



**DEPARTMENT OF JUSTICE**  
APPELLATE DIVISION

September 13, 2013

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

Re: *Dan Harmon v. Ellen F. Rosenblum, Attorney General, State of Oregon*  
SC S061587

Dear Chief Justice Balmer:

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

Sincerely,

/s/ Judy Lucas

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

JCL:chc/4589709

cc: Jill Gibson Odell/without encl.  
Steven C. Berman/without encl.  
Patrick Green/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

DAN HARMON,

Petitioner,

v.

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

Respondent.

Supreme Court No. S061587

RESPONDENT'S ANSWERING  
MEMORANDUM TO PETITION TO  
REVIEW BALLOT TITLE RE: INITIATIVE  
PETITION NO. 19

Petitioner seeks review of the Attorney General's certified ballot title for Initiative

Petition (IP) #19 (2014). The measure provides, in its entirety:

**Section 1.** ORS 317.061 is amended to read:

317.061. The rate of the tax imposed by and computed under this chapter is:  
shall be the same as the tax imposed on taxable income for every resident of  
this state.

~~(1) Six and six tenths percent of the first \$10 million of taxable income, or  
fraction thereof; and~~

~~(2) Seven and six tenths of any amount of taxable income in excess of \$10  
million.~~

**Section 2.** The amendments to ORS 317.061 by section 1 of this 2014 Act  
apply to tax years beginning on or after January 1, 2015.

The court reviews the Attorney General's certified ballot title to determine  
whether it substantially complies with the requirements of ORS 250.035(2)(a) to (d).

ORS 250.085(5); *Wolf v. Myers*, 343 Or 494, 496, 173 P3d 812 (2007). Petitioner  
challenges three parts of the Attorney General's ballot title.

**A. The caption**

The caption must “inform potential petition signers and voters of the sweep of the measure.” *Terhune v. Myers*, 342 Or 475, 479, 154 P3d 1284 (2007). It must identify the “principal effect” or “actual major effect” of the proposed measure, *Terhune*, 342 Or at 479, without being inaccurate or underinclusive, *Hunnicut v. Myers*, 342 Or 491, 495, 155 P3d 870 (2007). When the major effect of a proposed measure would be a substantive change in existing law, the ballot title should inform the reader of the scope of the change. *Rasmussen v. Kroger*, 351 Or 195, 198, 262 P3d 777 (2011), citing *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004) (caption should identify the proposed measure’s subject matter in a way that “do[es] not understate or overstate the scope of the legal changes that the proposed measure would enact”). To determine the subject matter of a proposed measure, the court first examines its words and the changes, if any, that the proposed measure would enact in the context of existing law. *Kain/Waller*, 337 Or at 41.

The Attorney General’s caption provides:

**Makes corporate excise tax rate on taxable income  
the same as personal income tax rate[.]**

ORS 317.061 provides the rate of excise tax imposed on corporate income:

(1) Six and six-tenths percent of the first \$250,000 of taxable income, or fraction thereof; and

(2) Seven and six-tenths percent of any amount of taxable income in excess of \$250,000.

The tax rate brackets for taxable personal income are set out in a table in ORS 316.037.

IP #19 amends ORS 317.061 so that corporations pay tax on taxable income at the same rate—whatever it is—that applies to personal taxable income.

Petitioner first asserts that the Attorney General’s caption is deficient in not stating “that the corporate excise tax would decrease for some corporations and increase for other corporations.” We disagree. The subject matter of the measure is not that it increases excise tax for some corporations and decreases it for others. The subject matter of the measure is to change the way corporate excise tax is computed, by requiring “[t]he rate of the tax imposed by and computed\* \* [to] be the same as the tax imposed on taxable income for every resident of this state.”

In addition, it is not apparent from the text of IP #19 that the measure decreases excise tax for some corporations and increases excise tax for others. Petitioner claims that some voters will know what the individual income tax rates are, and will therefore infer from the measure’s text that the tax will increase for some corporations and decrease for others. That argument is misdirected, because it is immaterial that some voters will draw that conclusion from the text. The caption may not do so. This court has held that “[t]he Caption requires only *identification* of the subject matter of the measure; it should not be \* \* \* a vehicle for conclusions about how a measure may affect legal rights and duties.” *Mabon v. Keisling*, 317 Or 406, 411, 856 P2d

1023 (1993), *quoting Bauman v. Roberts*, 309 Or 490, 494, 789 P2d 258 (1990) (emphasis in *Bauman*).

Second, petitioner argues that the caption's use of the word "makes" is inaccurate. Petitioner contends that the measure does not "make" the corporate tax rate the same as "personal income tax rate," but rather "proposes corporate tax rates which are "the same as the *tax* imposed on the taxable income for every resident of this state." Pet 4. (Emphasis in original). Petitioner argues that the caption must state that the measure decreases or increases "corporate tax rate on taxable income to correspond with personal tax rates." We fail to see a significant difference between "makes the same as" and "to correspond with," in this context. In addition, although petitioner apparently faults the Attorney General's caption for using the term "tax rate" in connection with personal income taxes, petitioner's proposed caption retains the terms "corporate tax rate" and "personal tax rates."

