

ELLEN F. ROSENBLUM
Attorney General



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Appellate Court Records

MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

July 12, 2013

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

Re: *Knute Buehler and Duane Ray Fletchall v. Ellen Rosenblum, Attorney General, State of Oregon*
SC S061408

Dear Chief Justice Balmer:

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

Under separate cover, respondent Rosenblum is submitting her Answering Memorandum to Petition to Review Ballot Title.

Sincerely,

Laura S. Anderson
Senior Assistant Attorney General
laura.anderson@doj.state.or.us

LSA:chc/4426055

cc: Kevin L. Mannix/without encl.
Daniel W. Meek/without encl.
Duane Fletchall/without encl.
Knute Buehler/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

KNUTE BUEHLER and RAY
FLETCHALL,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court No. S061408

RESPONDENT'S ANSWERING
MEMORANDUM TO PETITION TO
REVIEW BALLOT TITLE RE:
INITIATIVE PETITION NO.11
(SUPREME COURT)

Pursuant to ORAP 11.30(6), respondent Ellen F. Rosenblum, Attorney General, submits this answering memorandum to the petition to review the ballot title for Initiative Petition No. 11 (2014) filed by chief petitioners Buehler and Fletchall ("petitioners") and to the Amicus Brief filed by elector Dan Meek ("amicus"). This court reviews the ballot title to determine whether it substantially complies with ORS 250.035(2). ORS 250.085(5) (stating standard of review). This memorandum, together with the June 6, 2013 letter from the Attorney General's office to Stephen N. Trout, Director of the Elections Division, explains why this court should reject petitioners' and amicus's challenges and certify the Attorney General's ballot title as submitted.¹ The Attorney General's ballot title substantially complies with ORS 250.035(2), and the court should certify it to the Secretary of State without modification.

¹ The Attorney General has submitted the official record, pursuant to ORAP 11.30(7).

A. The caption substantially complies with ORS 250.035(2)(a).

IP 11 would alter the process for validating signatures on petitions, referenda, recalls, nominations and political party formation. It also would eliminate ballot titles for proposed measures of 100 words or less. In addition, IP 11 creates a process for challenging the Secretary of State's determination that a petition signature cannot be counted.²

ORS 250.035(2)(a) requires that the caption "reasonably identif[y] the subject matter of the state measure." *Prozanski v. Myers*, 326 Or 391, 394-95, 952 P2d 531 (1998). The "subject matter" of a measure refers to "the 'actual major effect' of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words)." *Whitsett v. Kroger*, 348 Or 243, 247, 230 P3d 545 (2010). To identify the "actual major effect" of a measure, this court looks to "the text of the proposed measure to determine the changes that the proposed measure would enact in the context of existing law" and then evaluates whether the caption "reasonably identifies those effects."

² The Secretary's existing process of verifying petition signatures has been found to ensure consistency, protect the petitioner's rights and serve administrative interests in efficiency in light of short timelines. *See Lemons v. Bradbury*, 538 F3d 1098, 1104-1105 (9th Cir 2008) (rejecting due process and equal protection challenges to Oregon process for verifying referendum petition signatures, holding that Oregon has "weighty and undeniable" interests in detecting fraud and administering orderly elections).

Rasmussen v. Kroger, 350 Or 281, 285, 253 P3d 1031 (2011). The Attorney

General's caption satisfies that standard. It provides:

Changes, repeals laws governing petition signatures, ballot titles, qualified voters; authorizes lawsuits challenging disqualified signatures

Petitioners and amicus challenge the caption in two respects, as discussed below.

First, both petitioners and amicus object to the word "repeals" in the caption. Although petitioners concede that IP 11 would "supersede" inconsistent laws, "amend" one statute, and "enact" new provisions, they assert that the nothing in the proposed measure "repeals" laws. (Pet 3). Amicus similarly asserts that the phrase "repeals laws," without a limiting word, such as "some," renders the caption misleading and vague. (Amicus Br 1-2).

The Attorney General disagrees. Section 16 states that IP 11 "supersedes any Oregon law which is inconsistent with this Act." Several inconsistencies are apparent when comparing the provisions of the proposed measure to current law. Thus, IP 11 would "supersede," and thus impliedly repeal,³ several existing laws governing signature-gathering and ballot titles.

³ The doctrine of "implied repeal" applies when a subsequent statute conflicts with a prior statute, but contains no language expressly repealing the prior statute. *State v. Shumway*, 291 Or 153, 160, 630 P2d 796 (1981). In such cases, "the earlier must yield to the later by implied repeal." *Anthony v. Veatch*,

Under current law, signature sheets that do not meet the statutory and regulatory legal requirements are not included in determining whether the petition or prospective petition contains the required number of signatures of electors. For example, ORS 250.042 provides that if a signature sheet is not certified by the petition circulator as required by law, the signatures contained on the signature sheet “*may not be counted* for purposes of determining whether the petition contains the required number of signatures of electors.” (Emphasis added). In addition, ORS 250.048(6) provides that the Secretary of State may not include any signatures in the count if a paid circulator was not registered. *See also* OAR 164-014-0280(5)(c) (petition sheets of paid circulator unable to show proof of registration will not be accepted). OAR 165-014-0030(5) through (16) provide that a signature may not be counted if it does not match voter registration records. *See also* OAR 165-014-0270 (regulating circulator certification).

189 Or 462, 481, 220 P2d 493 (1950). An implied repeal must be established by “‘plain, unavoidable, and irreconcilable repugnancy.’” *Shumway*, 291 Or at 162 (quoting *Messick v. Duby*, 86 Or 366, 371, 168 P 628 (1917)). *See also* *State ex rel Huddleston v. Sawyer*, 324 Or 597, 604, 932 P2d 1145 (1997) (declining to hold that Measure 11 “impliedly repealed” sentencing guidelines by explaining how the two sets of enactments could be harmonized).

In contrast, section 4 of IP 11 provides: “*Notwithstanding ORS 250.042, the Secretary of State and election officers may not disqualify a signature on a petition based on the failure of a circulator to comply with a law * * * .*”

(Emphasis added). Section 3 provides:

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

Thus, sections 3 and 4 impliedly repeal ORS 250.042 and 250.048(6).

IP 11 also conflicts with current law governing voter registration.

Compare ORS 247.012, ORS 247.013(6), ORS 247.174 (procedures for initial and reactivation of voter registration) *with* IP 11 §12 (providing that an inactive registered voter’s signature on a petition “immediately” re-activates the voter’s registration, and “the voter’s signature shall be counted on that petition”).

Finally, section 11 of IP 11 provides that “[a]ny ballot measure by citizen initiative that contains 100 words or fewer of text * * * shall have the full text of the measure presented on the ballot * * * instead of any ballot title.” Section 11 impliedly repeals ORS 250.065(3), which requires the Attorney General to provide a ballot title for any state measure received from the Secretary of State.

In sum, the word “repeal” fairly in the caption describes the “actual major effect” of the measure, and thus it substantially complies with ORS 250.035(2)(a). *See Rasmussen*, 350 Or at 285.

Petitioners’ and amicus’s second objection is to the caption’s phrase, “authorizes lawsuits challenging disqualified signatures.” Petitioners claim the phrase is vague, while amicus objects to the word “lawsuit” as “inflammatory.” The word “lawsuits” is neither ambiguous nor inflammatory, and including that information in the ballot title caption does not render the caption noncompliant with ORS 250.035(2)(a). *See Caruthers v. Myers*, 343 Or 162, 168, 166 P3d 514 (2007) (flexibility inheres in the “substantial compliance” standard for evaluating certified ballot titles). The court should certify the Attorney General’s caption.

B. The Attorney General’s “yes” and “no” result statements substantially comply with ORS 250.035(2)(b).

The Attorney General’s “yes” result statement provides:

Result of “Yes” Vote: “Yes” vote changes, repeals laws governing petition signature qualification, verification, counting; public notice required if voter’s signature rejected; requires printing entire text of short measures.

