

ELLEN F. ROSENBLUM
Attorney General



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Appellate Court Records

MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

S061610

October 1, 2013

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

Re: *Patrick Green v. Ellen Rosenblum, Attorney General, State of Oregon*
SC S061610

Dear Chief Justice Balmer:

Petitioner Patrick Green 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 C. Lucas

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

JCL:chc/4625395

cc: Steven C. Berman/without encl.
Nathan R. Rietmann/without encl.
Jason Williams/without encl.

IN THE SUPREME COURT OF THE STATE OF OREGON

PATRICK GREEN,

Petitioner,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court No. S061610

RESPONDENT'S ANSWERING
MEMORANDUM TO PETITION TO
REVIEW BALLOT TITLE RE:
INITIATIVE PETITION NO. 20

Petitioner seeks review of the Attorney General's ballot title for Initiative Petition (IP) #20 (2014). The measure provides that a local law enacted after the measure's effective date that imposes or increases a tax or fee must be approved by a majority of voters who cast votes on the law. Approval by local voters is not required if the local government reasonably estimates that the law will raise no more than \$750,000 during the three year period immediately following enactment.

Petitioner objects that three parts of the ballot title fail to substantially comply with the requirements of ORS 250.035.

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).

The Attorney General's caption provides:

**Majority of participating voters must approve certain local laws
imposing or increasing taxes or fees**

Petitioner argues that the Attorney General's caption "fails to identify for voters the ambiguity in the Initiative regarding what constitutes the 'voters' who must approve certain local laws." According to petitioner, "voters of the local government" could have two plausible meanings: the phrase could refer to "the electorate of the 'local government'," or it could refer to "those elected members of a local governmental body with the authority to pass laws and ordinances." Pet 3-4. We do not agree that "voters of the local government," as used in the measure, could plausibly mean "elected members of a local governmental body." We see no ambiguity in the phrase "voters of the local government." The court should conclude that "voters of the local government" is unambiguous in this context.

Contrary to petitioner's assertion, the Attorney General does not "acknowledge[] that the Initiative is ambiguous as to what constitutes 'voters of the local government' entitled to vote on revenue raising laws." Pet 5. The Attorney General expressly disagrees that "voters" is an ambiguous term. Pet, Ex 4 at 2. To the extent that there is a question as to *which* voters, *i.e.*, which members of the electorate, must approve local laws imposing taxes or fees, the caption avoids impermissible speculation by providing that only *participating* voters are counted in determining the majority vote. *See id.*

Petitioner argues that the Attorney General's caption is inconsistent with the Attorney General's ballot title caption for a different measure, IP #4 (2014). That argument is beside the point. The text of IP #4 is not the same as the text of this measure, and it does not include the phrase "voters of the local government." The text of IP #4 uses the entirely different phrase "electors interested." Thus, IP #4 has no bearing on the question petitioner raises here.

Because petitioner's attempt to discern an ambiguity in the text of IP #20 is unavailing, the use of quotation marks around "voters" is not required, under ORS 250.035(2)(a).

Next, petitioner objects that "local law" should be placed in quotation marks, followed by the parenthetical "(defined)." According to petitioner,

“local law” “has no clear meaning under Oregon law,” but is defined in the measure. In fact, the measure provides that the term “local law” “shall be liberally construed to include ordinances, resolutions, and any other law of a local government.” That is consistent with how “local law” is commonly understood, and what voters would likely understand “local law” to mean. *Cf., Tauman v. Myers*, 343 Or 299, 302-303, 170 P3d 556 (2007) (“Because the proposed measure defines the term ‘charity’ more broadly than the term commonly is understood, the caption’s use of the term has the potential to leave petition signers and voters with a false impression of the proposed measure’s subject matter.”). Using IP #20’s term “local law” in the caption without quotation marks or a parenthetical is unlikely to leave petition signers and voters with a false impression of the measure’s subject matter.

Finally, petitioner argues that the caption is not substantially compliant with ORS 250.035(2)(a) because the word “imposing” in the phrase “imposing or increasing taxes or fees” is “a loaded word.” That argument lacks merit. In ordinary usage, people refer to taxes as being “imposed.” *See, e.g., Rassmussen v. Kroger*, 351 Or 358, 360, 266 P3d 87 (2011) (“Initiative Petition 18, if approved by the voters, would enact a prohibition on the *imposition of* any state or local estate tax, inheritance tax, * * * [and] would supersede current statutes

that *impose those taxes*[.]”). (Emphasis added.) We disagree with petitioner’s choice of definitions of “impose” in the dictionary. Pet 7, citing *Webster’s Third New Int’l Dictionary* 1136 (unabridged ed 2002). According to petitioner, “impose” means “to inflict by deception or fraud” (*Webster’s* definition 5b) and “to cause to be burdened” (*Webster’s* definition 3a *obs.*). The clearly applicable dictionary definition of “impose” is: “3b(1) : to make, frame, or apply (as a charge, tax, obligation, rule, penalty) as compulsory, obligatory, or enforceable.” *Webster’s* 1136. In this context, “impose” is neutral, not a “loaded” word.

Therefore, the court should approve the Attorney General’s caption.