In sum, petitioner has not demonstrated that the Attorney General's caption does not substantially comply with ORS 250.035(2)(a).

#### **B. The "Yes" Result 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." This court has stated that "the result of a proposed measure's enactment that belongs in the 'yes' vote result statement is that outcome that is the most significant and immediate, or that carries the greatest consequence, for

the general public.” *Rasmussen v. Kroger*, 350 Or 281, 286-287, 253 P3d

1031 (2011), *quoting Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004).

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

**Result of “Yes” Vote:** “Yes” vote makes the corporate excise tax rate for any amount of taxable corporate income the same as the applicable rate of personal income tax.

Petitioner contends that the “Yes” result statement, like the caption, “does not adequately explain what will happen if IP #19 is approved, which is a decreased excise tax rate for certain corporations and an increased excise tax rate for other corporations[.]” Pet 5. But the primary result of the measure’s passage is the change in the way corporate excise taxes are computed, by requiring that the rate be the same as the rate of personal income tax. That is the most significant and immediate outcome, which carries the greatest consequence, for the general public.

Petitioner also argues that the “Yes” statement must inform voters of “the actual tax rates and amounts” that apply to corporations under the measure. Pet 5. The court should reject that argument. The measure does not address the applicable personal income tax rate or rates. Therefore, it is unclear what actual tax rate or rates the measure imposes on corporations. We believe the “Yes” statement correctly and adequately informs voters of the measure’s most immediate result: it ties the rate or rates of corporate tax to the rate or rates of personal income tax.

Petitioner has not shown that the Attorney General’s “Yes” result statement fails to comply with ORS 250.035(2)(b).

### C. The Summary

The summary is to be a “concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” ORS 250.035(2)(d). The function of the summary is “to provide voters with enough information to understand what will happen if the measure is approved, *i.e.*, to advise voters of the ‘breadth’ of a measure's impact.” *Carson v. Kroger*, 351 Or 508, 519, 270 P3d 243 (2012), *quoting Caruthers v. Kroger*, 347 Or 660, 670, 227 P3d 723 (2010). That information must pertain to an identified, actual “effect” of enacting the measure; it is not permissible to “speculate about the possible effects of a proposed measure.” *Pelikan/Tauman v. Myers*, 342 Or 383, 389, 153 P3d 117 (2007); *see also Kain v. Myers*, 333 Or 446, 450-51, 41 P3d 416 (2002) (ballot title need not mention “conditional and conjectural” effects of proposed measure).

Petitioner argues that the Attorney General’s summary does not substantially comply with ORS 250.035(2)(d) for two reasons. First, petitioner claims, the summary “does not summarize the measure’s major effects, which is [*sic*] to impose corporate excise tax rates of 5%, 7%, 9%, and 9.9%, depending on the amount of corporate taxable income.” Pet 6. Second, petitioner objects that the summary “does not explain that these changes would result in a corporate excise tax rate reduction for some corporations and a tax increase for other corporations.” *Id.* Neither argument is well taken.

As explained above, we do not agree with petitioner’s second argument.

We also disagree that the summary must inform voters what the rates of personal income tax are. As already discussed, we believe the major effect of the measure is to make corporations pay tax on taxable income at the same rate—whatever it is—that applies to personal taxable income. The current tax rate brackets for taxable personal income are set out in a table in ORS 316.037:

If taxable income is:	The tax is:
Not over \$2,000	5% of taxable income
Over \$2,000 but not over \$5,000	\$100 plus 7% of the excess over \$2,000
Over \$5,000 but not over \$125,000	\$310 plus 9% of the excess over \$5,000
Over \$125,000	\$11,110 plus 9.9% of the excess over \$125,000

In addition, ORS 316.042 provides the following variation for joint income tax returns: “In the case of a joint return of husband and wife, \* \* \* the tax imposed by ORS 316.037 shall be twice the tax which would be imposed if the taxable income were cut in half.” Another variation is found in ORS 316.045(2), which provides a different tax rate for “certain long-term capital gain from farming.”



In sum, the actual rates of personal income tax for Oregon residents are governed by various statutes in ORS Chapter 316. Importing an adequate summary of those statutes into the ballot title for IP #19 is neither possible nor necessary to voters' understanding of the measure.

In addition, IP #19 does not permanently tie the corporate excise tax rate to the particular personal income tax rates *currently* in effect. Rather, the measure makes the corporate excise tax rate “the same as” the tax imposed on the income of “every resident.” Thus, if the personal income tax rate changes, the measure presumably requires the corporate excise tax rate to change, also. Providing current tax rates in the summary could mislead voters to conclude, incorrectly, that those rates would remain in effect for corporate excise taxes even if personal income tax rates change.

Finally, we fail to understand petitioner's argument that the phrase “rates of personal income tax” in the summary is incorrect. Petitioner contends that IP #19 “does not \* \* \* establish corporate excise tax rates that are the same as ‘rates of personal income tax rates.’” Pet 7. Petitioner fails to demonstrate that the Attorney General's summary is incorrect in that respect.

