IN THE SUPREME COURT OF THE STATEOF OREGON

JILL GIBSON ODELL, *an individual Oregon elector* Petitioner, v. **ELLEN F. ROSENBLUM**, *in her Official capacity as Oregon Attorney General* Respondent.	Case No. **PETITION TO REVIEW BALLOT TITLE CERTIFIED BY ATTORNEY GENERAL** 61292

BALLOT TITLE CERTIFIED
April 23, 2013
Initiative Petition #9

Chief Petitioner: Jill Gibson Odell

Jill Gibson Odell, OSB #973581
Gibson Law Firm, LLC
10260 SW Greenburg Rd., Ste.1180
Portland, OR 97223
jill@gibsonlawfirm.org
Telephone: 503.686.0486

Of Attorneys for Petitioner on Review

Ellen F. Rosenblum, OSB # 753239
Attorney General
1162 Court St., NE
Salem, OR 97301
ellen.rosenblum@doj.state.or.us
Telephone: 503.378.4400

Of Attorneys for Respondent

May 2013

I. PETITION TO REVIEW BALLOT TITLE

A. Petitioner's Interest

Petitioner Jill Gibson Odell is an elector of this State, a person dissatisfied with the ballot title that is the subject of this action, and adversely affected by Respondent's actions. Because Petitioner timely submitted written comments concerning the draft ballot title, she has standing pursuant to ORS 250.085(2).

The text of the initiative measure proposed by the Chief Petitioner Jill Gibson Odell is attached as Exhibit 1. On March 25, 2013, the Attorney General submitted a draft ballot title to the Secretary of State for Prospective Initiative Petition #9. On April 8, 2013, Petitioner timely submitted comments to the Attorney General's draft ballot title. Exhibit 2. On April 23, 2013, the Attorney General submitted a certified ballot title which does not substantially comply with the requirements of ORS 250.035. Exhibit 3. Specifically, while the caption does substantially comply with statutory requirements, the results statements and summary do not because they are confusing and misstate current law.

B. Certified Ballot Title

On April 23, 2013, the Attorney General certified the following ballot title:

Prohibits compulsory payment of union representation costs by public employees choosing not to join union

Result of "Yes" Vote: "Yes" vote prohibits requiring represented public employees who choose not to join union to make compulsory "payment in lieu of dues" for union representation costs.

Result of "No" Vote: "No" vote allows requiring represented public employees who choose not to join union to make compulsory "payment in lieu of dues" for union representation costs.

Summary: Current law allows public employees to bargain collectively through a labor organization/union as their exclusive representative; prohibits requiring union membership as condition of public employment; requires union to fairly represent members and nonmembers in bargaining unit; allows contracts requiring public employees who choose not to join union to make compulsory "payment in lieu of dues" for cost of union representation. Measure affirms public employees' right to join or decline to join union; prohibits requiring public employees choosing not to join union to make compulsory "payment in lieu of dues" for union representation costs; makes entry into such compulsory payment agreements an unfair labor practice. Measure applies only to new, renewed, or extended contracts entered into after the effective date of the measure. Other provisions.

A copy of the certified ballot title is attached to the Attorney General's letter to Stephen N. Trout dated April 23, 2013, which is attached to this Petition as Exhibit 3.

II. ARGUMENTS AND AUTHORITIES

A. Introduction

Initiative Petition #9 seeks to amend the Oregon Public Employee Collective Bargaining Act. ORS 243.650 *et seq*. Currently, a union may be certified by the Employment Relations Board or recognized by a public employer to be the "exclusive representative" for the employer's employees in collective bargaining. ORS 243.666. Exclusive representatives have the right to bargain on behalf of all employees in an appropriate bargaining unit and may enter into agreements with public employers which allow the union to collect "payment-in-lieu-of-dues" from nonmembers of the union. ORS 243.650(8); ORS 243.672(c). As such, while public employees may not be required to join a union, public employees still may have to make compulsory payments to a union against their wishes.

These compulsory payments to unions infringe upon the First Amendment rights of public employees. *Elvin* v. *Oregon Public Employees Union,* 313 Or. 165, 168 (1992) ("forcing a person - even a member of a collective bargaining unit - to be affiliated with and, to some

extent, to thereby further the social and political views of a union has an impact on the person's right of free speech and association"). The United States Supreme Court has also stated that forced fee payments represent an impingement on the First Amendment rights of nonmembers. *See Knox v. SEIU,* ___ U.S. ___, (slip op at 27) (2012) ("by allowing unions to collect any fees from nonmembers . . . our cases have substantially impinged upon the First Amendment right of nonmembers"); *Davenport* v. *Washington Ed Assn.,* 551 U.S. 177, 181 (2007) ("agency shop arrangements in the public sector raise First Amendment concerns because they force individuals to contribute money to unions as a condition of government employment"); *Ellis* v. *Brotherhood of Railway,* 466 U.S. 435, 455 (1984) ("The dissenting employee is forced to support financially an organization with whose principles and demands he may disagree."); *Abood* v. *Detroit Bd. of Education,* 431 U.S. 209, 222 (1977) ("To compel employees financially to support their collective-bargaining representative has an impact upon their First Amendment interests.").

Unions seek to justify these compulsory payments and their resulting infringement of constitutional rights on the argument that "the union has a duty to fairly represent all employees in a bargaining unit, both in terms of collective bargaining and contract enforcement." Comments of Rasmussen and Darby, pg. 2 (April 8, 2013). As more fully discussed below, this is not correct. No Oregon law imposes a duty upon unions to represent nonmembers; rather, the law explicitly states that unions only have the "right" to represent all employees in a bargaining unit. ORS 243.650(8). Therefore, it is a union's choice to represent nonmembers. Furthermore, an appropriate bargaining unit may consist of any "part or combination" of employees found to be appropriate by the Board. OAR 115-025-0050. There is no requirement that nonmembers be included in bargaining units.

B. Standard of Review

On review, this Court must determine whether the title substantially complies with the requirements of ORS 250.035. ORS 250.085(5).