The Attorney General’s “no” result statement provides:

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

Petitioners and amicus again object to the word “repeal” in the “yes” statement, for the same reasons they raise regarding its use in the caption.⁴ (Pet 4; Amicus Br 4). The Attorney General’s arguments regarding the word “repeal” in the caption apply equally to the “yes” result statement. *See Pelikan/Tauman v. Myers*, 342 Or 383, 390, 153 P3d 117 (2007) (standard for result statements is to state “the most significant and immediate consequences of adoption of the proposed measure.”)

Petitioners and amicus also object that the “yes” result statement does not say “where the ‘entire text’ of short measures should be printed.” (Pet 5; Amicus Br 5). Given the 25-word limitation in ORS 250.035(2)(b), the “yes” statement sufficiently describes the most significant consequence of the proposed measure’s changes with regard to ballot titles. And parallels the last phrase of the “no” result statement: “all measures receive ballot titles.” *See* ORS 250.035 (3) (the “yes” and “no” statements “shall be written so that, to the extent practicable, the language of the two statements is parallel”).

⁴ Petitioners also argue that the Attorney General’s certified “yes” result statement does not comply with ORS 250.035(2)(b) because “there is no mention of the authorization of court action – a primary element of the Act[.]” (Pet 5). Petitioners did not object to the Attorney General’s draft ballot title for not including reference to the proposed measure’s allowance of court action.

Therefore, they may not raise that objection before this court. ORS 250.085(6).

Amicus objects to the term “public notice,” claiming that it “elevates the required notice to the voter, * * * thus causing concern by a petition signer that his privacy will be invaded.” (Amicus Br 5). Section 6 of IP 11 requires the election official to post on the official’s website the name of a voter whose signature is proposed to be disqualified, before disqualifying that signature. Nothing in section 6 suggests that the internet posting would be “private.” The term “public notice” accurately alerts voters to one of the proposed measure’s most significant effects and advances the voter’s understanding of the measure; the “yes” result statement substantially complies with ORS 250.035(2)(b).

Petitioners and amicus object to the phrase “retains existing laws allowing disqualification of signatures unlawfully obtained.”⁵ (Pet 5; Amicus Br 5).⁶ Petitioners assert that the average reader would construe that phrase to imply that “the signer did something wrong.” (Pet 5). The Attorney General

⁵ Amicus also objects to the phrase “inactive/unregistered voter” calling it an “invented term.” (Amicus Br 6). The use of a forward slash as a substitute for the word “or” (to comply with the word limitation in ORS 250.035(c)) is a common and convenient shorthand to signify (describing usage of slash). Amicus’s argument is not well-taken.

⁶ Petitioners and amicus make a similar argument about use of the “unlawfully obtained” phrase in the summary. As with the “no” result statement, the summary makes clear that the illegality would be on the part of the signature “obtainer.”

disagrees. The phrase “signatures unlawfully obtained” does not imply any wrongdoing *on the part of the signer*, but instead means that the signer gave his or her signature to someone *else*--the petition circulator or signature gatherer—who has done something “unlawful.” See Webster's Third New Int'l Dictionary 1559 (unabridged ed 1993) (defining “obtain” as to “get.”) The word “unlawful” is neutral; a signature may be obtained “unlawfully” either by design, or by benign inadvertence or mistake. The Attorney General’s “no” statement provides information that will help voters understand “the state of affairs that will exist if the voters reject the proposed measure.” *Nesbitt*, 335 Or 424, 432-33, 71 P3d 530 (2003) (“no” result statement “will provide information that should assist the voter to understand the state of affairs that will exist if the voters reject the proposed measure”).

D. The summary substantially complies with ORS 250.035(2)(c).

Petitioners object to the clause “Measure prohibits laws disqualifying voter’s valid signature even if gatherer/circulator obtains it illegally[,]” as under-inclusive and misleading: (Pet 6). Petitioners argue that the measure does not prohibit laws, but rather “restricts” enforcement against an innocent voter who signs a petition, and argue that the word “illegally” is “unduly inflammatory.”

Those arguments lack merit. Section 3 of IP 11 prohibits enforcement of anti-

fraud laws “in any manner so as to prevent the petition signature of a registered voter, who has committed no violation of law” from being counted. Section 4 prohibits signature disqualification unless the circulator’s failure to comply with a law, unless such failure was “knowing and willful.” The Attorney General’s phrasing will “help the voters understand what will happen in the measure is approved.” *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989)). The summary substantially complies with ORS 250.035(2)(c). The court should certify the Attorney General’s entire ballot title to the Secretary of State as written.

Respectfully submitted,

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

/s/ Laura S. Anderson

LAURA S. ANDERSON #881500
Senior Assistant Attorney General
laura.anderson@doj.state.or.us

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

OFFICE OF THE SECRETARY OF STATE

KATE BROWN
SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR

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

(503) 986-1518

June 21, 2013

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

Re: Kevin Mannix v. Ellen Rosenblum, Attorney General, State of Oregon
S061408, Petition to Review Ballot Title

Dear Ms. Joyce:

Pursuant to ORS 250.067(4), we transmit to you for filing with the court as part of the record in the above referenced matter, the written comments filed in this office pursuant to ORS 250.067(1), regarding initiative petition #11. We also enclose the draft and certified ballot titles with their respective transmittal letters.

Sincerely,

Lydia Plukchi
Compliance Specialist

enclosures

RECEIVED
JUN 24 2013

APPELLATE DIVISION
SALEM, OR 97301

Prospective Petition for State Measure

SEL 310

rev 7/12 OHS 280-045

OUR OREGON SIGNATURES COUNT

To the Secretary of State,

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

Type of Petition

☒ Initiative

☐ Referendum

☒ Statutory

☐ Constitutional

Designating Chief Petitioners

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

Chief Petitioner Information

Name print

Signature

1 Duane Ray Fletchall

Duane Ray Fletchall

Residence Address, Street/Route

Bison Ct. NE

City

Salem

State

OR

Zip Code

97305

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

503-364-1913

Sponsoring Organization if any

Name print

Signature

2 Knute Buehler

K. Buehler

Residence Address, Street/Route

FOXWOOD PLACE

City

BEND

State

OR

Zip Code

97701

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

Sponsoring Organization if any

Name print

Signature

3

Residence Address, Street/Route

City

State

Zip Code

Mailing Address if different, Street/Route

City

State

Zip Code

Email Address and/or Website

Day Phone Number

Sponsoring Organization if any

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2013 MAR 29 PM 2 29
KATE BROWN
SECRETARY OF THE STATE

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

HW 1712, ORS 250.042, ORS 250.105, ORS 250.107, ORS 250.108

● Prospective Petition Initial filing with filing officer

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

○ Completed Petition signatures submitted to filing officer

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

Identify Petition

Our Oregon Signatures Count

Signed	Date Signed
K. Buhl	March 29, 2013
D. Buhl	March 29, 2013
Signed	Date Signed
Signed	Date Signed

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



Warning

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

SEL 301: Statement No Petition Circulators Will be Paid

HW 1712, ORS 250.042, ORS 250.105, ORS 250.107, ORS 250.108

○ Prospective Petition Initial Filing with Filing Officer

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

○ Completed Petition Signatures Submitted to filing officer

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

Identify Petition

Signed	Date Signed
Signed	Date Signed
Signed	Date Signed

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2013 MAR 29 PM 2 29
KATE BROWN
SECRETARY OF THE STATE

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



Warning

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

Our Oregon Signatures Count Act

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

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

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

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

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

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

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

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

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

Section 9. For purposes of this 2014 Act:

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

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

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

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

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

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

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

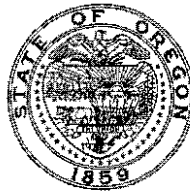
Section 15. It is the intent of the People that respect be shown to voters as to their signatures on petitions, and that the full text of reasonably short ballot measures be presented to voters on the ballot itself, so voters can readily see the actual full text.