The Attorney General's summary substantially complies with ORS 250.035(2)(d).

## CONCLUSION

The court should approve the Attorney General's certified ballot title for IP  
#19 without modification.

Respectfully submitted,

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

/s/ Judy C. Lucas

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JUDY C. LUCAS #903285  
Senior Assistant Attorney General  
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Attorneys for Respondent  
Ellen F. Rosenblum, Attorney General,  
State of Oregon

KATE BROWN  
SECRETARY OF STATE



GINA ZEJDLIK  
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SALEM, OREGON 97310-0722  
(503) 986-1518

September 4, 2013

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

Re: Dan Harmon v. Ellen Rosenblum, Attorney General, State of Oregon  
S061587, 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 #19. We also enclose the draft and certified ballot titles with their respective transmittal letters.

Sincerely,

Summer Davis  
Compliance Specialist

enclosures



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

July 15, 2013

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

Re: Proposed Initiative Petition — Makes Corporate Excise Tax Rate On Taxable Income  
The Same As Personal Income Tax Rate  
DOJ File #BT-19-13; Elections Division #19

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 making the corporate excise tax rate the same as the personal income tax rate.

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

A copy of the draft ballot title is enclosed.

Sincerely,

Cameron Craft  
Legal Secretary

chc/4429048

Enclosure

Patrick Green  
813 SW Alder Street Ste 800A  
Portland, OR 97205

RECEIVED  
2013 JUL 15 PM 2 03  
KATE BROWN  
SECRETARY OF THE STATE

## **DRAFT BALLOT TITLE**

**Makes corporate excise tax rate on taxable income the same  
as personal income tax rate**

**Result of “Yes” Vote:** “Yes” vote modifies the Oregon corporate excise rate of tax for any amount of taxable income from incremental rate to rate of personal income tax.

**Result of “No” Vote:** “No” vote retains existing Oregon corporate excise tax rate of seven and sixth-tenths percent for any amount of taxable income exceeding \$10 million.

**Summary:** Current Oregon law provides that, for the tax years beginning on or after January 1, 2013, the rate of tax imposed by and computed under the Corporation Excise Tax Law (ORS chapter 317) is six and six-tenths percent of the first \$10 million of taxable income (or fraction thereof), and seven and six-tenths percent of any amount of taxable income in excess of \$10 million. Measure eliminates the current incremental corporate excise tax rates. Measure changes the rate of excise tax imposed on corporations’ taxable income, of any amount, to be the same as the rate of personal income tax imposed on the taxable income of every state resident. Measure applies to tax years beginning on or after January 1, 2015.

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RECEIVED

# STOLL BERNE

STOLL STOLL BERNE LOKING &amp; SHELCHTER P.C. LAWYERS

Steven C. Berman  
sberman@stollberne.com

July 29, 2013

**VIA FACSIMILE**Kate Brown  
Secretary of State  
Elections Division  
255 Capital Street NE, Suite 501  
Salem, OR 97310RECEIVED  
2013 JUL 29 PM 1 42  
KATE BROWN  
SECRETARY OF THE STATERe: Draft Ballot Title for Initiative Petition No. 19 for the General Election of November 4, 2014

Dear Secretary Brown:

I represent Patrick Green, Executive Director for Our Oregon, regarding the ballot title for Initiative Petition No. 19, for the General Election of November 4, 2014 ("the Initiative"). Mr. Green is an elector in the State of Oregon and the Initiative's Chief Petitioner. This letter is written in response to your office's press release, dated July 15, 2013, which invites comments on the draft ballot title for the Initiative.

It is Mr. Green's position that the caption complies with the requirements of ORS 250.035(2)(a). Mr. Green respectfully submits that the results statements and summary would be statutorily compliant if revised, for the reasons set forth below.

**I. An Overview of Initiative Petition 19**

The Initiative modifies Oregon's current corporate profits tax rates, found in ORS 317.061. Under ORS 317.061, there are two tax rates. The first \$10 million of taxable income is taxed at the rate of 6.6%. ORS 317.061(1). Income in excess of \$10 million is taxed at the rate of 7.6%. ORS 317.061(2). The Initiative modifies the corporate profits rates, by tying them to the rates that personal income taxpayers in Oregon must pay. Because corporations are, and seek to be, "people" for the purposes of obtaining certain legal rights and privileges, corporations should be taxed like people.

{SSBLS Main Documents\8071\010\00408827-1 }

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## II. The Results Statements

ORS 250.035(2)(b) and (c) require that the results statements in a ballot title contain "simple and understandable statement[s] of not more than 25 words that describe[] the result if the state measure is" approved or rejected.

The results of statement in the draft ballot title provide:

"Result of 'Yes' Vote: 'Yes' vote modifies the Oregon corporate excise rate of tax for any amount of taxable income from incremental rate to rate of personal income tax."