C. The Caption

A ballot title caption must reasonably identify the subject matter of the measure. ORS 250.035(2) (a). For purposes of this Court's review, the "subject matter" of a ballot title is "the actual major effect" of the measure. *Lavey* v. *Kroger,* 350 Or 559,563 *(2011) (citing Whitsett* v. *Kroger,* 348 Or 243,247 (2010).

Although Petitioner believes her proposed captions more accurately and clearly capture the subject matter of IP #9, the Attorney General's certified caption substantially complies with statutory requirements. Commenters Rasmussen, Darby, Towers, and Petitioner objected to the phrase "'fair share' fee payments" and the Attorney General has replaced that with "compulsory payment of union representation costs." This phrase tracks the language used by the United States Supreme Court in its most recent case regarding union dues. *See Knox v. SEIU,* __ U.S. __, (slip op at 27) (2012) ("When a state establishes an 'agency shop' that exacts *compulsory union fees* a condition of public employment, '[t]he dissenting employee is forced to support financially an organization with whose principles and demands he may disagree.'") (emphasis added) (*quoting Ellis,* 466 U.S. at 455). Commenters Rasmussen, Darby, Towers, and Petitioner also objected to the phrase "prohibits requiring union membership as condition of public employment" and the Attorney General removed that phrase as well.

Commenters Rasmussen and Darby urged the Attorney General to include the "free rider" concept and suggested a caption that reads more like a campaign slogan than a ballot title. The Attorney General rightly rejected their proposed caption and instead captured this concept by

using words that are not misleading or biased. As explained by the Attorney General, the certified caption states "that the payments are for 'representation costs' to indicate that, under the proposed measure, non-union employees would be permitted to opt out of paying for those costs despite being represented by a union." Attorney General's letter to Stephen Trout, pg. 2 (April 23, 2013). The phrase "union representation costs" makes it clear that these employees are receiving representation from the union. The phrase also successfully avoids the issue of whether unions are legally required to represent nonmembers, which would be too complex to explain in the caption. Without stating whether unions are representing nonmembers out of duty or by choice, the phrase clearly conveys that nonmembers would not be compelled to pay for any such representation if they choose not to join the union, which is the actual major effect of the IP #9.

D. The Result of "Yes" Statement

ORS 250.035(2) (b) requires a ballot title to contain "[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is approved." The statement must inform voters of the "outcome that is the most significant and immediate, or that carries the greatest consequence, for the general public." *Novick v. Myers,* 337 Or 568, 574 (2004).

The Attorney General accepted most of the suggested changes offered by the commenters and the certified "yes" statement is greatly improved. The Attorney General has removed "fair share" and correctly uses the phrase "payment in lieu of dues" as this phrase is used in the proposed measure as well as in Oregon statutes to refer to the payments that could no longer be made compulsory for nonmembers. However, the new phrase "represented public employees" is misleading because it will likely cause potential signers and voters to believe that public unions

are legally required to represent all public employees. As explained below, that is not the law in Oregon. Additionally, to the extent this phrase is intended to convey that public employees would not have to pay for representation that unions choose to provide, the phrase is redundant because that information is already conveyed by the phrase "union representation costs." This redundancy causes the statement to be confusing and incorrectly conveys that these public employees want to be represented by the union. Deleting the word "represented" will solve this confusion and the statement will still make it clear that nonmember employees could receive non-mandated representation without paying for representation costs. Therefore, Petitioner suggests the following "yes" statement:

Result of "Yes" Vote: "Yes" vote prohibits requiring public employees who choose not to join union to make compulsory "payment in lieu of dues" for union representation costs.

E. The Result of "No" Statement

ORS 250.035(2) (c) requires a ballot title to contain "[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected." Petitioner and other commenters objected to the draft "no" statement for the same reasons as stated above and also objected to the phrase "all-union agreements" because these agreements are prohibited in Oregon's public sector. The Attorney General accepted these comments; however, the certified "no" statement does not comply with statutory requirements because the new phrase "represented public employees" is used. Therefore, Petitioner suggests the following "no" statement:

Result of "No" Vote: "No" vote allows requiring public employees who choose not to join union to make compulsory "payment in lieu of dues" for union representation costs.

Summary

A ballot title's summary must be "concise and impartial" and summarize the measure's major effect. ORS 250.035(2) (d). The goal of the summary is to "help voters [] understand what will happen if he measure is approved" and the "breadth of [the measure's] impact." *Mabon v. Myers,* 332 Or 633, 640 (2001) *(quoting Fred Meyer, Inc.* v. *Roberts,* 308 Or 169,175 (1989)). Although the Attorney General accepted most of Petitioner's and other commenters' suggested changes (e.g., deleted "fair share" and "right to work"), the certified summary does not substantially comply with statutory standards because it contains a misstatement of law. *See Dale v. Kulongoski,* 321Or 108, 113 (1995) (ballot title should not misstate existing law, even by implication).

Specifically, the certified summary incorrectly states that current law "requires union to fairly represent members and nonmembers in bargaining unit." This provision was incorporated into the certified summary at the behest of Commenters Rasmussen, Darby, and Towers, who argue that unions have a legal duty to represent nonmembers. Notably, Rasmussen, Darby, and Towers can provide no statutory citation for this assertion; rather, Rasmussen and Darby argue that the duty is judicially created and cite several cases that are inapposite because they pertain to *private* unions, which are controlled by the National Labor Relations Act. Oregon public unions are controlled by state law, not federal law, and the Oregon Public Employee Collective Bargaining Act does not require public unions to negotiate on behalf of nonmembers. *Caruthers v. Myers,* 344 Or 596, 602 (2008) ("federal labor law does not apply to state public unions"). State law only gives public unions the *right* to bargain on behalf of all employees - members and nonmembers - if unions choose to exercise that right. ORS 243.650(8).

Furthermore, assuming arguendo that public unions have a duty to represent all employees in the bargaining unit does not necessarily mean that unions have a duty to

represent nonmembers because nonmembers can be excluded from bargaining units. The Oregon Employment Relations Board has broad discretion in determining which employees are included in a bargaining unit and they are to consider factors such as "community of interest" and "the desires of the employees." OAR 1115-025-0050. There is no requirement that all employees- members and nonmembers - be included in the bargaining units. Indeed, it would seem more appropriate that bargaining units do not include employees who do not want to join and financially support the union. The fact that the Board has the authority to include nonmembers in bargaining groups is not tantamount to such representation being legally mandated. Indeed, because the Board has the authority to create bargaining units that exclude nonmembers, unions can "fairly represent all employees in the bargaining unit" without creating a "free rider" situation. Comments of Rasmussen and Darby, pg. 2.