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

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

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KATE BROWN
SECRETARY OF THE STATE

ELLEN F. ROSENBLUM
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

May 7, 2013

Stephen N. Trout
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition — Changes Procedures For Disqualifying Petition Signature
of Registered Voter, Challenging Disqualification, Describing Certain Ballot Measures
DOJ File #BT-11-13; Elections Division #11

Dear Mr. Trout:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to changing the procedures for disqualifying petition signatures, for challenging disqualification, and for describing certain ballot measures.

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,

Misty Kintz
Legal Secretary

LSA:mlk/4191963

Enclosure

Lynn Rosik, General Counsel Division

Duane Fletchall
Bison Court NE
Salem, Oregon 97305

Knute Buehler
Foxwood Place
Bend, Oregon 97701

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2013 MAY 7 PM 3 22
KATE BROWN
SECRETARY OF THE STATE

DRAFT BALLOT TITLE

Changes procedures for disqualifying petition signature of registered voter, challenging disqualification, describing certain ballot measures

Result of "Yes" Vote: "Yes" vote changes procedures for disqualifying petition signature, challenging signature disqualification of registered voter; requires printing entire text of short ballot measure on petition, ballot.

Result of "No" Vote: "No" vote retains existing laws that regulate collecting, counting and verifying petition signatures to determine if measure qualifies for ballot; retains existing ballot title requirements.

Summary: Currently, initiative petitions qualify for placement on the ballot based on the number of qualified registered voters' signatures; constitutional provisions, statutes and rules regulate signature collection, verification and counting to prevent fraud, forgery and improper signature-gathering. Measure prohibits laws excluding from signature count (defined) a qualified voter's signature on petition (defined), even if signature was obtained unlawfully; allows for future anti-forgery, anti-fraud laws in petition circulation; requires notice of proposed signature disqualification and opportunity to validate; provides re-activation of inactive voter's registration automatically when voter signs a petition; requires that if initiative measure is 100 words or less, entire text of measure will be printed on petition and ballot; allows qualified voter/chief petitioner to sue to require counting qualified voter's signature. Other provisions.

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KATE BROWN
SECRETARY OF THE STATE



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

May 6, 2013

Kate Brown
Secretary of State
255 Capitol St. NE, Suite 501
Salem, OR 97310-0722

RE: Proposed Initiative Petition #11: Our Oregon Signatures Count

Dear Secretary Brown:

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

I am an Oregon elector. I offer the opinion that this petition satisfies those procedural constitutional requirements.

Thank you for your consideration.

Sincerely,

Kevin L. Mannix

mak

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KATE BROWN
SECRETARY OF THE STATE

COMMENTS ON DRAFT BALLOT TITLE FOR PETITION 11 (2014)

May 21, 2013

I am an elector in Multnomah County and offer these comments.

I. CAPTION.

ORS 250.055(2)(a) requires a "caption of not more than 15 words that reasonably identifies the subject matter of the state measure." The DBT of Initiative Petition 11 (IP 11) reads:

CHANGES PROCEDURES FOR DISQUALIFYING PETITION SIGNATURE
OF REGISTERED VOTER, CHALLENGING DISQUALIFICATION,
DESCRIBING CERTAIN BALLOT MEASURES

For reasons explained below, I offer this alternative caption:

GRANTS EVERY VOTER RIGHT TO HAVE VOTER'S VALID
SIGNATURE ON PETITIONS COUNTED; SIMPLIFIES BALLOT
TITLES

First, the DBT caption is incorrect in portraying the central feature of the measure as "changes procedures." The change in procedures is ancillary to, and a means to implement, the granting to each registered voter "an individual, enforceable right to have his or her signature counted on the petition," even if the circulator has transgressed a rule or process.

Second, the DBT is so vague that it does not communicate any purpose to IP 11. Merely "changes procedures" does not reasonably identify its subject matter, which is to expand the right of voters to have their valid signatures on petitions count, not merely to "change procedures."

II. YES/NO STATEMENTS.

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

Result of "Yes" Vote: "Yes" vote changes procedures for disqualifying petition signature, challenging signature disqualification of registered voter; requires printing entire text of short ballot measure on petition, ballot.

Result of "No" Vote: "No" vote retains existing laws that regulate collecting, counting and verifying petition signatures to determine if measure qualifies for ballot; retains existing ballot title requirements.

For reasons explained below, I offer these yes/no statements:

RESULT OF "YES" VOTE: "Yes" grants voters right to have their valid signatures on petitions counted, regardless of circulator error; prints entire text of short measures on petition, ballot.

RESULT OF "NO" VOTE: "No" retains process whereby government officials, without notice to voters, disregard valid voter signatures on petitions, if the circulator has not followed all required procedures.

First, the DBT's yes/no statements suffer all the defects of the DBT's caption.

We incorporate by reference all of the discussion above about those defects.

Second, the DBT's yes/no statements convey almost no information not already in the caption. My versions use the allowable words to more fully explain the primary "result if the state measure is approved."

III. SUMMARY.

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

SUMMARY: Currently, initiative petitions qualify for placement on the ballot based on the number of qualified registered voters' signatures; constitutional provisions, statutes and rules regulate signature collection, verification and counting to prevent fraud, forgery and improper signature-gathering. Measure prohibits laws excluding from signature count (defined) a qualified voter's signature on petition (defined), even if signature was obtained unlawfully; allows for future anti-forgery, anti-fraud laws in petition circulation; requires notice of proposed signature disqualification and opportunity to validate; provides re-activation of inactive voter's registration automatically when voter signs a petition; requires that if initiative measure is 100 words or less, entire text of measure will be printed on petition and ballot; allows qualified voter/chief petitioner to sue to require counting qualified voter's signature. Other provisions.

For reasons explained below, I offer this alternative summary:

SUMMARY: Currently, the valid signatures of registered voters on initiative, referendum, recall, and other petitions are not counted toward qualifying those measures for the ballot, if the circulator collecting the signatures has not complied with all required procedures. Measure requires that valid voter signatures be counted, despite circulator error. If government disqualifies voter's signature on a petition, Measure requires that government notify voter and allow 10 days for voter to vouch for signature. Measure does not change laws against forgery or fraud. Measure re-activates inactive voter's registration automatically when voter signs a petition and lists a new address. Measure requires printing on petition and ballot full texts of initiative measures of 100 words or less instead of a summaries prepared by government officials. Other provisions.

First, the DBT's summary displays all of the same defects as the caption and as the yes/no statements. We incorporate by reference all of the discussion above about those defects.

Second, the DBT's summary contains several statements that are very susceptible to misinterpretation. For example, it states "allows for future anti-forgery, anti-fraud laws in petition circulation." That strongly implies that IP 11 would not allow for existing anti-forgery or anti-fraud laws, which is entirely false. IP 11 does not repeal any anti-forgery or anti-fraud laws.

Third, the DBT's summary includes this inaccurate and highly prejudicial statement:

Measure prohibits laws excluding from signature count (defined) a qualified voter's signature on petition (defined), even if signature was obtained unlawfully;

This statement is inaccurate, because Section 4 of IP 11 does allow the disqualification of signatures, if the "circulator's failure was the result of a knowing and willful violation of law." This statement is also highly prejudicial, because it implies that it requires the counting of signatures, even if obtained by such unlawful methods as forgery or fraud. To the contrary, IP 11 requires to be counted only the valid signatures of registered voters. Note that Sections 2, 3, 5, and 6 each refer to signatures of registered voters, not to alleged signatures of registered voters.¹ The

1. Section 2 refers to "his or her signature" of a "registered voter." Section 3 refers to "the petition signature of a registered voter." Section 4 refers to "the signature of a
(continued...)

protections accorded by IP 11 are for valid voter signatures, not for invalid flows of ink on paper purporting to be signatures. Section 9 defines "signature" as the person's name or mark indicating "that the person has signed a petition," not to a name or mark written by someone else.