"Result of 'No' Vote: 'No' vote retains existing Oregon corporate excise tax rate of seven and sixth-tenths percent for any amount of taxable income exceeding \$10 million."

Mr. Green respectfully submits that the results statements do not comply with the statutory requirements. In the result of yes statement, the phrase "incremental rate" is potentially confusing. "Incremental" does not accurately describe the existing corporate profits rates; under current law, there are only two rates, not a series of rates. Moreover, both the personal and corporate profits tax rates are based on the amount of the taxpayer's income. However, using the word "incremental" to describe the corporate profits tax rate, but not the personal income tax rate, implies that: (1) only the corporate profits tax rate is graduated; and, (2) there is only one personal income tax rate, rather than multiple rates depending on the taxpayer's income. "[M]odifies" also understates the impact of the Initiative; the Initiative makes the corporate profits tax rates the same as the personal income tax rates. The result of yes statement should so provide.

The result of no statement does not comply with the statutory requirements, because it discusses one aspect of current law that the Initiative would change, to the exclusion of another aspect of current law that the Initiative would change. Specifically, the result of no statement focuses only on the tax rate paid by corporations with profits exceeding \$10 million, but does not discuss the tax rate paid by corporations with profits of \$10 million or less. Because the Initiative displaces both tax rates, the result of no statement cannot address only one tax rate, but not the other. Moreover, the no statement fails to explain how, under current law, the personal and corporate tax rates differ. Because the Initiative ties corporate tax rates to personal tax rates, voters should be provided this information in the description of current law.

Result statements that comply with the statutory requirements would provide:

"Result of 'Yes' Vote: "Yes vote makes the corporate excise (profits) tax rates on taxable income the same as the personal income tax rates paid by Oregon taxpayers."

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"Result of 'No' Vote: 'No' vote retains existing corporate excise tax rates; corporate profits over \$10 million taxed at lower rate than personal income over \$5,000 (adjusted)."

### III. The Summary

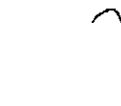
ORS 250.035(2)(d) requires that the ballot title contain a "concise and impartial statement of not more than 125 words summarizing the state measure and its major effect."

The summary is flawed for the reasons set forth above. A summary that complies with the statutory requirements would provide:

"Current Oregon law provides that the rate of tax imposed by and computed under the Corporation Excise Tax Law is six and six-tenths percent of the first \$10 million of taxable income (or fraction thereof), and seven and six-tenths percent of any amount of taxable income in excess of \$10 million; corporate income over \$10 million is taxed at a lower rate than personal income over \$5,000 (adjusted for inflation). Measure eliminates current corporate excise tax rates; makes rates of excise tax on corporate taxable income same as the personal income tax rates on the taxable income of every Oregon resident. Measure applies to tax years beginning on or after January 1, 2015."

Thank you for your consideration of these comments. Please notify me immediately when a certified ballot title is issued.

Very truly yours,

  
\_\_\_\_\_  
Steven C. Berman

SCB:jjjs  
cc: client





July 29, 2013

Via Facsimile - (503)373-7414

The Honorable Kate Brown  
Secretary of State  
Elections Division  
255 Capitol Street NE, Ste 501  
Salem, OR 97310-0722

RECEIVED  
2013 JUL 29 PM 3 47  
KATE BROWN  
SECRETARY OF THE STATE

Re: Public Comment on Initiative Petition #19 (2014)

Dear Secretary Brown,

I represent Dan Harmon, who is an elector in the State of Oregon and wishes to comment on the draft ballot title for IP 19 (2014). The Attorney General has proposed the following ballot title for IP 19:

**Makes corporate excise tax rate on taxable income  
the same as personal income tax rate**

**Result of "Yes" Vote:** "Yes" vote modifies the Oregon corporate excise rate of tax for any amount of taxable income from incremental rate to rate of personal income tax.

**Result of "No" Vote:** "No" vote retains existing Oregon corporate excise tax rate of seven and sixth-tenths percent for any amount of taxable income exceeding \$10 million.

**Summary:** Current Oregon law provides that, for the tax years beginning on or after January 1, 2013, the rate of tax imposed by and computed under the Corporation Excise Tax Law (ORS chapter 317) is six and six-tenths percent of the first \$10 million of taxable income (or fraction thereof), and seven and six-tenths percent of any amount of taxable income in excess of \$10 million. Measure eliminates the current incremental corporate excise tax rates. Measure changes the rate of excise tax imposed on corporations' taxable income, of any amount, to be the same as the rate of personal income tax imposed on the taxable income of every state resident. Measure applies to tax years beginning on or after January 1, 2015.

**I. INTRODUCTION**

Oregon has two types of corporate taxes: excise and income. *See* ORS 317.005 et seq.; ORS 318.010 et seq. An excise tax is a tax imposed upon businesses for the privilege of carrying on or doing business in the State of Oregon and is based on the business' net income. ORS 317.010(5). Corporations are taxed at a rate of 6.6% on the first \$10 million of taxable income and 7.6% on any taxable income in excess of \$10 million. IP 19 seeks to impose Oregon's

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personal income tax rate upon corporations, so that the corporate excise tax rate would be 5%, 7%, 9% or 9.9%, depending on a corporation's amount of taxable income. As such, the measure would decrease the corporate excise tax for some corporations and increase this tax for other corporations.