B. The 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.”

The Attorney General’s “yes” and “no” result statements provide:

Result of “Yes” Vote: “Yes” vote requires majority of participating voters to approve local laws imposing/increasing taxes/fees estimated to raise more than \$750,000 in three years.

Result of “No” Vote: “No” vote retains status of local law authorizing local government to enact laws whether or not it requires approval by majority of participating local voters.

Petitioner challenges the Attorney General’s “yes” result statement on the same grounds he raises in objecting to the caption. For the reasons discussed above, the court should reject those arguments. The “yes” result statement substantially complies with the statutory requirements.

Petitioner contends that the “no” result statement “implies that extant law is lacking because a majority of the electorate does not get to enact each local revenue raising law.” Pet 8. In addition, petitioner contends that the phrase “whether or not” in the “no” result statement incorrectly “implies that there is some ambiguity in existing law.” *Id.* Finally, he argues that the referent of the word “it” (in “whether or not it requires approval by * * * local voters”) is unclear and, if it refers to “local law,” the “no” result statement is inaccurate. None of those arguments has merit.

The “no” result statement does not fail to substantially comply with the statutory requirements for any of those reasons. The “no” statement does not suggest, as petitioner asserts, that there is any deficiency in current law. The “no” statement simply states that whatever authority local governments currently have to enact laws (with or without subsequent voter approval) is unaffected by the measure. The antecedent to “it” (in “whether or not it requires approval”) is clearly “local law.” It makes little if any sense to read the “no” result statement to mean: “the status of local law is retained whether or not the status of local law requires voter approval.” Under current law, a local law imposing or increasing taxes or fees may or may not require voter approval. In other words, a “no” vote keeps the local law governing the increase or imposition of taxes and fees, regardless of whether that law does or does not require voter approval.

Finally, the “no” result statement is not inaccurate. The only local law in question is local law imposing or increasing taxes or fees. Therefore, it is unlikely voters will be misled to think a “no” vote will have any effect on “all local laws,” as petitioner suggests. In any event, a “no” vote *will* have no effect on other local laws. Therefore, to the extent the “no” result statement could be read as petitioner suggests, it would not be inaccurate.

The court should approve the Attorney General's result statements without modification.

C. The Summary

The summary must contain "[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect." ORS 250.035(2)(d).

Petitioner argues that the Attorney General's summary is noncompliant for the same reasons as the caption and result statements. As discussed above, petitioner's arguments lack merit. The Attorney General's summary substantially complies with ORS 250.035(2)(d).

CONCLUSION

The court should approve the Attorney General's ballot title for IP #20
(2014) without modification.

Respectfully submitted,

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

/s/ Judy C. Lucas

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

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

KATE BROWN
SECRETARY OF STATE



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

September 9, 2013

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

Re: Patrick Green v. Ellen Rosenblum, Attorney General, State of Oregon
S061610, 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 #20. 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 22, 2013

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

Re: Proposed Initiative Petition — Majority Of Participating Voters Must Approve Certain
Local Laws Imposing Or Increasing Taxes Or Fees
DOJ File #BT-20-13; Elections Division #20

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 when local laws imposing or increasing taxes or fees must be approved by voters.

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/4441142

Enclosure

Jason Williams
P.O. Box 23573
Tigard, OR 97281

RECEIVED
2013 JUL 22 PM 2 53
KATE BROWN
SECRETARY OF THE STATE

DRAFT BALLOT TITLE

Majority of participating voters must approve certain local laws imposing or increasing taxes or fees

Result of “Yes” Vote: “Yes” vote requires majority of participating voters to approve local laws imposing/increasing taxes/fees estimated to raise more than \$750,000 in three years.

Result of “No” Vote: “No” vote retains status of local law authorizing local government to enact laws whether or not it requires approval by majority of participating local voters.

Summary: Current law provides local legislative bodies with authority to pass laws establishing, raising, or lowering taxes or fees; voters have authority to require a vote on such laws through referendum; local legislative bodies may refer such laws to voters for approval. Measure provides that a local law enacted after measure’s effective date imposing/increasing tax/fee must be approved by a majority of voters who cast votes on the law. Approval by local voters not required if local government reasonably estimates law will raise no more than \$750,000 during three year period immediately following enactment. Measure defines “local government;” mandates that “local law” be “liberally construed” to include ordinances, resolutions, any other law; does not provide basis for calculating \$750,000 threshold. Other provisions.

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KATE BROWN
SECRETARY OF THE STATE

STOLL BERNE

STOLL STOLL BERNE LOKTING & SHLACHTER P.C. LAWYERS

Steven C. Berman
sberman@stollberne.com

August 5, 2013

VIA FACSIMILE

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

Re: Draft Ballot Title for Initiative Petition No. 20 for the General Election of November 4, 2014

Dear Secretary Brown:

I represent Patrick Green regarding the ballot title for Initiative Petition No. 20 for the general election of November 4, 2014 ("the Initiative"). Mr. Green is an elector in the State of Oregon and the Executive Director of Our Oregon. This letter is written in response to your office's press release, dated July 22, 2013, which invites comments on the draft ballot title for the Initiative.

It is Mr. Green's position that the caption, results statements and summary of the draft ballot title for the Initiative do not comply with the requirements of ORS 250.035(2).