Third, my alternative Summary provides far more information about the other provisions of IP 11.

Thank you for considering these comments.

Dated: May 21, 2013

Daniel W. Meek

1.(...continued)

registered voter on a petition." Section 6 refers to "a signature of a registered voter on a petition."



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May 21, 2013

Office of the Secretary of State
Elections Division
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RE: Ballot Title, Initiative Petition 11

Ladies & Gentlemen:

This letter presents comments in regard to the draft Ballot Title prepared by the Attorney General for Initiative Petition 11 (Our Oregon Signatures Count Act). I present these comments on behalf of myself, as an Oregon elector, and as an attorney on behalf of Duane Ray Fletchall, and Knute Buchler, Oregon electors and the two Chief Petitioners on this initiative.

Overall, the Ballot Title is supposed to give voters a balanced sense of what this citizen initiative will do. The word limitations set by statute for each part of the Ballot Title, as a practical matter, often preclude a complete description of what the initiative will do. This often requires a focus on the major elements.

So, I begin these comments, as one of the architects of this citizen initiative, with an outline of the major elements of change presented by the Our Oregon Signatures Count Act (the Act).

First and foremost, the Act gives registered voters a statutory power which they presently do not have: a right, enforceable in the courts, to have their signatures counted on initiative, referendum, and recall petitions.

Currently, anyone can sign a petition form (and yes, sometimes non-voters erroneously do so). But when a registered voter signs such a petition, one would hope that the voter's signature would be respected – and counted – when the petition is timely presented to the appropriate elections official.

This is, sadly, sometimes more of a hope rather than a reality. An Oregon registered voter who signs a petition sheet which is timely submitted can have his or her signature set aside, and not counted, for many reasons having little or nothing to do with the voter. Here are some examples from the 2008-2010-2012 general election cycles:

1. The color of the petition sheet (light blue) had not yet been approved by the Elections Division at the time certain voters signed the light blue sheets.

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2. The circulator who signed at the bottom did not use the proper date format (month-day-year) but instead used the European/military date format (day-month-year)
3. Part of the petition sheet was torn off.
4. The signature may have been recognized but the voter used a new address.
5. The voter was a registered voter but had not voted recently so the voter was not an active registered voter. An inactive registered voter who signs a Vote-By-Mail ballot is automatically reactivated (and his/her vote is counted) but an inactive registered voter who signs a petition is ignored and treated as if non-registered.

But the most frustrating part of this process occurs when elections officials simply refuse to recognize the signature of a registered voter, with proper/current address, who has signed a petition. These decisions are made on the spot, without use of handwriting experts, based on a comparison of the petition signature with signatures on samples (such as the voter registration card) available, by computer, to elections officials.

So, what happens when a voter's signature is set aside? Observers, present at the request of the Chief Petitioners, or representing initiative opponents, can question a decision to accept/deny a signature. But other than an informal give-and take at the time of petition review, the voter himself/herself has no right to be heard. Court decisions give wide discretion to the authority of elections officials to accept/refuse voter signatures. Within recent years, even an affidavit from a voter, identifying a signature as his/hers, has been rejected.

This occurs because no statute provides a court process or legal authority for voters or Chief Petitioners to press for acceptance of voter signatures on petitions.

This is unlike the statutes which apply to elections themselves. When a voter signs a Vote-By-Mail envelope and sends it in, that signature is evaluated for acceptance. If it is accepted, all is well and the enclosed ballot is counted. If it is rejected, the elections official must hold the ballot and write to the voter, to ask the voter to confirm he/she signed the envelope. If the voter confirms this, the ballot is accepted and counted (unless a rare case of forgery/fraud ensues).

This is no similar process for voter signatures on petitions. Yet the rejection of a single voter signature on a petition has a significant multiplier effect: only a limited sample of signatures are selected for verification, so rejection of a single signature in the verification process can be the equivalent of as many as 400 "bad" signatures on a statewide petition.

Practically speaking, there is no time for a letter to be sent to each voter whose signature is rejected, and this involves added expense. So this initiative simply requires a web posting of the signature-rejection information, with 10 business days for a voter to assert the signature should be accepted. Of course, few voters are going to search out this information; but Chief Petitioners will pay attention and will have a chance to contact a supportive voter and get him/her to confirm the signature.

This gets us to the burden of proving a signature. If the voter asserts he/she has signed the petition, and confirms the rejected signature, why should any elections official object?

The Act essentially empowers the voter to insist that his/her signature be recognized and counted – and provides for court proceedings to enforce this right. This is a major change and needs to be the key element of the caption and remainder of the Ballot Title.

The second major change in the Act relates to Ballot Titles themselves. Oregon law recognizes that many initiatives are lengthy, and are too long to place the text on the ballot itself. So, Oregon has a process for a 190–word Ballot Title, to efficiently and effectively inform voters about the measure to be voted upon. But what about a measure which contains 100 words or fewer? Why use a government–issued Ballot Title (sorry about that – no offense!) which is 190 words long when the measure itself is 100 words or fewer? Right now the voter must go to the Voters’ Pamphlet to read the text of the measure. Under this system, if we were to propose the First Amendment to the U.S. Constitution, to be added to the Oregon constitution, voters would read the Attorney General (or Supreme Court) interpretation in the Ballot Title – but would have to seek the short text itself in the Voters’ Pamphlet. (I know we have our own broader, Freedom of Expression clause; I am just using this as a rhetorical example).

With this in mind we can turn to the draft Ballot Title.

The draft Caption reads as follows:

Changes procedures for disqualifying petition signature of registered voter, challenging disqualification, describing certain ballot measures.

This draft misses the heart of the Act, and makes it appear that we are simply changing “procedures for disqualifying” petition signatures of registered voters. This is substantially under-inclusive. There is no hint that voters will be empowered to insist that their signatures be counted, and that specific court proceedings are authorized for enforcement – which do not presently exist, as discussed above. A caption which touches upon the heart of this Act, and then touches upon the fact that other changes occur, should read as follows:

Voters may bring court action to enforce acceptance of their petition signatures; other petition changes.

Alternatively, a good caption would read:

Voters may require acceptance of their petition signatures; ballot must present text of certain measures.

The result of a “Yes” Vote draft reads:

Result of “Yes” Vote: “Yes” vote changes procedures for disqualifying petition signature, challenging signature disqualification of registered voter; requires printing entire text of short ballot measure on petition, ballot.

This is again under-inclusive and so bland as to be potentially misleading. Again, the changed “procedures” reflect a complete turn-about in the burden of proof, so to speak, as to rejection of voter signatures. When the voter chooses to object, the elections official bears the burden of disproving a signature, in a court proceeding, where currently the voter can only beg for consideration. A clearer, more inclusive version should read:

Result of “Yes” Vote: “Yes” vote requires notice of rejection of petition signature; voter may require acceptance of valid signature; requires printing text of short ballot measure on ballot.

The original draft also includes reference to printing the text of a short ballot measure on “petition.” This is true, but at present the rules do allow both a ballot title and text (when it can fit) for a shorter measure to be printed on a petition sheet. So, this change is not as significant and we recommend words be allocated to the more significant elements.

The Result of “No” Vote draft reads:

Result of “No” Vote: “No” vote retains existing laws that regulate collecting, counting and verifying petition signatures to determine if measure qualifies for ballot; retains existing ballot title requirements.

We have no proposed changes to this.