IP 19 is the sixth initiative petition pertaining to corporate taxes filed by Our Oregon for the 2014 election. Overall, its chief petitioners estimate that IP 19 would generate more than \$370 million in new revenue.<sup>1</sup>

## II. 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 identify the proposal's subject matter in terms that will not "confuse or mislead potential signers and voters." *Kain/Waller v. Myers*, 337 Or 36, 40 (2004). The Oregon Supreme Court recently emphasized that the "subject matter" is the "actual major effect" of the measure. *Lavey v. Kroger*, 350 Or 559 563 (2011). 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 because it does not convey to potential signers and voters what the corporate excise tax rate would be if IP 19 passed. While the draft caption does state one of the major effects of the measure - that the corporate excise tax rate would be the same as the personal income tax rate - the caption must also state the other major effect - that the corporate excise tax would decrease for some corporations and increase for other corporations.

Because the draft ballot title does not comply with statutory requirements, we propose the following caption:

**Decreases or increases corporate tax rate on taxable income  
to correspond with personal tax rates**

This proposed caption conveys both actual major effects of IP 19 and the phrase "to correspond with" clarifies that the corporate tax rate may change in the future if and when the personal tax rate changes. As currently drafted, the word "Makes" is likely to create the false impression that the measure establishes set tax rates that would not change in the future even if personal income tax rates change.

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<sup>1</sup> <http://ouroregon.org/20#15initiatives> See Exhibit 1.

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### III. RESULT OF "YES" VOTE

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

**Result of "Yes" Vote:** "Yes" vote modifies the Oregon corporate excise rate of tax for any amount of taxable income from incremental rate to rate of personal income tax.

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 the word "modifies" does not reasonably explain what will happen if IP 19 is approved, which is a decreased excise tax rate for certain corporations and an increased excise tax rate for other corporations, depending on the amount of a corporation's taxable income. More specifically, IP 19 would decrease the tax rate for corporations with taxable income of \$2,000 or less and increase the tax rate for corporations with taxable income over \$2,000. As written, the result statement does not inform voters of either effect. Indeed, the results of IP 19 that likely have the greatest importance to Oregonians are the actual tax rates, and these rates are absent from the results statement.

To address this defect, we suggest the following statement:

**Result of "Yes" Vote:** "Yes" vote decreases or increases corporate tax rates, currently 6.6% or 7.6%, to correspond with personal income tax rates, currently 5%, 7%, 9% or 9.9%.

### IV. RESULT OF "NO" VOTE

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

**Result of "No" Vote:** "No" vote retains existing Oregon corporate excise tax rate of seven and sixth-tenths percent for any amount of taxable income exceeding \$10 million.

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).

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The draft "No" statement does not comply with these requirements primarily because it is incomplete in that it omits the other tax rate which would be retained if voters reject IP 19 – the 6.6% tax rate currently applied to the first \$10 million of corporate taxable income. The failure to mention the 6.6% tax rate is at best misleading and confusing, and at worst a misstatement of law, and therefore the result statement should be revised to include both current tax rates. *See Dale v. Kulongoski*, 321 Or 108, 113 (1995) (ballot title should not misstate existing law, even by implication.)

To cure these defects, we suggest the following "No" statement:

**Result of "No" Vote:** "No" vote retains existing corporate excise tax rates of 6.6% for first \$10 million of taxable income and 7.6% for taxable income above \$10 million.

## V. SUMMARY

The Attorney General has issued the following draft summary:

**Summary:** Current Oregon law provides that, for the tax years beginning on or after January 1, 2013, the rate of tax imposed by and computed under the Corporation Excise Tax Law (ORS chapter 317) is six and six-tenths percent of the first \$10 million of taxable income (or fraction thereof), and seven and six-tenths percent of any amount of taxable income in excess of \$10 million. Measure eliminates the current incremental corporate excise tax rates. Measure changes the rate of excise tax imposed on corporations' taxable income, of any amount, to be the same as the rate of personal income tax imposed on the taxable income of every state resident. Measure applies to tax years beginning on or after January 1, 2015.

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 summary does not comply with these standards because it does not summarize the measure's major effects, which is to impose corporate excise tax rates of 5%, 7%, 9%, and 9.9%, depending on the amount of corporate taxable income. After reading that the measure changes the corporate tax rate "to be the same as the rate of personal income tax imposed on the taxable income of every state resident," voters will naturally be wondering what those personal tax rates are, and the summary of the measure must provide that information. Otherwise, voters will not understand "what will happen if the measure is approved" and "the breadth of its impact." *Id.* Additionally, the summary does not explain that these changes would result in a corporate excise tax rate reduction for some corporations and a tax increase for other corporations.