I. An Overview of Initiative Petition 20

The Initiative is a reckless and ill-conceived proposal that is similar, but not identical to, Initiative Petition 4 (2013).¹ The Initiative creates a new voting requirement for taxes and fees that exceed certain threshold amounts. The Initiative makes enactment of any "local law" creating or raising taxes or fees (except those below certain minimal thresholds) contingent on a majority vote of the "voters of the local government."

¹IP 4 and the Initiative have the same Chief Petitioner. He withdrew IP 4 the day the certified ballot title was issued by the Attorney General and, as a result, the Attorney General's letter and certified ballot title for IP 4 are not available from the Oregon Secretary of State's on-line Initiative, Referendum and Referral database. A copy of the Attorney General's letter and certified ballot title for IP 4 are attached as Exhibit A.

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The Initiative has four sections. Section 1 provides that any "local law imposing or increasing taxes or fees shall be submitted to the voters of the local government and approved by at least a majority of votes cast thereon" before it can take effect. Section 1 contains an exemption for local laws that the local government estimates will not raise more than \$750,000 in the three year period following enactment.

Section 2 defines "local law" and "local government." Section 2 does not define the word "voters" or the term "voters of the local government."

Section 3 provides that the Initiative does not apply to any local law adopted prior to the effective date of the Initiative.

Section 4 is a severability clause.

There is a significant ambiguity in the Initiative. It is not clear from the text of the Initiative who the "voters" or the "voters of the local government" are that would vote on any local revenue raising law.

In the context of the Initiative, "[v]oters of the local government" could have two plausible meanings. "Voters of the local government" could be the electorate of the "local government," meaning all registered voters of the local governmental unit. Alternatively "voters of the local government" could mean those elected members of a local governmental body with the authority to pass laws and ordinances. That would be the literal interpretation of the phrase "voters of the local government." The "voters of the local government" *are* the elected officials who vote on local laws and ordinances. The primary effect of the Initiative could be to require a majority the members of an elected local governmental body to approve certain taxes or fees. This could be to ensure that local governments do not require super-majorities of their elected bodies to approve certain revenue raising measures.² Because the meaning of the phrase "voters of the local government" as used in the Initiative has two plausible meanings, the Attorney General cannot choose one of those meanings for the ballot title. *Wolf v. Myers*, 343 Or 494, 501 (2007) ("[w]hen confronted with the narrower problem of the meaning of a specific provision in a proposed measure that is subject to two or more plausible interpretations, we ordinarily have declined to choose (or to permit the Attorney General to choose) one of those interpretations for purposes of the ballot title") (citations omitted; internal quotation marks omitted).

²The context of the Initiative does not resolve the ambiguity. The Oregon constitution repeatedly refers to the public entitled to vote as "electors." See, e.g., Article II, section 13 (providing that "electors" shall be free from arrest and harassment at the polls); Article II, section 16 (candidates shall be elected by "a majority of the electors voting for candidates for that office"); Article II, section 17 (providing that "[a]ll qualified electors shall vote" in the district in which they reside); Article II, section 18 (providing that "electors" shall have the right to recall public officials); Article IV, section 3 (senators and representatives chosen "by the electors of the respective counties or districts or subdistricts").

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II. The Draft Ballot Title for the Initiative Does Not Comply with the Statutory Requirements.

A. The Caption

ORS 250.035(2)(a) provides that a ballot title must contain a "caption of not more than 15 words that reasonably identifies the subject matter of the state measure." The caption must "state or describe the proposed measure's subject matter accurately and in terms that will not confuse or mislead potential petition signers and voters." *Lavey v. Kroger*, 350 Or 559, 563 (2011) (citations omitted; internal quotation marks omitted). A caption that is incorrect, or inaccurate, is not statutorily compliant. *Towers v. Myers*, 341 Or 357, 362 (2006).

The caption in the draft ballot title provides:

Majority of participating voters must approve certain local laws imposing or increasing taxes or fees

Mr. Green respectfully submits that the caption should be revised, because it misstates the scope of the Initiative. The caption incorporates the undefined word "voters" from the Initiative, but fails to convey the full ambiguity of the word as used in the context of the Initiative. "Voters" should remain in the caption (and throughout the ballot title). However, a parenthetical "(undefined)" should follow "voters" to emphasize the ambiguity in the Initiative. Similarly, "local laws" is defined in the Initiative and may have a meaning not familiar to the electorate. Accordingly, a parenthetical "defined" should be included after the phrase "local laws."

Mr. Green further submits that the caption fails to convey to voters the ambiguity in the process created by the Initiative. From the Initiative, it is not clear when a majority of "voters" would approve a revenue raising law. To the extent "voters" means the electorate, the caption should provide that no "local law" may go into effect unless the law receives a majority of votes at an election, presumably after the law already has been passed by the local governmental body. In other words, under the Initiative, it may be that until a revenue raising law is passed by the local governmental body, there is no "law" for voters to "approve."

The caption also uses the word "imposing" to describe the taxes and fees restricted by the Initiative. "Imposing" is a word used in the Initiative itself; the ballot title should not mirror wording used in a proposed initiative if the terminology used in the initiative "is not neutral." *Mabon v. Myers*, 332 Or 633, 638 n 2 (2001) (citation omitted; internal quotation marks omitted). Mr. Green respectfully submits that "imposing" is a loaded word. "Impose" means, among other things, "to inflict by deception or fraud" and "to cause to be burdened." Webster's Third New Int'l Dictionary 1136 (unabridged ed 2002). Electors easily could apply one of those common meanings to the word "imposing" as used in the caption. "Imposing" should be replaced with a word without political connotations, such as "passing."

