

IN THE SUPREME COURT OF THE STATE OF OREGON

PAUL ROMAIN.

Petitioner,

V.

ELLEN ROSENBLUM.

Attorney General, State of Oregon,

Respondent.

Supreme Court Case No.

**PETITION TO REVIEW
BALLOT TITLE CERTIFIED
BY THE ATTORNEY GENERAL**

Initiative Petition 71 (2016)

(ORAL ARGUMENT REQUESTED)

Ballot Title Certified December 31, 2015
Chief Petitioners: Gerry Dory and Lynn Gust

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PETITION TO REVIEW BALLOT TITLE

I. Petitioner's Interest

Petitioner Paul Romain is an elector of this State and a person dissatisfied with the ballot title that is the subject of this action. Petitioner timely submitted written comments concerning the draft ballot title and therefore has standing pursuant to ORS 250.085(2) to seek review of the ballot title certified by the Attorney General for Initiative Petition 71 (2016).¹

II. Certified Ballot Title

On December 31, 2015, the Attorney General certified the following ballot title:

**Allows qualified retail stores to sell liquor;
prohibits state liquor sales, distribution; eliminates liquor revenue**

Result of “Yes” Vote: “Yes” vote expands number of liquor retailers; establishes retailer qualifications, sales, distribution requirements; prohibits state from selling, distributing liquor; eliminates state/local revenue from sales.

Result of “No” Vote: “No” vote retains current retail liquor sales exclusively through state agents; retains state authority to sell, distribute, set prices, generate state/local revenue through sales.

Summary: Currently, retail sales of liquor by the bottle are made exclusively by agents of Oregon Liquor Control Commission (OLCC); OLCC is authorized to sell, distribute, and set prices. Measure prohibits state sale/distribution of liquor; eliminates revenue from sales for state and local programs. Allows current beer/wine retailers to sell liquor. Allows continued sales by current retail liquor agents. Doubles existing fines for sales to minors/intoxicated persons. Dedicates fines/savings from measure to local public safety. Regulates agreements between distributors, manufacturers, and retailers. Prohibits state from regulating purchase,

¹ A copy of Initiative Petition 71 is attached as Exhibit 1; the draft ballot title is attached as Exhibit 2; Petitioner's comments are attached as Exhibit 3; the Attorney General's explanatory letter is attached as Exhibit 4; and the certified ballot title is attached as Exhibit 5.

sale, transportation, storage of liquor, except as provided by measure. Prohibits sales in certain gas stations. Prohibits amendment/repeal by legislature for two years without supermajority vote (effect unclear). OLCC retains regulatory functions. Other provisions.

III. Proposed Ballot Title

In lieu of the ballot title certified by the Attorney General, Petitioner seeks certification of the alternative ballot title set forth below:²

**Allows qualified retail stores to sell liquor;
prohibits state liquor sales, distribution; eliminates liquor revenue**

Result of “Yes” Vote: “Yes” vote greatly expands number of liquor retailers; establishes retailer qualifications, distribution requirements; prohibits state from selling, distributing liquor; eliminates state/local revenue from sales.

Result of “No” Vote: “No” vote retains current retail liquor sales exclusively through state agents; retains state authority to sell, distribute, set prices, generate state/local revenue through sales.

Summary: Currently, retail sales of liquor by the bottle made exclusively by agents of Oregon Liquor Control Commission (OLCC); OLCC authorized to sell, distribute, set prices. Measure prohibits state sale/distribution of liquor; eliminates revenue from sales for state/local programs. Allows current beer/wine retailers to sell liquor. Allows continued sales by current retail liquor agents. Doubles existing fines for sales to minors/intoxicated persons. Dedicates fines/savings from measure to local public safety. Regulates agreements among distributors, manufacturers, retailers. Prohibits state from regulating purchase, sale, transportation, storage of liquor, except as provided by measure. Prohibits small retailers with gas pumps from selling distilled spirits but not beer/wine; allows large retailers with gas pumps to sell all liquor. OLCC retains regulatory functions. Other provisions.

IV. Argument and Authorities

The Attorney General made certain revisions to the draft ballot title in response to Petitioner’s comments. The certified ballot title, however, still does not substantially comply with ORS 250.035 for the reasons set forth below:

² Petitioner’s proposed caption and “no” vote statement are the same as the Attorney General’s certified version; the “yes vote statement and summary are different.

A. THE “YES” VOTE STATEMENT DOES NOT SUBSTANTIALLY COMPLY WITH ORS 250.035(2)(b).

ORS 250.035(2)(b) requires the “yes” vote statement to describe “the result if the state measure is approved” within 25 words. “[T]he 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. Stated differently, the legislature intended the 25-word ‘yes’ vote result statement to notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon.” *Carley v. Myers*, 340 Or 222, 231, 132 P3d 651 (2006) (quoting *Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004)).

The certified “yes” vote statement contains the simple statement that the proposed measure “expands number of liquor retailers.” This statement alone does not accurately describe one of the major effects of the measure. Currently, there are about 250 retail outlets that sell distilled spirits by the bottle. *See* OLCC’s list of “Liquor Stores by City,” available at http://www.olcc.state.or.us/pdfs/liquor_store_list.pdf. The measure allows all retailers who sell beer and wine to now sell distilled spirits by the bottle. Ex. 1, p. 1, Section 3. There is no distinction between beer and wine on-premises licensees and off-premises licensees, so every one of these retailers would be eligible to sell distilled spirits by the bottle. There is an attempt to limit this retail category by placing certain requirements or restraints on smaller stores, but the net effect of these provisions is to increase the number of retail outlets for distilled spirits by the bottle from 250 to about 12,000. *See* OLCC’s list of “Licensed Businesses,”

available at http://www.olcc.state.or.us/pdfs/licenses_by_type.pdf.