The cases cited by Commenter Towers are also not dispositive of this issue. He cites *Dale* for the proposition that the "ballot title must convey that 'measure, if adopted, would entitle public employees who do not join a union to become 'free riders.'" Tower's Comments, pg. 1 (April 8, 2013). However, a review of *Dale* shows that this quote was not a statement made by the Court; it was an argument advanced by Petitioners in that case. *See Dale*, 321 Or at 111-112 ("Petitioners argue that . . . the measure, if adopted, would entitle public employees who do not join a union to become 'free riders' by securing bargaining and representation services without cost.").

Sizemore v. Myers, 342 Or 578 (2007) is equally unhelpful to Towers because the measure in that case dealt with private employee unions, which, as stated above, are regulated by federal law which arguably does require representation to nonmembers. *See, e.g., Airline Pilots v. O'Neill*, 499 U.S. 65 (1991); *Caruthers,* 344 Or at 601 ("measure

would have no effect on a private sector union's federal obligation to represent all the employees in a bargaining unit"). Additionally, the Court in *Sizemore* agreed with Petitioner that a union may elect to bargain for only its members and unless a union chooses to become the exclusive bargaining representative for a bargaining unit of employees, it never assume a duty to fairly represent nonmembers of the union. *Sizemore,* 342 at 590.

Although this Court has discussed the topic of union representation of nonmembers many times, Petitioner cannot find a case where the Court examined the issue and conclusively stated that such representation by public employee unions is legally mandated. Significantly, as mentioned above, even Commenters Rasmussen, Darby, and Towers cannot provide a basis for their assertion that such representation is required. As such, the summary should not state that current law "requires union to fairly represent members and nonmembers in bargaining unit." This phrase must be deleted in order for the summary to be a concise and impartial description of the measure's major effect.

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court declare that the certified ballot title does not substantially comply with ORS 250.035 and refer the ballot title back to the Attorney General for modification.

Dated this 7th day of May, 2013.

GIBSON LAW FIRM, LLC

Jill Gibson Odell, OSB #97358
jill@gibsonlawfirm.org
503.686.0486

Of Attorneys for Chief Petitioner

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

March 18, 2013

To All Interested Parties:

Secretary of State Kate Brown is responsible for the pre-election review of proposed initiative petitions for compliance with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. This review will be completed before approving the form of the cover and signature sheets for the purpose of circulating the proposed initiative petition to gather signatures.

The Secretary of State is seeking public input on whether proposed initiative petition (#9), satisfies the procedural constitutional requirements for circulation as a proposed initiative petition. Petition #9 was filed in our office on March 15, 2013, by Jill Gibson Odell and Libby Braeda, for the General Election of November 4, 2014.

A copy of the text of this proposed initiative petition is on the second page of the letter. If you are interested in providing comments on whether the proposed initiative petition meets the procedural constitutional requirements, please write to the secretary at the Elections Division. Your comments, if any, must be received by the Elections Division no later than April 8, 2013, in order for them to be considered in the review.

KATE BROWN
Secretary of State

BY:

Lydia Plukchi
Compliance Specialist

SECTION 1. This 2014 Act shall be known as the Public Employee Choice Act.

SECTION 2. The people of Oregon find that:

(1) A person shall have the individual freedom of choice in the pursuit of public employment;

(2) A person shall not be required to abstain or refrain from membership in any labor organization as a condition of public employment or continuation of public employment. The inherent right to work shall not be denied on account of an employee's choice to bargain collectively through a labor organization;

(3) A person shall not be required to become or remain a member of a labor organization as a condition of public employment or continuation of public employment. The inherent right to work shall not be denied on account of an employee's choice not to bargain collectively through a labor organization.

(4) A person who does not choose to become a member of any labor organization shall not be required to pay any organization or third party an amount that is in lieu of any portion of dues, fees, or other charges required of labor organization members.

SECTION 3. ORS 243.662 is amended to read:

243.662. **(1)** Public employees have the right **and freedom to choose whether or not** to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations.

(2) If an employee does not choose to join and participate in a labor organization, such employee shall not pay an amount of money in-lieu-of-dues to a labor organization, another organization, or third party as a condition of employment.

SECTION 4. ORS 243.666 is amended to read:

243.666. (1) A labor organization certified by the Employment Relations Board or recognized by the public employer is the exclusive representative of the employees of a public employer for the purposes of collective bargaining with respect to employment relations. [*Nevertheless any agreements entered into involving union security including an all-union agreement or agency shop agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee would otherwise be required to pay dues. The employee shall furnish written proof to the employer of the employee that this has been done.*]

(2) Notwithstanding the provisions of subsection (1) of this section, an individual employee or group of employees at any time may present grievances to their employer and have such grievances adjusted, without the intervention of the labor organization. [*, if:*

(a) The adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect; and

(b) The labor organization has been given opportunity to be present at the adjustment.]

(3) Nothing in this section prevents a public employer from recognizing a labor organization which represents at least a majority of employees as the exclusive representative of the employees of a public employer when the board has not designated the appropriate bargaining unit or when the board has not certified an exclusive representative in accordance with ORS 243.686.

SECTION 5. 243.672 is amended to read:

243.672. (1) It is an unfair labor practice for a public employer or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce employees in or because of the exercise of rights guaranteed in ORS 243.662.

(b) Dominate, interfere with or assist in the formation, existence or administration of any employee organization.

(c) Discriminate in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization. [*Nothing in this section is intended to prohibit the entering into of a fair-share agreement between a public employer and the exclusive bargaining representative of its employees. If a "fair-share" agreement has been agreed to by the public employer and exclusive representative, nothing prohibits the deduction of the payment-in-lieu-of-dues from the salaries or wages of the employees.*]

(d) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under ORS 243.650 to 243.782.