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A caption that complies with the statutory requirements would provide:

**Majority of "voters" (undefined) must enact "local laws" (defined)
passing/increasing taxes/fees over specified amounts**

B. The Results Statements

ORS 250.035(2)(b)&(c) require that the 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 statements in the draft ballot title provide:

Result of "Yes" Vote: "Yes" vote requires majority of participating voters to approve local laws imposing/increasing taxes/fees estimated to raise more than \$750,000 in three years.

Result of "No" Vote: "No" vote retains status of local law authorizing local government to enact laws whether or not it requires approval by majority of participating local voters.

The results statements should be revised for the reasons set forth above. The result of yes statement is flawed for the additional reason that it does not inform voters who is responsible for determining when the revenue threshold is met. That is an important aspect of the Initiative that should be conveyed in the result of yes statement.

Mr. Green respectfully submits that the result of no statement is flawed for three additional reasons. First, the result of no statement incorrectly assumes that under the Initiative, it is the electorate of the local government who votes on local revenue raising laws. As was set forth above, the Initiative is ambiguous, at best, in that regard. The second flaw with the result of no statement is that it is not impartial. The current phrasing -- "whether or not it requires approval by a majority of participating local voters" -- implies that extant law is lacking because a majority of the electorate does not get to enact each local revenue raising law. "[W]hether or not" also implies that there is some ambiguity in existing law, when no such ambiguity exists. The result of no statement for the draft ballot title for IP 4 did not contain this problematic phrasing. Finally, the result of no statement is confusing; it is not clear whether the pronoun "it" refers to "local law," "local government" or laws enacted by local governments.

Results statements that comply with the statutory requirements would provide:

Result of "Yes" Vote: "Yes" vote requires majority of "voters" (undefined) to enact "local laws" (defined) passing/increasing taxes/fees; "local government" (defined) determines exempt laws under specified amounts.

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Result of "No" Vote: "No" vote retains current laws that do not require "local government" (defined) "voters" (undefined) to vote to enact local laws passing or raising taxes/fees.

C. 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 should be revised for the reasons set forth above.

Mr. Green respectfully submits that the summary should be revised for the additional reason that it fails to inform voters that the Initiative may be unenforceable or at least has significant legal infirmities that may prevent its enforcement if passed. Imposing statewide limits on local jurisdictions could impermissibly interfere with those jurisdictions' home rule powers. *See generally* Oregon Constitution, Article IV, § 1(5); Article XI, § 2 (setting forth home rule powers). Voters must be informed of that significant constitutional issue.

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

ELLEN F. ROSENBLUM
Attorney General



MARY H. WILLIAMS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

January 23, 2013

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

RECEIVED
2013 JAN 23 AM 11 47
KATE BROWN
SECRETARY OF THE STATE

Re: Proposed Initiative Petition — Majority of "Electors Interested" (Undefined) Must Enact Laws Imposing/Increasing Taxes/Fees Over Specified Amounts
DOJ File #BT-4-12; Elections Division #4

Dear Mr. Trout:

We received comments from attorney Steven Berman on behalf of electors Patrick Green and Elspeth McCann. This letter summarizes those comments, our responses to the comments and the reasons why we altered or declined to alter the ballot title in response to the comments. ORAP 11.30(7) requires this letter to be included in the record if the Oregon Supreme Court is asked to review the ballot title.

A. The caption

The caption of a ballot title must "reasonably identif[y] the subject matter of the state measure." ORS 250.035(2)(a). The draft ballot title contains the following caption:

**Majority of "electors interested" must approve laws imposing or
increasing taxes/fees over specified amounts**

Currently, under the Oregon Constitution, the power to pass statewide laws, including laws raising revenue, generally lies with the legislature, and revenue-raising bills must originate in the House of Representatives. Oregon Constitution, Article IV, §§ 17, 18. The electorate has the power to require a vote on any laws raising revenue by calling for a referendum on those laws. *See, e.g.*, Oregon Constitution, Article IV, § 1(3) (reserving to the people the referendum power over any act of the legislature); Article IV, § 1(5) (reserving to the people the referendum power over acts of local government); Article VI, § 10 (reserving referendum powers to home rule counties); Article XI, § 14(5) (reserving referendum powers to metropolitan service districts).

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IP #4 purports to create a new voting requirement for taxes and fees above certain threshold amounts. IP #4, Section 1, does not change any current laws. It is a policy statement that declares that "guaranteeing electors the right to vote on taxes and fees is a matter of statewide concern." IP #4, Section 2, adds a new provision to Oregon law: "[n]o law imposing or increasing any tax or fee shall hereafter be enacted without a vote of the electors interested and approval by a majority voting thereon" unless the law in question is a "state law" that raises "\$10,000,000 per biennium or less," or a "local law" that raises "\$1,000,000 per biennium or less." IP #4, Section 3, defines "law," "state law," and "local law." The initiative does not define "tax," "fee," or "electors interested." IP #4, Section 4, is a severability clause.