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

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Comments on IP 19  
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**Summary:** Current Oregon law provides that, for the tax years beginning on or after January 1, 2013, the rate of tax imposed by and computed under the Corporation Excise Tax Law (ORS chapter 317) is 6.6% of the first \$10 million of taxable income (or fraction thereof), and 7.6% of any amount of taxable income in excess of \$10 million. Measure eliminates the current incremental corporate excise tax rates. Measure imposes personal income tax rates on corporate taxable income. Measure decreases or increases the rate of excise tax imposed on corporations' taxable income, of any amount, to be 5%, 7%, 9%, or 9.9%, depending on amount of corporate taxable income. Measure applies to tax years beginning on or after January 1, 2015.

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

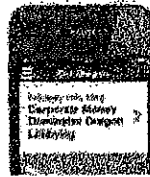
Very truly yours,

Jill Gibson Odell  
Gibson Law Firm

Attachments

6/11/13

Some Big Ideas to Fund Oregon's Priorities | our oregon

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## SOME BIG IDEAS TO FUND OREGON'S PRIORITIES

We're exploring ways to fund Oregon's schools and other critical priorities. Will you join us?

Email\* Zip/Postal Code\* 

On April 26, we filed numerous initiative petitions with the Secretary of State's office for the 2014 election.

These initiatives would raise hundreds of millions of dollars to more than \$1 billion in funding for Oregon's classrooms and critical services by raising tax rates on large corporations. Most of these corporations are headquartered out of state, but make a lot of money here—and are essentially getting a free ride.

There's not yet been any one magic solution proposed that can solve the problem, so we're filing many different initiatives as a way of keeping multiple ideas on the table in case we need to pursue them. It's very early in the process, and we won't have a decision about what initiatives we move forward on for several months.

Right now, Oregon is tied for the lowest business taxes in the nation. Our business taxes are far below our closest neighbors, including Washington. It should be no wonder, then, that we have the third largest class sizes in the country and one of the shortest school years.

It's no secret that our schools are hurting, classrooms are overcrowded, and senior services continue to be threatened. It's also no secret that Oregonians believe that large corporations should pay their fair share.

Our Oregon has been on the front lines of the fight for a fairer tax system and more funding for the state's critical priorities, like our schools and senior health care. By filing these initiatives, we're continuing to take the lead in making sure that Oregon remains a great place to live for everyone.

Here's what we filed:

Title	Estimated Revenue*	Notes
Large Corporations Should Pay Their Fair Share I	\$1 billion	Lift the existing \$100,000 corp minimum cap on corps with more than \$100 million; tax revenue above \$100 million at 2%
Large Corporations Should Pay Their Fair Share II	\$500 million	Lift the existing \$100,000 corp minimum cap on corps with more than \$100 million; tax revenue above \$100 million at 1%
Invest in Oregon's Future I	\$1.189 billion	Replace current corporate minimum tax for C-corps with more than \$10 million in sales with a gross receipts tax of 0.25%
Invest in Oregon's Future II	\$2+ billion	Replace current corporate minimum tax for C-corps with more than \$10 million in sales with a graduated gross receipts tax of 0.25% to 1% (for corps with more than \$100 million in sales)
Fund Oregon's Priorities	\$150 million	Increase corporate income tax rate on profits above \$10 million to 10%
If Corporations Are People, Let's Tax Them Like It	\$370+ million	Change the corporate income tax structure to mirror personal income tax rates

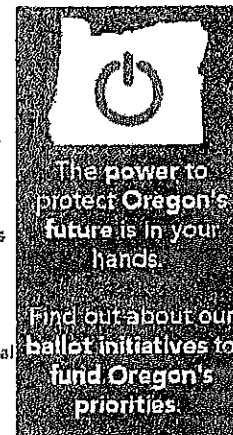


EXHIBIT 1



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

August 13, 2013

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2013 AUG 13 PM 2 15  
KATE BROWN  
SECRETARY OF THE STATE

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

Re: Proposed Initiative Petition — Makes Corporate Excise Tax Rate On Taxable Income  
The Same As Personal Income Tax Rate  
DOJ File #BT-19-13; Elections Division #19

Dear Mr. Trout:

We have received the comments submitted in response to the draft ballot title for the prospective Initiative Petition # 19 (2014). Comments were submitted by Steven Berman, on behalf of chief petitioner Patrick Green; and by Jill Gibson Odell, on behalf of Dan Harmon. 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).

The measure provides, in its entirety:

**Section 1.** ORS 317.061 is amended to read:

317.061. The rate of the tax imposed by and computed under this chapter is: shall be the same as the tax imposed on taxable income for every resident of this state.

~~(1) Six and six-tenths percent of the first \$10 million of taxable income, or fraction thereof; and~~

~~(2) Seven and six-tenths of any amount of taxable income in excess of \$10 million.~~

**Section 2.** The amendments to ORS 317.061 by section 1 of this 2014 Act apply to tax years beginning on or after January 1, 2015.