(e) Refuse to bargain collectively in good faith with the exclusive representative.

(f) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(g) Violate the provisions of any written contract with respect to employment relations including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.

(h) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(i) Enter into an agreement whereby employees who do not choose to become a member of a labor organization make payments in-lieu-of-dues to a labor organization, another organization, or a third party. Such agreements are prohibited.

(2) Subject to the limitations set forth in this subsection, it is an unfair labor practice for a public employee or for a labor organization or its designated representative to do any of the following:

(a) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under ORS 243.650 to 243.782.

(b) Refuse to bargain collectively in good faith with the public employer if the labor organization is an exclusive representative.

(c) Refuse or fail to comply with any provision of ORS 243.650 to 243.782.

(d) Violate the provisions of any written contract with respect to employment relations, including an agreement to arbitrate or to accept the terms of an arbitration award, where previously the parties have agreed to accept arbitration awards as final and binding upon them.

(e) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

(f) For any labor organization to engage in unconventional strike activity not protected for private sector employees under the National Labor Relations Act on June 6, 1995. This provision applies to sitdown, slowdown, rolling, intermittent or on-and-off again strikes.

(g) For a labor organization or its agents to picket or cause, induce, or encourage to be picketed, or threaten to engage in such activity, at the residence or business premises of any individual who is a member of the governing body of a public employer, with respect to a dispute over a collective bargaining agreement or negotiations over employment relations, if an objective or effect of such picketing is to induce another person to cease doing business with the governing body member's business or to cease handling, transporting or dealing in goods or services produced at the governing body's business. For purposes of this paragraph, a member of the Legislative Assembly is a member of the governing body of a public employer when the collective bargaining negotiation or dispute is between the State of Oregon and a labor organization. The Governor and other statewide elected officials are not considered members of a governing body for purposes of this paragraph. Nothing in this paragraph may be interpreted or applied in a manner that violates the right of free speech and assembly as protected by the Constitution of the United States or the Constitution of the State of Oregon.

(h) For any labor organization to enter into an agreement whereby employees who do not choose to become a member of a labor organization make payments in-lieu-of-dues to a labor organization, another organization, or a third party. Such agreements are prohibited.

(3) An injured party may file a written complaint with the Employment Relations Board not later than 180 days following the occurrence of an unfair labor practice. For each unfair labor practice complaint filed, a fee of $300 is imposed. For each answer to an unfair labor practice complaint filed with the board, a fee of $300 is imposed. The board may allow any other person to intervene in the proceeding and to present testimony. A person allowed to intervene shall pay a fee of $300 to the board. The board may, in its discretion, order fee reimbursement to the prevailing party in any case in which the complaint or answer is found to have been frivolous or filed in bad faith. The board shall deposit fees received under this section to the credit of the Employment Relations Board Administrative Account.

SECTION 6. The Public Employee Choice Act shall not apply to any collective bargaining agreement or contract between an employer and a labor organization entered into before the effective date of the Act but shall apply to a renewal or extension of the contract or agreement or to a new contract or agreement entered into after the effective date the Act.

SECTION 7. This act does not limit, impair, or affect the right of a public employee to the expression or communication of a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment as long as the expression or communication does not interfere with the full, faithful, and proper performance of the duties of employment.

GIBSON
LAW FIRM

April 8, 2013

Via Facsimile- (503)373-7414

Elections Division
Office of the Secretary of State
255 Capitol Street NE, Ste 501
Salem, OR 97310-0722

Re: Public Comment on Initiative Petition #9 (2014)

Dear Secretary Brown,

As a registered voter and the chief petitioner of IP #9, I would like to provide comments on the draft ballot title for IP #9.

The Attorney General has proposed the following ballot title for IP #9:

Prohibits requiring union membership as condition of public employment; prohibits requiring "fair share" fee payments

Result of "Yes" Vote: "Yes" vote prohibits requiring union membership as condition of public employment; prohibits requiring "fair share" fees from public employees who choose not to join union.

Result of "No" Vote: "No" vote retains laws allowing all-union agreements with public employees, including required payment of "fair share" fees by employees choosing not to join union.

Summary: Currently, Oregon law allows public employees to bargain collectively through a labor organization/union as their exclusive representative and to require those public employees who choose not to join a labor organization/union to pay "fair share" fees instead of union dues. Measure affirms the right of public employees to join union if they choose. Measure adopts "right to work" provision that prohibits requiring union membership as a condition of public employment. Measure also prohibits requiring payment of "fair share" fees instead of union dues by public employees who choose not to join union. Measure does not apply to existing contracts between public employers and labor organizations; applies only to new, renewed, or extended contracts entered into after th effective date of measure. Other provisions.

CAPTION

ORS 250.035(2)(a) requires a ballot title to contain "[a] caption of not more than 15 words that reasonably identifies the subject matter of the state measure." To comply with this standard, case law requires that the caption "state or describe the proposed measure's subject matter 'accurately, and in terms that will not confuse or mislead potential signers and voters.'" *Lavey v. Kroger* __ Or __, slip op at 4 (July 28, 2011) (quoting *Kain/Waller v. Myers*, 337 Or 36, 40 (1995)). According to *Greene v. Kulongoski*, 322 Or 169, 175 91995), "the caption is the cornerstone for the other portions of the ballot title. . . . As the headline for the ballot title, it provides the context for the reader's consideration of the other information in the ballot title." If a draft ballot title is challenged for failure to comply with these requirements, upon review the Oregon Supreme Court's "initial task is to determine whether the title prepared by the Attorney General is unfair or insufficient." *Remington v. Paulus*, 296 Or 317, 320 (1984).