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, *id.*, without being inaccurate or underinclusive. *Hunnicut v. Myers*, 342 Or 491, 495, 155 P3d 870 (2007).

The commenters contend that the caption is inadequate because it "misstates the scope of the Initiative." Specifically, they contend that, because the initiative requires voting by "electors interested" in order to "enact" a new tax or fee, such voting must necessarily take place *before* the law is passed. In the commenter's view, because the caption states that voters must "approve" such laws, it implies that voters will vote after the legislature has passed such laws: "In other words, under the Initiative, until there is a vote of the 'electors interested,' there is no 'law' for voters to 'approve.'"

While we disagree that the draft caption misstates the scope of IP #4, we agree that the commenter's suggested change—using "enact" rather than "approve"—clarifies IP #4's scope. We therefore adopt it.

The commenters also contend that including the parenthetical "(undefined)" after the phrase "electors interested" would "signal for the voters" the ambiguity of the term "electors interested," and would also be consistent with the use of the parenthetical in the result statements and summary. We agree that adding the parenthetical clarifies that the term is not defined in IP #4.

We therefore certify the following caption:

**Majority of "electors interested" (undefined) must enact laws
imposing/increasing taxes/fees over specified amounts**

B. The result statements

ORS 250.035(2)(b) and (c) require a ballot title to contain "[a] simple and understandable statement of not more than 25 words that describes the result if the state

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measure" is approved or rejected. The draft ballot title contains the following result statements:

Result of "Yes" Vote: "Yes" vote requires majority of "electors interested" (undefined) approve state/local laws imposing/increasing taxes/fees; exceptions for laws raising taxes/fees under specified amounts.

Result of "No" Vote: "No" vote retains current laws that do not require that "electors interested" (undefined) vote to approve state/local laws imposing or raising taxes or fees.

The commenters contend that the result statements suffer from the same shortcomings as the caption, and suggest that "enact" be substituted for "approve." For the same reason that we adopted that suggested change in the caption, we adopt it in the result statements.

We therefore certify the following "yes" result statement:

Result of "Yes" Vote: "Yes" vote requires majority of "electors interested" (undefined) enact state/local laws imposing/increasing taxes/fees; exceptions for laws raising taxes/fees under specified amounts.

We therefore certify the following "no" result statement:

Result of "No" Vote: "No" vote retains current laws that do not require that "electors interested" (undefined) vote to enact state/local laws imposing or raising taxes or fees.

E. The summary

ORS 250.035(2)(d) requires a "concise and impartial statement of not more than 125 words summarizing the state measure and its major effect." The draft summary reads:

Summary: Current law provides that the Oregon Legislative Assembly and local legislative bodies have authority to pass laws establishing taxes or fees, and have authority to pass laws raising or lowering such taxes or fees; Legislative Assembly or local legislative bodies have authority to refer such laws to qualified voters for approval. Measure requires that state or local laws imposing or increasing a tax or fee must be referred to electorate and approved by a majority of "electors interested." Referral of laws to the electorate for approval is not required if law raises \$10,000,000 or less per biennium for state law, or \$1,000,000 or less per biennium for local law.

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Measure defines "state law" and "local law;" does not define "electors interested." Other provisions.

The commenters contend that the summary suffers from the same shortcomings as the caption and result statements. They also contend that it is inadequate for four other reasons: (1) the summary fails to convey that, under current law, voters already have the power to require a vote on any revenue-raising law; (2) it fails to inform voters that the initiative may require statewide votes on local revenue raising matters; (3) it does not inform voters that the initiative makes no provision for determining how the \$10,000,000 and \$1,000,000 thresholds are determined; and (4) it does not inform voters that the initiative "may be unenforceable or at least has significant legal infirmities that may prevent its enforcement if passed."

First, for the reasons stated above with respect to the caption and result statements, we agree that the term "approved" should be replaced with "enacted." We therefore change the summary to make that clear to voters.

We agree with the commenters that the draft summary does not make clear that voters currently have the power to require a vote on revenue raising laws. We therefore change the summary to clarify that.

We disagree that IP #4, if passed, would require statewide votes on local revenue raising matters. It is true that Section 1 states that "guaranteeing electors the right to vote on taxes and fees is a matter of statewide concern." However, Section 1 is a policy statement and does not purport to amend, repeal, or otherwise change current laws. Because it does not change any current laws, we cannot conclude that the reference to "statewide concern" requires statewide voting on local revenue raising matters. Accordingly, we reject the commenters suggested changes in that respect.

We agree that the draft summary fails to inform voters that IP #4 does not contain any provision for calculating the \$10,000,000 and \$1,000,000 thresholds. We therefore change the summary to include that information.

We decline to include information in the summary regarding possible unenforceability or "significant legal infirmities" that IP #4 may contain. Such issues are not properly the subject of the ballot title process. *See, e.g., Kane v. Kulongoski*, 320 Or 273, 278, 882 P2d 588 (1994) (when commenter attempted to have inserted into the ballot title a warning that proposed measure created "serious legal difficulties and questions," court held that it "does not address the legality of a proposed measure in these proceedings").

