” (defined); exceptions; reduces abortion access**

**Result of “Yes” Vote:** “Yes” vote amends constitution, prohibits spending “public funds” (defined) directly/indirectly for any “abortion” (defined), health plans/insurance covering “abortion”; limited exceptions; reduces abortion access.

**Result of “No” Vote:** “No” vote retains current law that places no restrictions on spending public funds for abortion or health plans covering abortion when approved by medical professional.

**Summary:** Amends Constitution. Under current law, abortions may be obtained, when approved by medical professional, under state-funded health plans or under health insurance procured by or through a public employer or other public service. Measure amends constitution to prohibit spending “public funds” (defined) for “abortion” (defined) or health benefit plans that cover “abortion.” Measure defines “abortion,” in part, as “purposeful termination of a clinically diagnosed pregnancy.” Exception for ectopic pregnancy and for pregnant woman in danger of death due to her physical condition. Exception for spending required by federal law, if requirement is “found to be constitutional.” No exception for pregnancy resulting from rape or incest. Effect on spending by public entities other than the state is unclear. Measure reduces access to abortion. Other provisions.

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

I certify that on September 27, 2016, I directed the original Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 1 (Supreme Court) to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Jill O. Gibson, attorney for chief petitioners, using the court's electronic filing system.

/s/ Shannon T. Reel

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SHANNON T. REEL #053948

Assistant Attorney General

shannon.t.reel@doj.state.or.us

Attorney for Respondent

Ellen F. Rosenblum, Attorney General,  
State of Oregon