The draft caption does not meet these statutory requirements for two reasons. First, it fails to describe the proposed measure's subject matter accurately because it misstates existing law. *See Dale v. Kulongoski*, 321 Or 108, 113 (1995) (ballot title should not misstate existing law, even by implication.) The draft ballot title caption states in part, "Prohibits requiring union membership as condition of public employment," which does not adequately communicate the fact that this phrase is intended to be subjunctive with the following phrase: "prohibits requiring 'fair share' fee payments." Because the two phrases are separated by a semicolon, the two phrases will be read as complete and independant statements. Therefore, the phrase, "Prohibits requiring union membership as condition of public employment" will mislead potential signers and voters to believe that the law currently requires union membership as a condition of public employment. This is not entirely the case. Rather, the law currently requires *either* union membership *or* payments-in-lieu-of-dues. ORS 243.672(1)(c) (authorizes deduction of payments-in-lie-of-dues); ORS 243.650 (18) (defines "payment-in-lieu-of-dues"). This issue was raised in *Dale,* where the ballot title required modification because it incorrectly implied that compulsory union membership was required by then-existing law. *Id.* at 113.

The draft caption also does not meet these statutory requirements because the term "fair share" is insufficient. *Crumpton v. Kulongoski*, 319 Or 82, 86 (1994) ("fair share" removed from ballot title because it "does not reasonably identify to the voter the subject of the measure.") The phrase is also insufficient because the draft ballot title does not define the term, and, indeed, could not accurately define "'fair share' fee payments" because that term is not defined by the Public Employment Collective Bargaining Act (PECBA) (ORS 243.650 - 243.782). Rather, the phrase used in PECBA to describe payments made by nonmembers is "payment-in-lieu-of-dues." ORS 243.650(18) states:

> "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employees. The payment must be equivalent to regular union dues and assessments, if any, or must be an amount agreed upon by the public employer and the exclusive representative of the employees.

The use of the above defined term will make it clear to voters what payments are affected by IP #9.

Additionally, authors of ballot titles routinely put words in quotation marks to show that the words are defined and used in the proposed initiative. *See Carley v. Myers*, 340 Or 222, 233 (2006)(n. 6) (use of the word "reliable" was fair because it was set off in quotation marks to show that proposed amendment used the word, rather than the Attorney General or the court). Here, use of "fair share" in quotation marks causes the reader to mistakenly conclude that IP #9 defines and uses the phrase. Rather, IP #9 uses the phrase "payments-in-lieu-of-dues" because it is clearly defined by statute and, therefore, the draft ballot title caption should also use "payment-in-lieu-of-dues."

The use of "fair share" is also unfair because it is a value-laden term that will cause potential signers and voters to believe that the payments at issue are fair and, therefore, that IP #9 is unfair. Use of an emotionally-charged or biased word renders the ballot title insufficient. *See Sizemore v. Myers*, __ Or __ (slip op at 6) (April 13, 2007) (court rejected use of "benefits" to describe union services because voters may interpret that terminology as an argument against the proposed measure). Indeed, many voters believe forced payments-in-lieu-of-dues are completely unfair because the payments infringe upon the First Amendment rights of public employees. *Elvin v. Oregon Public Employees Union*, 313 Or. 165, 168 (1992) ("forcing a person - even a member of a collective bargaining unit - to be affiliated with and, to some extent, to thereby further the social and political views of a union has an impact on the person's right of free speech and association").

The United States Supreme Court has also stated that forced dues represent an impingement on the First Amendment rights of nonmembers. *See Knox v. SEIU*, __ U.S. __, (slip op at 27) (2012) ("by allowing unions to collect any fees from nonmembers . . . our cases have substantially impinged upon the First Amendment right of nonmembers"); *Davenport v. Washington Ed. Assn.*, 551 U.S. 177, 181 (2007) ("agency shop arrangements in the public sector raise First Amendment concerns because they force individuals to contribute money to unions as a condition of government employment"); *Ellis v. Brotherhood of Railway*, 466 U.S. 435, 455 (1984) ("The dissenting employee is forced to support financially an organization with whose principles and demands he may disagree."); *Abood v. Detroit Bd. of Education*, 431 U.S. 209,

222 (1977) ("To compel employees financially to support their collective-bargaining representative has an impact upon their First Amendment interests.").

Oregon voters may also believe that "fair share" is actually unfair because it institutes a scheme whereby unions can extract involuntary loans. *See Elvin* (Oregon Public Employees Union committed unfair labor practice by over collecting payments from nonmembers and was ordered to refund payments). The fact that unions may issue rebate checks to nonmembers at the end of the year does not undo the violation of First Amendment rights and it does not render the involuntary interest free loans fair because for a period of time the union had full use of nonmembers' funds. *See Knox* (slip op at 11-12) ("the First Amendment does not permit a union to extract a loan from unwilling nonmembers even if the money is later paid back in full); *Ellis*, 466 U.S. at 444 ("the union obtains an involuntary loan for purposes to which the employee objects").

Because the United States Supreme Court recognizes the inherent unfairness of impinging upon First Amendment rights, the Court does not refer to these compulsory fees as "fair share fees." In *Abood*, the Court called the payments "a service charge," "a service fee," and "financial support." *Id.* at 211, 212, and 219, respectively. In *Ellis*, the court used the phrase "agency fees," "compelled dues," "contributions," and "obligatory payments." *Id.* at 439, 441, 448, and 448 respectively. In *Knox*, the Court's most recent case regarding compulsory union dues by nonmembers, the Court referred to these payments as "chargeable expenses," and "compulsory union fees." *Id.* at 4 and 8, respectively.

Finally, the premise underlying the phrase "fair share" is the argument that unions are legally required to bargain on behalf of nonmembers. While this may be correct in the context of private unions, which are controlled by federal labor laws, public unions have no legal requirement to represent nonmembers. Oregon public unions are controlled by state law, which *allows* unions to bargain on behalf of all employees in the appropriate bargaining unit. ORS 243.650(8). The Oregon Employment Relations Board has broad discretion in determining which employees are included in a bargaining unit and they consider factors such as "community of interest" and "the desires of the employees." OAR 1115-025-0050. There is no requirement that all employees - members and nonmembers - be included in the bargaining units. In fact, it would seem more appropriate that bargaining units do not include employees who do not want to join and financially support the union. Because the Board has the authority to create bargaining units that exclude nonmembers, the phrase "fair share" is misleading and inaccurate in the context of public unions.