We therefore certify the following summary:

January 23, 2013

Page 5

Summary: Current law provides the Oregon Legislative Assembly and local legislative bodies with authority to pass laws establishing, raising, or lowering taxes or fees; voters have authority to require a vote on such laws through referendum; assembly or local legislative bodies may refer such laws to voters for approval. Measure requires that state/local laws imposing or increasing a tax or fee must be enacted by a majority of "electors interested." Enactment by "electors interested" is not required if law raises \$10,000,000 or less per biennium for state law, or \$1,000,000 or less per biennium for local law. Measure defines "state law" and "local law;" does not define "electors interested;" does not provide basis for calculating \$10,000,000 or \$1,000,000 thresholds. Other provisions.

We certify the attached ballot title.

Sincerely,



Jeff J. Payne
Assistant Attorney General

JJP:mlk/3944765

Enclosure

Jason Williams
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Tigard, Oregon 97281

Steven C. Berman
Stoll Berne
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Portland, OR 97204

Certified by Attorney General on January 23, 2013.

Assistant Attorney General

BALLOT TITLE

Majority of "electors interested" (undefined) must enact laws imposing/increasing taxes/fees over specified amounts

Result of "Yes" Vote: "Yes" vote requires majority of "electors interested" (undefined) enact state/local laws imposing/increasing taxes/fees; exceptions for laws raising taxes/fees under specified amounts.

Result of "No" Vote: "No" vote retains current laws that do not require that "electors interested" (undefined) vote to enact state/local laws imposing or raising taxes or fees.

Summary: Current law provides the Oregon Legislative Assembly and local legislative bodies with authority to pass laws establishing, raising, or lowering taxes or fees; voters have authority to require a vote on such laws through referendum; assembly or local legislative bodies may refer such laws to voters for approval. Measure requires that state/local laws imposing or increasing a tax or fee must be enacted by a majority of "electors interested." Enactment by "electors interested" is not required if law raises \$10,000,000 or less per biennium for state law, or \$1,000,000 or less per biennium for local law. Measure defines "state law" and "local law;" does not define "electors interested;" does not provide basis for calculating \$10,000,000 or \$1,000,000 thresholds. Other provisions.

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**Nathan R. Rietmann
Attorney at Law**

August 5, 2013

Honorable Kate Brown
Oregon Secretary of State
Elections Division
225 Capitol Street NE, Ste 501
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KATE BROWN
SECRETARY OF THE STATE

Re: Initiative Petition #20 (2014) –Draft Ballot Title Comments

Secretary Brown:

My office represents Jason Williams who is an elector and the Chief Petitioner upon 2014 Initiative Petition #20 ("IP 20"). Chief Petitioner is dissatisfied with the draft ballot title for IP 20. Chief Petitioner respectfully asks the Attorney General to certify a ballot title that includes the alternative language proposed in these comments.

CAPTION

The Attorney General has proposed the following caption:

Majority of participating voters must approve certain local laws imposing or increasing taxes or fees.

ORS 250.035(2)(a) requires a ballot title caption to "reasonably" identify the subject matter of the measure in 15 words or less. The Attorney General's draft caption substantially complies with the statutory standard. Consequently, Chief Petitioner does not believe any change to the draft ballot title is legally required.

Nevertheless, the Attorney General has authority to improve upon a draft ballot title before it is certified. Chief Petitioner believes the draft caption may be improved upon by being revised to read as follows:

Voters must approve certain local laws imposing or increasing taxes or fees.

From Chief Petitioner's perspective, the phrase "majority of participating voters" language is redundant and somewhat confusing. Voters understand that in the absence of a special requirement to the contrary (e.g., double majority), the majority of voters

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participating decide the outcome of an election. Chief Petitioner is concerned the phrase "majority of participating voters" may suggest to some voters that the measure is imposing a new type of voter participation requirement, even though the measure does not have that effect and is not aimed at changing how elections are decided. Thus, while Chief Petitioner believes the draft caption substantially complies with the legal standard, Chief Petitioner believes his suggested revision improves upon the draft caption and should be certified in lieu thereof.

"YES" VOTE STATEMENT

Chief Petitioner believes the draft "yes" vote statement complies with the statutory standard and should not be modified.

"NO" VOTE STATEMENT

Chief Petitioner believes the draft "no" vote statement complies with the statutory standard and should not be modified.

SUMMARY

ORS 250.035(2)(d) requires a ballot title to contain a 125-word statement, which accurately summarizes the measure and its major effects in a concise and impartial manner. The goal is to provide voters with enough information to understand what will happen if the measure is approved and the "breadth of its impact." *Fred Meyer, Inc. v. Roberts*, 308 Or. 169, 175 (1989).

Chief Petitioner objects to the first sentence of the summary statement, which provides as follows:

~~Current law provides local legislative bodies with authority to pass laws establishing, raising, or lowering taxes or fees; voters have authority to require a vote on such laws through referendum; local legislative bodies may refer such laws to voters for approval.~~

Chief Petitioner specifically objects to the phrase "voters have authority to require a vote on such laws through referendum." As presently drafted, the phrase indicates that voters always have the opportunity to require a vote through the referendum process. In fact, there are many instances where that is not the case.

To cite but one example, local governments are entitled to attach emergency clauses to ordinances imposing or increasing fees and they often do so. In such instances, which are not infrequent, voters do not have authority to require a vote through referendum, despite what is stated in the draft summary statement.