As to the Summary, we recognize the challenge of trying to summarize the impact of this initiative in 125 words. We generally agree that the Summary meets statutory standards. But one part has a misleading negative slant in its narrow focus. It is this phrase, in the middle of the Summary:

“Measure prohibits laws excluding from signature count (defined) a qualified voter’s signature on petition (defined), even if signature was obtained unlawfully;”

The reference to a signature which was “obtained unlawfully” focuses on illegality, and to the ordinary reader, suggests the voter did something wrong. The signature itself was not “obtained unlawfully.” The voter properly signed a proper petition form which was timely turned in. The circulator may have done something which violated a rule, but that act has nothing to do with whether:

- a) The voter exists;
- b) The voter is registered;
- c) The voter actually signed a real petition; and
- d) The petition was turned in by the constitutional deadline.

The errant phrase should be corrected to read:

“Measure prohibits restrictions excluding from signature count a qualified voter’s signature on timely petition, when someone else makes procedural error.”

The reference, in the draft, which says "Measure prohibits laws..." is especially offensive and incorrect. Section 3 of the Act provides that "...laws and regulations shall not be enforced in any manner so as to prevent the signature of a registered voter, who has committed no violation of law, from being included in determination" of the signature count.

The real preclusion here is on "enforcement in any manner" so as to prevent counting the petition signature of a registered voter. It does not prohibit laws themselves. There can be penalties for violations, such as civil fines. But, there cannot be a death penalty for real signatures of real voters. The innocent signer is not punished for errors of others.

Our replacement phrase, quoted above, better reflects this. Since it is necessary to synthesize things to stay within the word limit, we used the short term "restrictions." It is more inclusive as to the coverage, as it gets to the "enforcement" point.

Thank you for your consideration.

Sincerely,

Kevin L. Mannix,
Attorney at Law
For myself, and Representing Duane Ray Fletchall and Knute Buehler

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The Honorable Kate Brown
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2013 MAY 21 PM 4 16
KATE BROWN
SECRETARY OF THE STATE

Re. Initiative Petition 11 (2014) - Draft Ballot Title Comments
Our File No. 4815-1163

Dear Secretary Brown:

This office represents Gail Rasmussen and BethAnne Darby, Oregon electors and interested parties in Initiative Petition 11 (2014). Gail Rasmussen is the President of the Oregon Education Association and BethAnne Darby, is the Associate Executive Director of Government Relations. We write to comment on the draft ballot title for IP 11. The Oregon Education Association is a labor organization that represents over 40,000 education employees throughout Oregon.

1. INTRODUCTION

Initiative Petition 11 (2014) is a statutory proposal that would make multiple significant changes to Oregon election laws. Specifically, it provides:

- A registered voter has a "right" to have his/her signature "counted" (defined) on a petition, provided the petition has been timely submitted. Section 2.¹

¹ "Petitions" are defined to include petitions for citizens' initiatives, referenda, candidate nomination, formation of a political party and recall petition. Section 9(a).

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- No laws or regulations designed to prevent fraud or forgery can be enforced in a manner which requires rejecting a signature sheet collected in violation of the law. Sections 3 and 4.
- The elections official must publicly post on the web the name of any voter whose signature was rejected for ten days before disqualifying the signature. Section 5 and 6. If the voter notifies the elections official that his/her signature is valid, then it must be counted.
- A registered voter or chief petitioner can also bring file a private lawsuit to require a signature to be counted and is entitled to attorney fees for prevailing. Section 7.
- Eliminates ballot titles for petitions that contain 100 words or fewer. Instead, the full text of the measure shall be printed on the petition and ballot. Section 10 and 11.
- The act of signing a petition automatically renders an "inactive" registered voter's registration "active" at the address listed on the petition. Section 12. As a consequence, the petition signature can be counted, and the voter's registration is active for all other purposes.
- A signature is valid if signed on the same date as a new voter registration form. Section 13.
- An electronic petition need not be "printed," which may possibly allow electronic signatures on petitions. Section 14.

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

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While the draft ballot title does not fall into some of the traps identified by the Oregon Supreme Court in *Rasmussen* or *Caruthers*, it nonetheless falls short of the statutory standards. As discussed in more detail below, it fails to adequately convey the true subject and breadth of the proposal. It must be revised.

2. LEGAL FRAMEWORK

As set forth in detail in the Court's opinions regarding IP 12 (2012) and IP 43 (2010), current law contains a myriad of laws and regulations designed to prevent fraud and forgery and to ensure compliance with Article IV, section 1b of the Oregon Constitution ("Measure 26") and ORS 260.569. *Rasmussen*, 350 at 276; *Caruthers I*, 347 Or at 664-665. Specifically, once a petition is submitted to the elections official for verification, signature sheets are first reviewed for compliance with rules relating to signature gathering and circulator verification. As authorized by ORS 250.042, sheets that do not meet the legal requirements are pulled and are not included as part of the statistical sample.² By prohibiting elections officials from pulling signature sheets that are unlawfully obtained, IP 11 eliminates the most effective mechanism for enforcing these anti-fraud and anti-forgery provisions.

Once the initial "sort" is complete and the elections officials determine that there are sufficient signatures to begin the process of signature verification, the Secretary then verifies signatures identified in the statistical sampling process. OAR 165-014-0030(5) - (16). Signatures that do not "match" those contained in the voter registration records (determined after multiple levels of review) are excluded. While there is no process for "curing" a determination that a signature does not match, the process used to verify signatures ensures consistency, protects petitioner's rights, and serves important administrative and regulatory interests in efficiency, particularly in light of short deadlines. *Lemons v. Bradbury*, 538 F3d 1098, 1104-1105 (9th Cir. 2008).³

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

³ The Ninth Circuit explained:

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IP 11 changes this verification process in at least two ways. First, the Secretary of State must publicly post the name of any voters whose name has been disqualified. Section 6. All the voter need do is come forward within 10 days and say "that is my signature," regardless of whether the signature "matches" that on the voter registration files. In addition, a registered voter or Chief Petitioner can file a private lawsuit challenging exclusion of a signature. Section 7. There is no requirement that the voter have come forward when the name was posted and the burden is on the Secretary of State to justify disqualification. The voter or Chief Petitioner "*shall*" be awarded costs and attorney fees for prevailing. Moreover, in the likely event that the court is unable to issue a decision by the constitutional deadline for verifying signatures, IP 11 provides that the signature *will* count. Article IV, section 3(a). Thus, all the Chief Petitioner need do is file a lawsuit challenging the exclusion of any signature, and the signature must be counted. Sections 6 and 7.

"Oregon's interests in detecting fraud and in the orderly administration of elections are weighty and undeniable. Requiring the state to provide thousands of petition signers with individual notice that their signatures have been rejected and to afford them an opportunity to present extrinsic evidence during the short thirty-day verification period would impose a significant burden on the Secretary and county elections officials. In contrast to the significant weight of the state's interests, plaintiffs' interest in the additional procedures they seek is slight. First, the verification process is already weighted in favor of accepting questionable signatures, in part because only rejected signatures are subject to more than one level of review by county elections officials. Providing notice and allowing individuals to contest a determination that a signature did not match would further skew the process in favor of accepting invalid signatures, as there would be no corresponding notice to those whose signatures were erroneously deemed to match.³ Second, as previously noted, the Secretary's procedures already allow chief petitioners and members of the public to observe the signature verification process and challenge decisions by county elections officials. The value of additional procedural safeguards therefore is negligible, and the burden on plaintiffs' interests from the state's failure to adopt their proposed procedures is slight at most."

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In addition to changing the laws regarding how signatures are collected and verified, IP 11 also changes *which* signatures may be counted. Currently, only "qualified voters" may sign a petition. Article IV, section 1. To be "qualified," a voter's registration must be "active." This means that the voter must have voted in the past five years or, where there is a change in registration information (such as address), confirmed that the new information is correct. ORS 247.013.⁴ With regard to registration, individuals who sign a voter registration card must wait until the registration card is turned in to sign a petition. Until then, they are not "qualified" to vote. Section 12 provides that the act of signing a petition "reactivates" a voter's registration—making the elector an "active" qualified voter. Therefore, the petition signature counts. Section 13 provides that a signature is valid if signed on the same day as a voter registration form.