**A. The caption**

The caption must “inform potential petition signers and voters of the sweep of the measure.” *Terhune v. Myers*, 342 Or 475, 479, 154 P3d 1284 (2007). It must identify the “principal effect” or “actual major effect” of the proposed measure, *Terhune*, 342 Or at 479, without being inaccurate or underinclusive, *Hunnicut v. Myers*, 342 Or 491, 495, 155 P3d 870 (2007). The caption must use terms that reasonably identify the proposed measure’s subject matter and do not understate or overstate the scope of the legal changes that the proposed measure would enact. *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004). To determine the subject matter of a proposed measure, the court first examines its words and the changes, if any, that the proposed measure would enact in the context of existing law. *Kain/Waller*, 337 Or at 41.

The draft caption reads:

**Makes corporate excise tax rate on taxable income  
the same as personal income tax rate**

Commenter Harmon first asserts that the caption must state “the other major effect” of the measure: “that the corporate excise tax would decrease for some corporations and increase for other corporations.” We disagree. It is not apparent from the text of IP #19 that the measure decreases excise tax for some corporations and increases excise tax for others. Harmon’s proposed language appears to be speculation, which we decline to engage in.

Second, Harmon comments that the draft caption “is likely to create the false impression that the measure establishes set tax rates that would not change in the future even if personal income tax rates change.” He suggests an alternative caption using the phrase “to correspond with personal tax rates” in place of “[m]akes \* \* \* the same as personal income tax rate.” We disagree that the draft caption suggests the measure sets immutable tax rates. In addition, we find no significant difference between “makes the same as” and “to correspond with,” in this context. Therefore, we do not accept Harmon’s suggested changes to the draft caption.

----- Commenter Green does not comment on the draft caption. -----

**B. The “Yes” and “No” result statements**

ORS 250.035(2)(b) requires the ballot title to include “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is approved.” ORS 250.035(2)(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.”

**1. The draft “Yes” result statement**

The draft “Yes” result statement provides:



**Result of “Yes” Vote:** “Yes” vote modifies the Oregon corporate excise rate of tax for any amount of taxable income from incremental rate to rate of personal income tax.

Commenter Harmon objects that the draft “Yes” statement does not explain that the measure decreases the excise tax rate for some corporations and increases it for others. As discussed above, we reject Harmon’s proposed change as speculative. Harmon also asserts that the “Yes” statement must inform voters of “the actual tax rates” that apply to corporations under the measure. Again, we disagree. The measure does not address the applicable personal income tax rate or rates. Therefore, it is unclear what actual tax rate or rates the measure imposes on corporations. We believe the “Yes” statement correctly and appropriately informs voters that the measure ties the rate or rates of corporate tax to the rate or rates of personal income tax.

Commenter Green finds three deficiencies in the draft “Yes” statement. First, Green comments that “incremental” does not accurately describe the existing corporate profits rates, because, under current ORS 317.061, there are only two tax rates. We agree. Second, Green comments that the draft “Yes” statement incorrectly suggests that there is only one personal income tax rate, whereas, in fact, there are multiple rates depending on the taxpayer’s income. We do not believe the draft “Yes” statement is misleading in that way, because it specifically refers to the tax rate for “any amount of taxable income.” We believe voters will understand that phrasing to mean the tax rate that applies to a particular amount of taxable income—especially with the addition of “applicable” in front of “rate of personal income tax.” Third, Green comments that the word “[m]odifies” understates what the measure does. We agree with that comment. We have modified the “Yes” statement accordingly, as follows:

**Result of “Yes” Vote:** “Yes” vote makes the corporate excise tax rate for any amount of taxable corporate income the same as the applicable rate of personal income tax.

## **2. The draft “No” result statement**

---

The draft “No” result statement provides:

**Result of “No” Vote:** “No” vote retains existing Oregon corporate excise tax rate of seven and sixth-tenths percent for any amount of taxable income exceeding \$10 million.

Commenter Harmon comments that the draft “No” statement is incomplete because it “omits the other tax rate which would be retained” if the measure is rejected. Commenter Green makes the same point. We agree, and we have modified the “No” statement accordingly.

Commenter Green also objects that the draft “No” statement “fails to explain how, under current law, the personal and corporate tax rates differ.” Green asserts that voters must be provided with that information. We disagree, because the actual differences between the two tax rates is beyond the scope of the ballot title. That is, providing that information would require us to go far beyond ORS 317.061—indeed, beyond ORS Chapter 371, which governs excise taxes.

We believe the apparent objective of the measure—to equalize corporate and personal income tax rates—is the information voters need, rather than the differences between the current actual rates.

Therefore, we certify the following “No” result statement:

**Result of “No” Vote:** “No” vote retains existing corporate excise tax rate of 6.6% for first \$10 million of taxable income, 7.6% for additional taxable income.

**C. The summary**

Harmon comments that the draft summary fails to specify that the measure “impose[s] corporate excise tax rates of 5%, 7%, 9%, and 9.9%, depending on the amount of corporate taxable income.” He asserts that voters “will naturally be wondering” what the rates of personal income tax are, which they need to know in order to understand “what will happen if the measure is approved” and “the breadth of its impact.” See *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175 (1989) (stating those requirements). In addition, Harmon objects that the draft summary does not explain that the measure reduces the corporate excise tax rate for some corporations and increases the rate for others. As explained above, we do not agree with the latter comment.