Chief Petitioner believes the inaccuracy noted above may be easily corrected by inserting qualifying language into the phrase at issue so that it reads as follows:

“voters **sometimes** have authority to require a vote on such laws through referendum;”

Chief Petitioner respectfully asks the Attorney General to certify a summary statement that includes the revision set forth above.

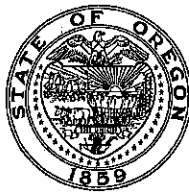
CONCLUSION

Chief Petitioner appreciates the opportunity to provide comments on the draft ballot title for IP #20 (2014).

Sir

Nathan R. Rietmann

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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

August 20, 2013

Gina Zejdlik
Acting Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

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KATE BROWN
SECRETARY OF THE STATE

Re: Proposed Initiative Petition — Majority Of Participating Voters Must Approve Certain
Local Laws Imposing Or Increasing Taxes Or Fees
DOJ File #BT-20-13; Elections Division #20

Dear Ms. Zejdlik:

We have received the comments submitted in response to the draft ballot title for prospective Initiative Petition #20 (2014). Comments were submitted by Steven Berman, on behalf of Patrick Green; and by Nathan Reitmann, on behalf of chief petitioner Jason Williams. 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).

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, *Hunnicutt 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:

**Majority of participating voters must approve certain local laws
imposing or increasing taxes or fees**

Commenter Green writes that the caption misstates the scope of the measure, because it incorporates the undefined word “voters,” but “fails to convey the full ambiguity of the word as used in” the measure. He suggests adding the parenthetical (“undefined”). Green asserts that the caption must state that the term “local laws” is defined in the measure, because the term “may have a meaning not familiar to the electorate.”

We do not agree with those comments. First, we disagree that “voters” is an ambiguous term. By way of illustration, the word “voters” is repeatedly used in the Oregon Constitution without ambiguity. *See, e.g.,* Or Const, Art XI, § 11(19)(a) (“The Legislative Assembly shall by statute limit the ability of local taxing districts to impose new or additional fees, taxes, assessments or other charges for the purpose of using the proceeds as alternative sources of funding to make up for ad valorem property tax revenue reductions caused by the initial implementation of this section, unless the new or additional fee, tax, assessment or other charge is approved by **voters**.”) (Emphasis added.). *See also* Or Const Art XI, § 2 (“The legal **voters** of every city and town are hereby granted power to enact and amend their municipal charter * * *.”) (Emphasis added.).

To the extent that there is a question as to *which* voters must approve local laws imposing or increasing taxes or fees, the caption specifies that only *participating* voters are counted in determining the majority vote. In other words, the local laws need not be approved by a majority of the entire local electorate. Therefore, we decline to accept Mr. Green’s first suggestion for the caption.

Second, we do not accept Green’s comment that “local laws” is a term that requires, or even warrants, the parenthetical “(defined)” in the caption. The measure provides that the term “local law” “shall be liberally construed to include ordinances, resolutions, and any other law of a local government.” That is consistent with how “local law” is commonly understood. *Cf., Tauman v. Myers*, 343 Or 299, 302-303, 170 P3d 556 (2007) (“Because the proposed measure defines the term ‘charity’ more broadly than the term commonly is understood, the caption’s use of the term has the potential to leave petition signers and voters with a false impression of the proposed measure’s subject matter.”).

Green also comments that the caption “fails to convey to voters the ambiguity in the process created by” the measure. That is, according to Green, the measure is unclear

as to when a majority of “voters would approve a revenue-raising law.” He suggests that the caption “provide that no ‘local law’ may go into effect unless the law receives a majority of votes at an election, presumably after the law already has been passed by the local governmental body.” We believe the draft caption already makes that clear.

Green also objects to the word “imposing” as a “loaded word.” Again, we cannot agree. In ordinary usage, people refer to taxes being “imposed.” *See, e.g., Rasmussen v. Kroger*, 351 Or 358, 360, 266 P3d 87 (2011) (“Initiative Petition 18, if approved by the voters, would enact a prohibition on the imposition of any state or local estate tax, inheritance tax, tax on property transferred in connection with a person’s death, or tax on the transfer of property between ‘family members’ [and] would supersede current statutes that impose those taxes[.]”). To the extent the term “imposed” is “loaded,” the prejudice derives from the fact that a tax or fee is being imposed.

Chief petitioner Williams comments that the phrase “majority of participating voters” is redundant and confusing, because voters understand that, unless otherwise specified, the majority of voters participating decide the outcome of an election. Williams believes the phrase may suggest, incorrectly, that the measure imposes a new voter participation requirement. While we agree that voters generally understand the concept of a majority vote, we believe that, in this context, it is helpful to tell voters that only the majority of those voting on the question will be counted in an election under the measure.

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 requires majority of participating voters to approve local laws imposing/increasing taxes/fees estimated to raise more than \$750,000 in three years.

Commenter Green writes that the “yes” statement fails to inform voters of an “important aspect” of the measure: who is responsible for determining when the revenue threshold is met. That information is appropriately included in the ballot title summary. (“Approval by local voters not required if local government reasonably estimates law will

raise no more than \$750,000 during three year period immediately following enactment.”).