The automatic reactivation of inactive registrations, based simply on signing a petition, would have far-reaching impacts outside of the petition process. Whether an elector's registration is "active" determines whether (and where) ballots are mailed and voter turnout for purposes of "double majority" requirements. Article XI, section 11(8). Arguably, elections officials would have to review all petition signatures to determine whether a voter's registration has been automatically reactivated. Thus, this change is not just about signature verification.

* ORS 247.013 provides, in pertinent part:

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

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

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

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

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

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The next change regarding petition signatures is found in Section 14. That section amends ORS 250.052(6) to eliminate the requirement that electronic signature sheets must be printed. Because the statute still requires that the elector "sign the sheet and deliver the signed sheet to a chief petitioner," it appears that there may still be a need for a physical sheet. However, it is possible that the deletion of the printing requirements could be interpreted to allow electronic signatures on petitions. If so, that is an enormous change.

The last significant area of change relates to ballot titles. Under current law, all measures receive a ballot title in order to provide voters with an impartial and accurate description of the proposals' subject and how it works. ORS 250.0035. That process allows interested parties to comment on draft ballot titles and seek review by the Oregon Supreme Court, if necessary. ORS 250.085. As reflected in case law, often the true subject of a proposal -- that is, the significant change brought on by the passage -- is not reflected in the actual language of the measure. Under IP 11, initiative petitions of 100 words or fewer would not receive a ballot title. Rather, the text of the initiative itself would be printed on the signature petitions as well as on the ballot. Thus, voters would be deprived of a key tool to understand what they are signing or to cast an informed vote.

3. CAPTION

ORS 250.035(2)(a) provides that a ballot title contain "a [c]aption of not more than 15 words that reasonably identifies the subject matter of the state measure." The caption is the "headline" or "cornerstone for the other portions of the ballot title" and in order to comply with the statute, it must identify the proposal's subject matter in terms that will not "confuse or mislead potential petition signers and voters." *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004) (quoting *Greene v. Kulongoski*, 322 Or 169, 174-75, 903 P2d 366 (1995)). As the court recently emphasized, the "subject matter" is the "actual major effect" or effects of the measure. *Lavey v. Kroger*, 350 Or 559, 563, 285 P3d 1194 (2011). "To identify the 'actual major effect' of a measure, this court examines the text of the proposed measure to determine the changes that the proposed measure would enact in the context of existing law and then examines the caption to determine whether the caption reasonably identifies those effects." *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011).

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The draft caption fails to capture the true subject of the measure or its breadth. It reads:

**Changes procedures for disqualifying petition signature of
registered voter, challenging disqualification, describing
certain ballot measures**

First, the draft fails to convey one of the key subjects of the initiative – to allow signatures to be counted, even when collected in violation of the law. As the court explained in *Rasmussen*:

“That new right would entitle every such voter to have his or her signature “counted” on the petition, even if the steps followed in collecting and submitting the signatures and petition signatures sheets violated laws enacted to prevent forgery or fraud in the circulation of a petition.”

350 Or at 276. The court then held that the draft ballot title failed to adequately capture this subject.⁵ The same analysis applies here. Nothing in the draft caption alerts voters to the fact that, as a result of passage, anti-fraud and forgery laws would have no practical effect. The ballot title must be modified.

Second, the focus on “procedures” is under-inclusive. As discussed above, the changes made by IP 11 are both procedural and substantive. In addition to creating new procedures for signature verification, sections 12 and 13 change *who* is qualified to sign petitions, and to vote. Those are significant, non-procedural changes which are not captured by the caption.

Third, the general reference to “procedures * * * challenging disqualification” is insufficient to convey the remarkable new provisions relating to enforcement. Specifically, IP 11 *requires* that the names of any voter whose signature was disqualified be publicly posted for at least ten days. While signatures on petition sheets are subject

⁵ The certified caption for IP 12 (2012) read: “Amends constitution: Prohibits laws excluding qualified voters’ signatures on initiative/referendum petitions; allows lawsuit compelling counting signature(s). The certified caption for IP 43 (2010) read: “Amends constitution: Prohibits current and future elections laws from disqualifying registered voters’ signatures on initiative/referendum petitions.”

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to public disclosure, affirmatively posting them on an electronic website is a significant and unprecedented change that voters need to know about. In addition, IP 11 creates a new cause of action to have a signature counted, in which the normal rules regarding litigation are flipped. Thus, a voter or chief petitioner can file a private lawsuit to have a signature counted, and the burden is on the Secretary of State to justify disqualification. If the signature counts, attorney fees are mandatory. Moreover, if a decision is not issued before the constitutional deadline, the signatures will be counted. As the court has emphasized, where a proposal creates new and novel enforcement mechanisms, they must be identified as high up in the ballot title as possible. *Greenberg v. Myers*, 340 Or 65, 68, 127 P3d 1192 (2006) (new enforcements mechanisms were not "mere procedural details" and therefore needed to be referenced in the caption).

Fourth, the description of ballot title change is inadequate. What IP 11 does is *eliminate* ballot titles for certain measures, not change "procedures *** describing certain ballot measures."

Commenters recognize that capturing all aspects of the proposal is difficult given the number of changes and applicable word limit. However, as the court emphasized in *Rasmussen*, word limits cannot justify using an otherwise misleading description of a proposal. 350 Or at 279. We propose the following:

Changes, repeals laws governing petition signatures, ballot titles, qualified voters; requires public postings; authorizes lawsuits.

By using both "change" and "repeal," voters will understand the impact of the proposal on current law. For example, IP 11 effectively repeals ORS 250.042, the provision in current law that authorizes the Secretary of State to disqualify signature sheets where the circulator has failed to comply with the applicable rules.⁶ In addition, it overrides current law as it relates to voter registration and "active" voters. ORS

⁶ Section 4 purports to allow disqualification of sheets where "the circulator's failure was the result of a knowing and willful violation of law." However, there is nothing in the remainder of the proposal, including Sections 6 and 7, that prevents a voter from challenging exclusion of his or her signature on that basis. There, this "exception" has no practical effect.

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247.013. See *Towers v. Myers*, 341 Or 357, 360 (2006) (initiative effectively "repealed" application of constitutional provision to initiative petitions);

Similarly, by referring to "petition signatures" more generally, as opposed to "petition signature verification," the phrase accurately captures the breadth of the changes made. Current provisions allowing petition sheets to be pulled during the initial "sorting" phrase (before the statistical sample) are not truly about "verification" of signatures, but rather about circulator irregularities.

The reference to "ballot titles" and "qualified voters" identifies the changes made in those two areas. Finally, this alternative clearly identifies for voters the two new and novel enforcement provisions. Additional detail can be provided in the "yes" vote result statement.

4. RESULT OF "YES" VOTE

ORS 250.035(2)(b) requires that a ballot title contain a "simple and understandable statement of not more than 25 words that describes the result if the state measure is approved." The purpose of this section of the ballot title is to "notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon." *Novick v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). Where the enforcement scheme is new and not just "mere procedural details," that enforcement scheme becomes one of the "major changes" or "results of enactment" that must be described to voters as high up in the ballot title as possible. *Greenberg v. Myers*, 340 Or 65, 70, 127 P3d 1192 (2006); *Sizemore v. Myers/Terhune*, 342 Or 578, 157 P3d 188, (2007). Typically, the "yes" vote result statement builds on the caption.

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

RESULT OF "YES" VOTE: "Yes" vote changes procedures for disqualifying petition signature, challenging signature disqualification of registered voter; requires printing entire text of short ballot measure on petition, ballot.