We also disagree that the summary must inform voters what the rates of personal income tax are. As already discussed, we believe the major effect of the measure is to make corporations pay tax on taxable income at the same rate—whatever it is—that applies to personal taxable income. The tax rate brackets for taxable personal income are set out in a table in ORS 316.037:

If taxable income is:

The tax is:

Not over \$2,000

5% of  
taxable  
income

Over \$2,000 but not  
over \$5,000

\$100 plus 7%  
of the excess  
over \$2,000

Over \$5,000 but not  
over \$125,000

\$310 plus 9%  
of the excess  
over \$5,000

Over \$125,000

\$11,110 plus 9.9%  
of the excess  
over \$125,000

In addition, ORS 316.042 provides the following variation for joint income tax returns: "In the case of a joint return of husband and wife, \* \* \* the tax imposed by ORS 316.037 shall be twice the tax which would be imposed if the taxable income were cut in half." Another variation is found in ORS 316.045(2), which provides a different tax rate for "certain long-term capital gain from farming."

In sum, the actual rates of personal income tax for Oregon residents are governed by various statutes in ORS Chapter 316. Importing an adequate summary of those statutes into the ballot title for IP #19 is neither possible nor necessary to voters' understanding of the measure. Nevertheless, we have added a reference to ORS Chapter 316 (personal income tax laws), consistently with the summary's existing reference to ORS Chapter 317 (corporate excise tax laws).

Finally, commenter Green renews his objections to the draft result statements in commenting on the draft summary: current corporate profit rates are not incremental; there is more than one personal income tax rate; the measure does more than "modify" current rates; the measure displaces both current rates on corporate taxable income; and the measure ties corporate taxable income rates to personal income tax rates. Our responses to Green's comments are as above.

Accordingly, we certify the following summary:

Current Oregon law provides that, for the tax years beginning on or after January 1, 2013, the rate of tax imposed by and computed under the Corporation Excise Tax Law (ORS Chapter 317) is six and six-tenths percent of the first \$10 million of taxable income (or fraction thereof), and seven and six-tenths percent of any amount of taxable income over \$10 million. Measure eliminates the current corporate excise tax rate brackets. Measure makes the rates of excise tax imposed on corporations' taxable income the same as the rates of personal income tax imposed on the taxable income of every state resident (as provided in ORS Chapter 316). Measure applies to tax years that begin on or after January 1, 2015.

We certify the attached ballot title.

Sincerely,

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

JCL:chc/4509052

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August 13, 2013  
Page 6

Enclosure

Patrick Green  
813 SW Alder Street Ste 800A  
Portland, OR 97205

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

Jill Gibson Odell  
Gibson Law Firm LLC  
10260 SW Greenburg Rd. Ste 1180  
Portland, OR 97223

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**BALLOT TITLE**

**Makes corporate excise tax rate on taxable income  
the same as personal income tax rate**

**Result of "Yes" Vote:** "Yes" vote makes the corporate excise tax rate for any amount of taxable corporate income the same as the applicable rate of personal income tax.

**Result of "No" Vote:** "No" vote retains existing corporate excise tax rate of 6.6% for first \$10 million of taxable income, 7.6% for additional taxable income.

**Summary:** Current Oregon law provides that, for the tax years beginning on or after January 1, 2013, the rate of tax imposed by and computed under the Corporation Excise Tax Law (ORS Chapter 317) is six and six-tenths percent of the first \$10 million of taxable income (or fraction thereof), and seven and six-tenths percent of any amount of taxable income over \$10 million. Measure eliminates the current corporate excise tax rate brackets. Measure makes the rates of excise tax imposed on corporations' taxable income the same as the rates of personal income tax imposed on the taxable income of every state resident (as provided in ORS Chapter 316). Measure applies to tax years that begin on or after January 1, 2015.

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SECRETARY OF THE STATE

## NOTICE OF FILING AND PROOF OF SERVICE

I certify that on September 13, 2013, I directed the original Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 19 to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and served upon Jill Gibson Odell, attorney for petitioner Dan Harmon, by using the court's electronic filing system.

I further certify that on September 13, 2013, I directed the Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 19 to be served upon Steven C. Berman, attorney for chief petitioner, and upon chief petitioner Patrick Green, by mailing a copy, with postage prepaid, in an envelope addressed to:

Steven C. Berman #951769  
Stoll Berne  
209 SW Oak St Ste 500  
Portland, OR 97204  
Telephone: (503) 239-8029  
Email: sberman@stollberne.com

Patrick Green  
813 SW Alder Street Ste 800A  
Portland, OR 97205

/s/ Judy C. Lucas

---

JUDY C. LUCAS #903285  
Senior Assistant Attorney General  
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Attorney for Respondent  
Ellen F. Rosenblum, Attorney General,  
State of Oregon