Because "fair share" is a politically motivated term of art and does not accurately describe the payments at issue in IP #9, the draft ballot title does not comply with ORS 250.035(2)(a). *See Carley v. Myers*, 340 Or 222, 233 (2006) (n. 6) ("Merely adding quotation marks to a doubtful or disputed term does not provide that required degree of clarity."). To more accurately and clearly

capture the subject matter of IP #9, I propose the following captions:

Prohibits requiring public employees to either join union or pay fees as condition of employment

Prohibits requiring union membership or payments-in-lieu-of-dues as condition of employment

RESULT OF "YES" VOTE

The draft "yes" statement reads as follows:

> **Result of "Yes" Vote:** "Yes" vote prohibits requiring union membership as condition of public employment; prohibits requiring "fair share" fees from public employees who choose not to join union.

ORS 250.035(2)(b) requires that a ballot title contain a "simple and understandable statement," 25 words long, explaining what will happen if the measure is approved. The purpose of this portion of the ballot title is to "notify petition signers and voters of the results of enactment that would have the greatest importance to the people of Oregon. *Novick v. Myers*, 337 Or 568, 574 (2004).

The draft "yes" statement does not meet this requirement because it suffers from the same defect as the draft caption. Specifically, the inclusion of "fair share" will cause potential signers and voters to believe that IP #9 will prohibit something that is fair. Therefore, as written, the draft "yes" statement operates as an argument against the proposed measure.

To address this defect, I suggest the following statements:

> **Result of "Yes" Vote:** "Yes" vote prohibits requiring union membership as condition of public employment; prohibits requiring union fees from employees who choose not to join.

RESULT OF "NO" VOTE

The Attorney General issued the following draft "no" statement:

> **Result of "No" Vote:** "No" vote retains laws allowing all-union agreements with public employees, including required payment of "fair share" fees by employees choosing not to join union.

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

The draft "no" statement does not comply with these requirements for two reasons. First, like the caption and the "yes" statement, the "no" statement also includes the unclear and unfair terminology "fair share." Second, inclusion of the phrase "all-union agreements" causes the statement to be a misstatement of law because the these types of union agreements are prohibited in Oregon's public sector. *See Dale*, 321 Or at 113 (ballot title should not misstate existing law, even by implication.).

The confusion in Oregon law regarding the legality of all-union agreements arises because the drafters of PECBA erroneously included this phrase in ORS 243.666(1), which states in part,

> Nevertheless any agreement entered into involving union security including an all-union agreement or agency shop agreement must safeguard the rights of nonassociation of employees, based on bona fide religious tenets or teaching of a church or religious body of which such employee is a member.

Id. This language is in direct conflict with ORS 243.672(1)(c), which allows agency shops but prohibits union shops in public employment. *Id.* (It is an unfair labor practice for a public employer to "[d]iscriminate in regard to hiring, tenure, or any terms or condition of employment for the purpose of *encouraging* or discouraging membership in an employee organization.") (emphasis added). This confusion was addressed in *Oregon State Employees Association v. Oregon State University*, 30 Or App 757 (1977), where a public union attempted to negotiate an agreement which would force all employees to join the union within 31 days, which is a union shop or "all-union" agreement. After reviewing the conflicting statutes concerning union shops, the court concluded that "it is clear from [legislative] history that the legislature never intended to permit union shop agreements." *Id.* at 763 ("We can only conclude that in lifting this language, the drafter neglected to delete the language 'all-union agreement or agency shop agreement.'").

Not only are all-union agreements prohibited in public employment, but the term is also unclear. In *Oregon State Employees Association*, the court recognized this ambiguity by stating, "It should also be noted that term "all-union agreement" is not a labor law term of art. It is a term which could refer not only to a union shop, but also a closed shop or even a fair share agreement." *Id.* at 764. For these reasons, the draft ballot title should not include a reference to

all-union agreements.

To cure these defects, I suggest the following "no" statement:

Result of "No" Vote: "No" vote retains law requiring public employees who do not join union to pay union fees; retains unions' authorization to collect union fees from nonmembers.

SUMMARY

The Attorney General has issued the following draft summary:

> **Summary:** Currently, Oregon law allows public employees to bargain collectively through a labor organization/union as their exclusive representative and to require those public employees who choose not to join a labor organization/union to pay "fair share" fees instead of union dues. Measure affirms the right of public employees to join union if they choose. Measure adopts "right to work" provision that prohibits requiring union membership as a condition of public employment. Measure also prohibits requiring payment of "fair share" fees instead of union dues by public employees who choose not to join union. Measure does not apply to existing contracts between public employers and labor organizations; applies only to new, renewed, or extended contracts entered into after th effective date of measure. Other provisions.

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

The draft ballot title does not comply with these standards for several reasons. First, for the reasons explained above, the phrase "fair share" causes the summary to not be concise or impartial. Additionally, there is no attempt to explain the nature of these fees and, therefore, the only thing readers will be able to surmise about these payments from the summary is that they are presumably "fair." As such, the term "payments-in-lieu-of-dues should be used instead because it is impartial and explains that these payments are made in lieu of paying dues.

The summary also fails to comply with statutory requirements because the first sentence contains a typographical and grammatical error by including the words "to require" and this renders the sentence unclear. If this sentence is retained, it should be corrected by deleting "to" and changing "require" to "requires."

The summary also includes the unclear, inaccurate, and politically charged phrase "right to

work." *Whelan v. Johnson*, 257 Or 238, 239-240 (1970) ("right to work" was stricken from ballot title because it is a "slogan" and "obviously argumentative.") "Right to work" is a political slogan which many Oregon voters are unfamiliar with and those voters might mistakenly conclude that a "right to work" law guarantees everyone a job. This, of course, is not the case. The phrase would also cause confusion among voters who follow labor union issues and associate it with state laws where both private and public employees have the right to not pay fees to unions if they are not members. Currently, 24 states are "right to work" states and they allow *private and public* employees the right to decide for themselves whether or not to join and financially support a union.[1] Therefore, among these voters, the summary is inaccurate because even with passage of IP #9, Oregon will not be a "right to work" state because union shops and agency shops will still be allowed in private employment. Indeed, this is why IP #9 does not use the phrase "right to work."