This statement suffers from the same shortcomings as the caption. It once again fails to capture the true subject of the proposal and is under-inclusive. It adds very little new information to the caption and continues to mischaracterize the changes made

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by the proposal as "procedural." The description of provisions relating to ballot titles is also incomplete. Section 10 *eliminates* the ballot title for certain short initiatives and Section 11 requires the printing of the full text. The result statement's unqualified reference to "ballot measures" is also inaccurate, because the ballot title provisions only apply to initiative petitions, not referenda. See e.g. *Terhune v. Myers*, 338 Or. 554, 558-59, 112 P.3d 1188 (2005) (phrase "ballot measure" in summary was under-inclusive and thus inaccurate because it failed to disclose that proposed measure would apply to both initiative petitions and ballot measures). While that level of detail may not be essential for voters to understand, the statement cannot be inaccurate.

The following alternative builds on the caption and would correct these shortcomings.

RESULT OF "YES" VOTE: Changes, repeals laws governing petition signature verification, circulator oversight, qualified voter determination, ballot titles; requires public posting of voter name if signature rejected; authorizes lawsuits.

5. RESULT OF "NO" VOTE:

ORS 250.035(2)(c) requires that the ballot title contain a "simple and understandable statement" of up to 25 words, explaining "the state of affairs" that will exist if the initiative is rejected, that is, the *status quo*. It is also essential that the law described in the "no" vote result statement concern the subject matter of the proposal. Otherwise, the description could mislead voters about the effect of their vote. *Nesbitt v. Myers*, 335 Or 219, 223, 64 P3d 1133 (2003). Finally, it is generally impermissible for the "no" result statement to simply state that a "no" vote rejects the "yes" vote. *Nesbitt v. Myers*, 335 Or 424, 431, 71 P3d 530 (2003).

Here, the Attorney General drafted the following "no" vote result statement.

RESULT OF "NO" VOTE: "No" vote retains existing laws that regulate collecting, counting and verifying petition signatures to determine if measure qualifies for ballot; retains existing ballot title requirements.

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This statement, like the rest of the ballot title, is too general to be useful. The reference to current law is also under-inclusive. The following alternative would be sufficient:

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

6. SUMMARY

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

The draft summary reads:

Summary: Currently, initiative petitions qualify for placement on the ballot based on the number of qualified registered voters' signatures; constitutional provisions, statutes and rules regulate signature collection, verification and counting to prevent fraud, forgery and improper signature-gathering. Measure prohibits laws excluding from signature count (defined) a qualified voter's signature on petition (defined), even if signature was obtained unlawfully; allows for future anti-forgery, anti-fraud laws in petition circulation; requires notice of proposed signature disqualification and opportunity to validate; provides re-activation of inactive voter's registration automatically when voter signs a petition; requires that if initiative measure is 100 words or less, entire text of measure will be printed on petition and ballot; allows qualified voter/ chief petitioner to sue to require counting qualified voter's signature. Other provisions.

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This summary does a better job than the remainder of the ballot title but must still be revised in order to meet the statutory guidelines. First, as discussed above, the description of current law is off-point and under-inclusive. IP 11 purports to change the rules regarding how signatures "count" on all election-related petitions. Therefore, it does not make sense to only describe initiative petitions. Rather, voters should understand what petitions are affected. Moreover, the focus should be on *who* can sign petitions under current law and the rules and regulations that govern the collection, verification and counting of signatures.

Second, the description of current law fails to describe one of the most significant changes made by the proposal – the requirement that the name of all voters whose signatures are disqualified be publicly posted. Third, the description of the ballot title provisions does not make clear that IP 11 eliminates ballot titles for certain short measures. Fourth, the description does not make clear that the provision activates a voter's registration for all purposes, not just for signing petitions.

Finally, the proposal should at least alert voters to the possibility that the provision would allow electronic signing of petitions.

We propose the following:

Summary: Currently, Oregon law provides that only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation and recall petitions; "qualified voters" are electors with active registration at time of signing; constitutional provisions, statutes and rules regulate signature collection, verification and counting to prevent fraud, forgery and improper signature-gathering. Measure prohibits laws disqualifying voter's signature, even if obtained unlawfully; reactivates "inactive" voter registration automatically upon signing petition for all purposes, counts signature; requires public electronic posting of voter name if signature disqualified, signature counts if voter validates; authorizes private lawsuits, attorney fees to require counting of disqualified signature(s); eliminates ballot title for initiatives of 100 words or less, full

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text must be printed on petition, ballot. May authorize
electronic signatures on petitions. Other provisions.

7. CONCLUSION

We recognize that crafting a neutral and complete ballot title is challenging in light of the complexities of the measure and the word limits. We appreciate your careful consideration of these comments.

Sincerely,

B

Margaret S. Olney

Tom Doyle

MSQ:kaj
cc: Clients



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

June 6, 2013

Stephen N. Trout
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition – Changes, Repeals Laws Governing
Petition Signatures, Ballot Titles, Qualified Voters; Authorizes
Lawsuits Challenging Disqualified Signatures
DOJ File #BT-11-13; Elections Division #11

Dear Mr. Trout:

Pursuant to ORS 250.067, we have reviewed the comments submitted in response to the draft ballot title for the above-referenced initiative petition. We provide the enclosed certified ballot title, reflecting changes to the caption, result statements and summary.

We received three comment letters from (1) Kevin Mannix, on behalf of himself as an Oregon elector, and as attorney for Messrs. Fletchall and Buehler, electors and chief petitioners, (2) elector Daniel W. Meek, and (3) attorney Margaret Olney, on behalf of electors Rasmussen and Darby. This letter summarizes the comments we received, our responses to those comments, and the changes we have made to the draft ballot title. ORAP 11.30(7) requires that this letter be included in the record in the event the Oregon Supreme Court reviews this ballot title.

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KATE BROWN
SECRETARY OF THE STATE

SUMMARY OF COMMENTS

Comments of Kevin Mannix, Duane Fletchall and Knute Buehler

Electors Mannix, Fletchall and Buehler object to the draft ballot title caption, the “yes” result statement, and one sentence in the draft ballot title summary. They propose specific changes to cure what they see as inadequacies in the Attorney General’s draft.

Specifically, Mannix and the co-petitioners believe that both the caption and the “yes” result statement are “under-inclusive.” They assert that the caption does not comply with the requirements in ORS Chapter 250, by not highlighting or emphasizing the voters’ right under the proposed measure to “insist” that their signatures be counted and its provision for a specific court proceeding to enforce that right. (May 21, 2013, Mannix letter page 3).

Elector Mannix, and co-petitioners, Fletchall and Buehler, also object to the Attorney General’s draft “yes” result statement for not including the measure’s provision that when a voter objects to rejection of his or her signature, the election official must disprove the signature in a court proceeding. (May 21, 2013, Mannix letter page 4).

Finally, elector Mannix and co-petitioners Fletchall and Buehler object to the following language in the draft ballot title summary: “Measure prohibits laws excluding from signature count (defined) a qualified voter’s signature on petition (defined), even if signature was obtained unlawfully[.]” (May 21, 2013, Mannix letter page 4). These electors assert that labeling a signature as “obtained unlawfully” wrongly implies that the signing voter, rather than the circulator, violated the law. (*Id.*)

Comments of Elector Meek

Elector Meek asserts that the Attorney General’s draft caption, result statements and summary do not meet the requirements in ORS 250.055(2)(a)-(d). Specifically, elector Meek claims that the draft caption fails to clearly convey the “central feature” of the measure, *viz.*, the grant of an “individual enforceable right” of a registered voter to have his or her petition signature counted even if the circulator violated a rule or process.

Elector Meek finds the same faults in the Attorney General's draft result statements, and argues that his alternatives provide additional information to the caption, whereas the Attorney General's do not.