2. The draft “No” result statement

The draft “No” result statement provides:

Result of “No” Vote: “No” vote retains status of local law authorizing local government to enact laws whether or not it requires approval by majority of participating local voters.

Green comments that the “no” statement is flawed for three reasons: (1) it incorrectly assumes that it is the electorate of the local government who votes on the local revenue-raising laws; (2) it is not impartial because it implies that current law “is lacking, in that a majority of the electorate does not get to enact each local revenue raising law”; and (3) it is confusing because the antecedent of “it” is unclear. We reject those objections for the following reasons.

As to Green’s first asserted flaw, it is unclear why Green finds fault with the “no” result statement for that particular reason (but not with the “yes” statement). In any event, we read the measure as unambiguously requiring a vote of the local electorate. Section 1. (1) of the measure provides: “Any local law imposing or increasing a tax or fee shall be submitted *to the voters of the local government* and approved by at least a majority of the votes cast thereon, before taking effect.” (Emphasis added.) Section 2. (1)(b) defines “local government” as “any entity or body defined as a ‘local government’ in ORS 174.116 or a ‘special government body’ as defined in ORS 174.117.” The plain meaning of section 1. (1) is that “the electorate of the local government” votes on the proposed local law.

Green’s second asserted flaw in the “no” statement is misdirected. The “no” statement does not suggest, as Green asserts, that there is any deficiency in current law. The “no” statement simply states that whatever authority local governments currently have to enact laws (with or without subsequent voter approval) is unaffected by the measure.

Green’s third asserted flaw in the “no” statement is unpersuasive. The antecedent to “it” is clearly “local law.” Therefore, we do not modify the “no” statement based on Green’s comments.

C. The summary

The draft summary provides:

Summary: Current law provides local legislative bodies with authority to pass laws establishing, raising, or lowering taxes or fees; voters have authority to require a vote on such laws through referendum; local legislative bodies may refer such laws to voters for approval. Measure provides that a local law enacted after measure's effective date imposing/increasing tax/fee must be approved by a majority of voters who cast votes on the law. Approval by local voters not required if local government reasonably estimates law will raise no more than \$750,000 during three year period immediately following enactment. Measure defines "local government;" mandates that "local law" be "liberally construed" to include ordinances, resolutions, any other law; does not provide basis for calculating \$750,000 threshold. Other provisions.

Commenter Green objects to the summary on the bases already discussed. For the reasons discussed above, we do not agree with those objections.

In addition, Green objects that the summary fails to inform voters that the measure "may be unenforceable or at least has significant legal infirmities." That inquiry is outside the scope of the ballot title process. *Kane v. Kulongoski*, 320 Or 273, 278, 882 P2d 588 (1994), citing *Hand v. Roberts*, 309 Or 430, 436, 788 P2d 446 (1990) (court not authorized to assess "legality" of proposed ballot measure in the context of a ballot title review). Therefore, we reject that comment.

Chief petitioner Williams objects to the phrase "voters have authority to require a vote on such laws through referendum." He asserts the phrase indicates that voters always have the opportunity to vote through the referendum process, whereas, in fact, the local government may attach an emergency clause to an ordinance imposing or increasing fees, precluding a referendum. Williams suggest inserting the qualifying word "sometimes" before "voters" in that phrase. We do not believe voters need that level of detail about possible exceptions to the general rule that voters have authority to require a vote on such laws through referendum. Therefore, we do not adopt Williams' suggestion.

Therefore, we certify the draft ballot title without changes.

Sincerely,

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August 20, 2013
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JCL:chc/4522114

Enclosure

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Assistant Attorney General

BALLOT TITLE

Majority of participating voters must approve certain local laws imposing or increasing taxes or fees

Result of "Yes" Vote: "Yes" vote requires majority of participating voters to approve local laws imposing/increasing taxes/fees estimated to raise more than \$750,000 in three years.

Result of "No" Vote: "No" vote retains status of local law authorizing local government to enact laws whether or not it requires approval by majority of participating local voters.

Summary: Current law provides local legislative bodies with authority to pass laws establishing, raising, or lowering taxes or fees; voters have authority to require a vote on such laws through referendum; local legislative bodies may refer such laws to voters for approval. Measure provides that a local law enacted after measure's effective date imposing/increasing tax/fee must be approved by a majority of voters who cast votes on the law. Approval by local voters not required if local government reasonably estimates law will raise no more than \$750,000 during three year period immediately following enactment. Measure defines "local government;" mandates that "local law" be "liberally construed" to include ordinances, resolutions, any other law; does not provide basis for calculating \$750,000 threshold. Other provisions.

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NOTICE OF FILING AND PROOF OF SERVICE

I certify that on October 1, 2013, I directed the original Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 20 to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and served upon Steven C. Berman, attorney for petitioner, Patrick Green, and upon Nathan R. Rietmann, attorney for Amicus, Jason Williams, by using the court's electronic filing system.

I further certify that on October 1, 2013, I directed the Respondent's Answering Memorandum to Petition to Review Ballot Title Re: Initiative Petition No. 20 to be served upon Jason Williams, chief petitioner, by mailing a copy, with postage prepaid, in an envelope addressed to:

Jason Williams
P.O. Box 23573
Tigard, OR 97281

/s/ Judy C. Lucas

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