Additionally, according to the United States Department of Labor glossary webpage, "right to work laws" is a "term used by opponents of unions to institute open-shop laws in the state. The expression has nothing to do with guaranteeing anyone the right to a job." (http://www.dol.gov/oasam/programs/history/glossary.htm) Because "right to work" is associated with opposing unions, use of this phrase will cause potential signers and voters to conclude that the summary is anti-union or that IP #9 is anti-union. It is not. IP #9 specifically provides that Oregon public employees are free to choose to join unions. Additionally, including this phrase in the summary is superfluous, rhetorical, tendentious, and provides no information to potential signers and voters regarding IP #9.

Finally, the summary fails to comply with ORS 250.035(2)(d) because it does not state the initiative's major effect. It does not clearly state that IP #9 gives public employees the right to decide for themselves whether or not to join or financially support a union. The summary explains the effect of the initiative in terms of "prohibits requiring," which is an unclear and indirect way to describe the act of "allowing" or "giving rights." Indeed, IP #9 is directed towards the permissible actions of employees, not the prohibited actions of unions.

To address the problems identified, we suggest the following summary:

> **Summary:** Currently, Oregon law requires public employees to either bargain collectively through a labor organization/union as their exclusive representative or make payments-in-lieu-of-dues to union if the employee does not join the union. Measure affirms the right of public employees to join union if they choose. Measure adopts provision that gives public employees the right to choose to not join union and to not make payments-in-lieu-of-dues to union. Measure also prohibits requiring payments-in-lieu-of-dues by public employees

[1] U.S. Department of Labor, state website.

who choose not to join union. Measure does not apply to existing contracts between public employers and labor organizations; applies only to new, renewed, or extended contracts entered into after the effective date of measure. Other provisions.

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

Very truly yours,

Jill Gibson Odell
Gibson Law Firm

ELLEN F. ROSENBLUM
Attorney General

MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

April 23, 2013

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

Re: Proposed Initiative Petition — Prohibits Compulsory Payment Of Union Representation Costs By Public Employees Choosing Not To Join Union
DOJ File #BT-9-13; Elections Division #9

Dear Mr. Trout:

We have received the comments submitted in response to the draft ballot title for the prospective Initiative Petition #9 (2014). We provide the enclosed certified ballot title.

This letter summarizes the comments we received, our response to those comments, and the reasons we made or declined to make the changes proposed by the commenters. This letter must be included in the record in the event the Oregon Supreme Court is asked to review this ballot title. ORAP 11.30(7).

We received comments from Gary from chief petitioner Jill Gibson Odell, from Richard from Margaret S. Olney and Aruna Masih on behalf of Gail Rasmussen and BethAnne Darby, from Steven C. Berman on behalf of Arthur Towers, and from Eric We have modified the caption, the "yes" and "no" result statements, and the summary in response to the comments.

The Caption

The draft caption provides:

Prohibits requiring union membership as condition of public employment; prohibits requiring "fair share" fee payments

All the commenters raised objections to the caption, particularly the use of the phrase "fair share" as a shorthand description of fees involuntarily collected from non-

union members of a bargaining unit to pay for union representation costs incurred in bargaining and administering employment contracts on their behalf. The commenters persuasively argue that the phrase "fair share" is one that the voters are not likely to understand well enough to convey the concept its shorthand use in the caption sought to convey. Accordingly, we have deleted this phrase from the caption, as well as from all other sections of the ballot title.

Commenters Odell, Rasmussen and Darby, Towers, and also object that the phrase "prohibits requiring union membership as condition of public employment" inaccurately describes current law by improperly implying that union membership currently could be required as a condition of public employment, which it cannot. Commenters Rasmussen and Darby assert that the caption fails to state the actual main purpose of the proposed measure, which they contend is to allow "free riders" to receive benefits of union representation without paying for them. Commenter Towers objects that the caption fails to indicate that existing law allows employees with bona fide religious objections to association with a union to refuse to make a "fair share" payment and that the caption fails to indicate that the proposed measure creates new unfair labor practices.

Some of the commenters' concerns are valid, and we have modified the caption to address those concerns by eliminating the phrase "fair share fees" to describe payments currently required to be paid by non-union public employees in lieu of union dues. We have indicated that the payments are for "representation costs" to indicate that, under the proposed measure, non-union employees would be permitted to opt out of paying for those costs despite being represented by a union. Word limitations preclude mention in the caption that the proposed measure creates new unfair labor practices, but we have included mention of this effect in the summary. We have not included mention of the religious exemption for several reasons: first, it is not a main subject matter of the proposed measure; second, word limitations do not allow its inclusion in the caption; and third, the commenter's description of the current exemption is inaccurate. That exemption does not allow those employees with religious objections to avoid making involuntary payments that are equivalent to union dues; instead, it requires them to make charitable contributions in the same amount as union dues to charities "mutually agreed upon" by the employee and the union representative. ORS 243.666(1).

We have modified the draft caption and certify the following:

Prohibits compulsory payment of union representation costs by public employees choosing not to join union

The "Yes" Result Statement

The draft "Yes" result statement provides:

Result of "Yes" vote: "Yes" vote prohibits requiring union membership as condition of public employment; prohibits requiring "fair share" fees from public employees who choose not to join union.

All of the commenters object to the draft "yes" result statement for the same reasons they objected to the draft caption – that is, dissatisfaction with the phrase "fair share" and the alleged inaccurate implication that public employees currently can be required to join a union as a condition of employment. We have revised the "yes" result statement to address the concerns raised by the commenters; in particular, we have chosen to use the phrase "payment in lieu of dues" – which is used in the proposed measure as well as in Oregon statute – to refer to the payments that could no longer be made compulsory for non-union public employees.

We certify the following "Yes" result statement:

Result of "Yes" Vote: "Yes" vote prohibits requiring represented public employees who choose not to join union to make compulsory "payment in lieu of dues" for union representation costs.

The "No" Result Statement

The draft "No" result statement provides:

Result of "No" Vote: "No" vote retains laws allowing all-union agreements with public employees, including required payment of "fair share" fees by employees choosing not to join union.

All of the commenters objected to the draft "no" result statement, primarily on the same grounds as their objections to the draft caption and draft "yes" result statements. Commenters Odell, Rasmussen and Darby, and Towers object to the phrase "all-union agreements." Commenter Towers also objects that the "no" result statement fails to indicate that the law currently allows a religious exemption for payments in lieu of fees.