Meek applies the same criticisms he makes about the caption and result statements to the draft ballot title summary, and identifies two additional purported ambiguities or inaccuracies in the Attorney General's draft summary. First, elector Meek argues that the draft summary implies that the measure would repeal existing anti-forgery or anti-fraud laws. (May 21, 2013, Meek Comments page 4). Second, like Mannix and the co-petitioners, Meek objects to the statement in the draft summary that the measure "prohibits laws excluding from signature count (defined), a qualified voter's signature on petition (defined) even if signature was obtained unlawfully[.]" Meek reads an implication into the foregoing statement that voter signatures must be counted even if gathered by a circulator's malfeasance. Meek proposes a revised summary that he believes provides "far more information" than the Attorney General's draft summary.

Comments of Electors Rasmussen and Darby

Electors Rasmussen and Darby object to all parts of the Attorney General's draft ballot title. (May 21, 2013, Olney letter on behalf of Rasmussen and Darby). Rasmussen and Darby assert that the Attorney General's draft caption fails to capture the "true subject of the measure or its breadth." (May 21, 2013, Olney letter page 7). Specifically, electors Rasmussen and Darby argue that the Attorney General's draft caption, result statements and summary

(1) fail to alert voters that current anti-fraud and anti-forgery laws would "have no practical effect" under the measure,

(2) fail to capture substantive changes to existing law on who is qualified to sign initiative petitions,

(3) fail to alert voters that disqualified signatures must be posted electronically for at least ten days,

(4) fail to inform voters that private lawsuits can be brought against election officials where the official bears the burden of proving a signature's invalidity and would be subject to mandatory attorney fees if the signature is ultimately counted, and

(5) fail to adequately alert voters that the effect of the proposed measure would be repeal of some existing laws. (May 21, 2013 Olney letter).

To address their concerns, electors Rasmussen and Darby propose alternatives to all aspects of the Attorney General's draft ballot title. (*Id.*)

RESPONSES TO COMMENTS

1. The caption.

The comments offered by elector Meek, elector Mannix and the co-petitioners, and electors Rasmussen and Darby regarding the perceived intent of the proposed measure and the purported shortcomings of Attorney General's draft caption have been considered. We agree that the draft caption's ostensible focus on procedure rather than substance is a legitimate concern. However, elector Mannix and the co-petitioners' proposed alternatives seem to suffer from what they claim makes the Attorney General's draft caption statutorily inadequate: under-inclusiveness. (May 21, 2013, Mannix letter page 3). And while elector Meek concerns regarding the draft's focus on the procedural aspects of the proposed measure are reasonable, in the Attorney General's view, his proposed alternative caption insufficiently captures the scope of the proposed initiative, and contains value judgments we deem inappropriate (*e.g.*, "*simplifies* ballot titles").

On the other hand, with the exception of their emphasis on the public posting provision in the proposed measure, we find much to be commended in electors Rasmussen and Darby's alternative. Therefore, we have amended the draft caption to read:

Changes, repeals laws governing petition signatures, ballot titles, qualified voters; authorizes lawsuits challenging disqualified signatures.

This amended caption, we believe, captures the subject matter of the proposed measure without emphasizing any particular aspect of the measure over another.

2. The result statements.

All three sets of commenting electors present alternative “yes” result statements that emphasize various aspects of the proposed measure, with varying degrees of clarity. The proposed alternate language of the “yes” statement proposed by electors Meek, Mannix and the co-petitioners omits mention of the legal mechanism for a signatory to challenge his or her signature disqualification, while electors Rasmussen and Darby omit from their alternate “yes” result statement, specific mention of the measure’s treatment of “short” proposed measures.

The Attorney General has amended the draft “yes” result statement as follows:

Result of “Yes” Vote: “Yes” vote changes, repeals laws governing petition signature qualification, verification, counting; public notice required if voter’s signature rejected; requires printing entire text of short measures.

We believe the above “yes” result statement more accurately captures the major changes to the law in the proposed initiative to satisfy the electors’ concerns, with any remaining explication contained in the summary.

Elector Mannix and the co-petitioners had no objections to the Attorney General’s draft “no” result statement. However, both elector Meek and electors Rasmussen and Darby, asserted that the Attorney General’s draft “no” result statement was under-inclusive and overly general. We reject elector Meek’s proposed “no” statement as too value-laden to accurately describe the *status quo* should the proposed initiative be rejected. On the other hand, electors Rasmussen and Darby’s alternative represents an improvement on the Attorney General’s draft “no” statement result statement and we therefore adopt it as follows:

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

3. The Summary.

Both elector Meek and elector Mannix and the co-petitioners object to the following statement in the Attorney General's draft summary: "Measure prohibits laws excluding from signature count (defined) a qualified voter's signature on petition (defined), even if signature was obtained unlawfully[.]" Both argue that the foregoing language suggests that signatures must be counted even if obtained by fraud or forgery, or even if the voter, rather than the circulator, did something wrong. (May 21, 2013, Meek comment pages 4-5; May 21, 2013, Mannix letter pages 4-5).

Electors Rasmussen and Darby criticize the Attorney General's draft summary for inadequately describing current law, and for failing to note that under the proposed measure, disqualified voter signatures must be publicly posted electronically. Electors Rasmussen and Darby also complain that the Attorney General's draft summary does not make clear that ballot titles will not be prepared for measures of 100 words or less. (May 21, 2013, Olney letter page 12). Finally, Rasmussen and Darby believe that the possibility that the proposed measure could be construed to allow electronic signing of petitions should be expressed in the summary. (*Id.*)

The Attorney General does not find the mere possibility that this proposed measure could be construed so as to allow electronic signatures to be so significant as to require inclusion in the ballot title summary, and therefore decline to accept that suggestion. The Attorney General does, however, agree that the description of current law could be improved in a revised summary. In addition, the Attorney General has revised the language regarding unlawfully obtained signatures to clarify that where the voter has committed no illegality but the circulator violates the law, the voter's signature will nevertheless be counted. The revised summary reads as follows:


Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure prohibits laws disqualifying voter's valid signature even if gatherer/circulator obtains it illegally; reactivates "inactive" voter registration for all purposes automatically

upon signing petition, counts signature. Requires public electronic posting of voter name if signature disqualified; signature counts if voter validates. Authorizes lawsuit to contest signature disqualification, attorney fees to voter/chief petitioner. Eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

CONCLUSION

For the foregoing reasons we have made changes to the draft ballot title. We certify the attached ballot title, pursuant to ORS 250.067(2).

Sincerely,

 Laura S. Anderson
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BALLOT TITLE

**Changes, repeals laws governing petition signatures, ballot titles, qualified voters;
authorizes lawsuits challenging disqualified signatures**

Result of "Yes" Vote: "Yes" vote changes, repeals laws governing petition signature qualification, verification, counting; public notice required if voter's signature rejected; requires printing entire text of short measures.

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

Summary: Currently, only "qualified voters" may sign initiative/referendum, candidate nomination, political party formation, recall petitions; "qualified voters" are electors with active registration at time of signing. Constitution, statutes, rules regulate signature collection, verification, and counting to prevent fraud, forgery, improper signature gathering. Measure prohibits laws disqualifying voter's valid signature even if gatherer/circulator obtains it illegally; reactivates "inactive" voter registration for all purposes automatically upon signing petition, counts signature. Requires public electronic posting of voter name if signature disqualified; signature counts if voter validates. Authorizes lawsuit to contest signature disqualification, attorney fees to voter/chief petitioner. Eliminates ballot title for initiatives of 100 words or less, full text must be printed on petition, ballot. Other provisions.

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KATE BROWN
SECRETARY OF THE STATE

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on July 12, 2013, I directed the original Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No.11 (Supreme Court) to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and served Daniel W. Meek, attorney for amicus, by using the court's electronic filing system.

I further certify that on July 12, 2013, I directed the Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No.11 (Supreme Court) to be served upon Kevin L. Mannix, attorney for petitioners, and chief petitioners Duane Fletchall and Knute Buehler, by mailing a copy, with postage prepaid, in an envelope addressed to:

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