We have revised the "no" result statement and have removed the phrases fair share" and "all-union agreements." We have not included mention of the religious exemption due to word limitations and because it is not a major effect of the proposed measure.

We certify the following "No" result statement:

"No" Result Statement: "No" vote allows requiring represented public employees who choose not to join union to make compulsory "payment in lieu of dues" for union representation costs.

The Summary

The draft summary provides:

Summary: Currently, Oregon law allows public employees to bargain collectively through a labor organization/union as their exclusive representative and to require those public employees who choose not to join a labor organization/union to pay "fair share" fees instead of union dues. Measure affirms the right of public employees to join union if they choose. Measure adopts "right to work" provision that prohibits requiring union membership as a condition of public employment. Measure also prohibits requiring payment of "fair share" fees instead of union dues by public employees who choose not to join union. Measure does not apply to existing contracts between public employers and labor organizations; applies only to new, renewed, or extended contracts entered into after the effective date of measure. Other provisions.

The commenters all object to the draft summary for the same reasons they objected to the other sections of the draft ballot title. Commenter Odell additionally contends that the draft summary fails to state the major effect that the proposed measure gives public employees the right to decide whether to financially support a union. Commenters Rasmussen and Darby contend that the draft summary fails to give context to the proposed changes – such as failing to indicate that a union must bargain for and represent all covered bargaining unit members, failing to describe the existing procedure for rescinding agreements authorizing payments in lieu of dues, and failing to describe new enforcement measures that the proposed measure would adopt. Commenter Towers objects that the draft summary's description that the proposed measure would not apply to existing contracts is misleading.

We have revised the summary to address most of these objections. As we did in the other sections, we have deleted the phrase "fair share" fees. We also have deleted the reference to "right to work" provision. We have added context by explaining that a union is required to fairly represent both members and nonmembers of a bargaining unit. We also have included mention that the proposed measure adds new unfair labor practices. We disagree that discussion of existing procedures for rescinding authorized payments in lieu of dues is particularly helpful – especially when it would require a detailed description of that somewhat cumbersome procedure which is rarely utilized. We also disagree that the proposed

measure expressly states that it would not apply to existing contracts; "new, renewed, or extended contracts" are not existing contracts.

We certify the following summary:

Summary: Current law allows public employees to bargain collectively through a labor organization/union as their exclusive representative; prohibits requiring union membership as condition of public employment; requires union to fairly represent members and nonmembers in bargaining unit; allows contracts requiring public employees who choose not to join union to make compulsory "payment in lieu of dues" for cost of union representation. Measure affirms public employees' right to join or decline to join union; prohibits requiring public employees choosing not to join union to make compulsory "payment in lieu of dues" for union representation costs; makes entry into such compulsory payment agreements an unfair labor practice. Measure applies only to new, renewed, or extended contracts entered into after the effective date of the measure. Other provisions.

Conclusion

We have changed each section of the draft ballot title and attach the certified ballot title.

Sincerely,

for Douglas F. Zier
Senior Assistant Attorney General
doug.zier@doj.state.or.us

DFZ:mlk/4134254

Enclosure
Lynn Rosik, General Counsel Division

Jill Gibson Odell
NW Shadow Hills Lane
Beaverton, Oregon 97006

Braeda Libby
Espana Avenue N.
Keizer, Oregon 97303

Gary Haycox
SW Tanager Terrace
Beaverton, Oregon 97007

Jill Gibson Odell
Gibson Law Firm
Lincoln Tower
10260 SW Greenburg Rd., Ste. 1180
Portland, Oregon 97223

Richard H.
1 NW Vaughn Street
Portland, Oregon 97210

Margaret S. Olney
Bennett, Hartman, Morris & Kaplan, LLP
210 SW Morrison St., Suite 500
Portland, Oregon 97204

Aruna A. Masih
Bennett, Hartman, Morris & Kaplan, LLP
210 SW Morrison St., Suite 500
Portland, Oregon 97204

Steven C.
Stoll Berne
209 SW Oak St., Ste 500
Portland, Oregon 97204

Eric
30710 SW Magnolia Avenue
Wilsonville, Oregon 97070

Certified by Attorney General on April 23, 2013.
Judy C. Lucas
Assistant Attorney General

BALLOT TITLE

Prohibits compulsory payment of union representation costs by public employees choosing not to join union

Result of "Yes" Vote: "Yes" vote prohibits requiring represented public employees who choose not to join union to make compulsory "payment in lieu of dues" for union representation costs.

Result of "No" Vote: "No" vote allows requiring represented public employees who choose not to join union to make compulsory "payment in lieu of dues" for union representation costs.

Summary: Current law allows public employees to bargain collectively through a labor organization/union as their exclusive representative; prohibits requiring union membership as condition of public employment; requires union to fairly represent members and nonmembers in bargaining unit; allows contracts requiring public employees who choose not to join union to make compulsory "payment in lieu of dues" for cost of union representation. Measure affirms public employees' right to join or decline to join union; prohibits requiring public employees choosing not to join union to make compulsory "payment in lieu of dues" for union representation costs; makes entry into such compulsory payment agreements an unfair labor practice. Measure applies only to new, renewed, or extended contracts entered into after the effective date of the measure. Other provisions.

CERTIFICATE OF SERVICE

I certify that on May 7, 2013, I electronically filed the attached Petition to Review Ballot Title Certified by Attorney General (Supreme Court) with the Appellate Court Administrator, Appellate Records Section, by using the court's electronic filing system.

I further certify that on May 7, 2013, I served the Petition to Review Ballot Title Certified by Attorney General upon Douglas F. Zier, attorney for Respondent Ellen F. Rosenblum, and Kate Brown, mailing a copy, with postage prepaid, in an envelope addressed to:

Douglas F. Zier
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

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

RESPECTFULLY SUBMITTED this 7th day of May, 2013,

GIBSON LAW FIRM, LLC

Ji
jill@gibsonlawfirm.org
503-686-0486

Of Attorneys for Chief Petitioner