An additional descriptive word can and should be added to the statement to accurately describe the effect of the measure. The proposed measure does not just “expand” the number of retail outlets, it “greatly expands” the number of those outlets. This expansion of the number of retail outlets certainly is of great importance to the people of the State of Oregon. Going from 250 to 12,000 outlets amounts to an increase by a factor of 48, or 4,700%. This is a huge expansion which must be noted in the ballot title in order to accurately describe the effect of the measure.

For these reasons, this Court should certify the following “yes” vote statement:

Result of “Yes” Vote: “Yes” vote greatly expands number of liquor retailers; establishes retailer qualifications, distribution requirements; prohibits state from selling, distributing liquor; eliminates state/local revenue from sales.

B. THE CERTIFIED SUMMARY DOES NOT SUBSTANTIALLY COMPLY WITH ORS 250.035(2)(d).

ORS 250.035(2)(d) requires that a ballot title contain “[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” The purpose of an initiative ballot summary “is to help voters understand what will happen if the measure is approved, and...[it] should...be worded so that voters will understand the breadth of its impact.” *Wyant v. Myers*, 336 Or 128, 139, 81 P3d 692 (2003) (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989)). In *Novick/Crew*, the Oregon Supreme Court described the “major effect” requirement as follows:

Logically, those would include additional important consequences or details that the result statement does not convey and helpful contextual information about the impact of the proposed measure on existing law.

337 Or at 574, 100 P3d 1064.

There are so many confusing issues in this measure that writing an accurate summary is a daunting task. The Attorney General does an exceptional job of explaining some of the major effects of this measure, but a few things stand out as inaccurate or confusing.

The certified ballot title summary states that the measure “Prohibits sales in certain gas stations.” While partially accurate, the statement itself is very misleading. The measure does not prohibit sales of all liquor in gas stations. It continues to allow all gas stations to sell beer, wine, and cider. The measure allows large retailers with gas pumps to sell all liquor, yet denies the ability to sell all liquor to small retailers with gas pumps. If the statement about sales in gas stations is to be in the summary, and we agree that it is important to the summary, it should be far more descriptive to accurately explain the measure.

The next sentence in the certified summary should not even be in the summary. The certified summary states that the measure “Prohibits amendment/repeal by legislature for two years without supermajority vote (effect unclear).” In the Attorney General’s comments to the certified title, the Attorney General states very directly that the provision in Section 12 of the measure has constitutional issues. Ex. 4, p. 10. Yet, in spite of this constitutional issue, the Attorney General included in the certified summary the supermajority vote requirement and simply notes that its effect is unclear. The provision in Section 12 is a political statement only, designed to try to make this measure palatable to the voter. It does not belong in the ballot title.

Under the Attorney General's reasoning, a proposed measure could have a provision in it that it could never be amended or repealed, and it would be okay to mention it in the ballot title as long as the title noted that its effect was unclear. If a provision in a measure is unconstitutional, it should not be in the ballot title.

Although the Court does not rule on the constitutionality of a provision in a proposed measure before the measure is adopted, *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), this does not prevent this Court from saying that a statement in a ballot title that the effect of one of the provisions in the measure is "unclear" should not be in the ballot title because it is confusing and potentially misleading to voters.

Moreover, inclusion of this sentence in the summary violates the requirement that a ballot title not take sides for or against a proposed measure. *Id.*, 309 Or at 433 (ballot title "should provide accurate and neutral information to the voters, not an additional opportunity for proponents or opponents to persuade"). If a provision in a proposed measure obviously has serious legal issues concerning its constitutionality, it should not be in the ballot title. There is a difference between speculating on the effect of a measure and including something in a ballot title that is clearly unconstitutional.

For these reasons, this Court should certify the following summary:

Summary: Currently, retail sales of liquor by the bottle made exclusively by agents of Oregon Liquor Control Commission (OLCC); OLCC authorized to sell, distribute, set prices. Measure prohibits state sale/distribution of liquor; eliminates revenue from sales for state/local programs. Allows current beer/wine retailers to sell liquor. Allows

continued sales by current retail liquor agents. Doubles existing fines for sales to minors/intoxicated persons. Dedicates fines/savings from measure to local public safety. Regulates agreements among distributors, manufacturers, retailers. Prohibits state from regulating purchase, sale, transportation, storage of liquor, except as provided by measure. Prohibits small retailers with gas pumps from selling distilled spirits but not beer/wine; allows large retailers with gas pumps to sell all liquor. OLCC retains regulatory functions. Other provisions.

CONCLUSION

The ballot title certified by the Attorney General fails to substantially comply with ORS 250.035(2) for the reasons set forth above. Petitioner respectfully requests the Court certify his proposed alternative ballot title or modify the Attorney General's proposed ballot title as appropriate, or refer the ballot title to the Attorney General for modification in accordance with ORS 250.085(8).

DATED this 15th day of January, 2016.

THE ROMAIN GROUP, LLC

Paul R. Romain, OSB No. 732565
Of Attorneys for Petitioner

BLACK HELTERLINE LLP

s/ Margaret E. Schroeder
Margaret E. Schroeder, OSB No. 025748
Of Attorneys for Petitioner

Relating to alcoholic beverages.

Be It Enacted by the People of the State of Oregon:

PURPOSES FOR STATE LIQUOR REGULATION

SECTION 1. The people of the State of Oregon find and declare that:

(1) The primary purposes of state regulation of liquor are to:

- (a) Protect and enhance the safety, welfare, peace and convenience of the public;
- (b) Prevent the sale of distilled liquor to minors;
- (c) License qualified private businesses to responsibly sell distilled liquor to the public; and
- (d) Focus on the enforcement of liquor laws instead of the State's sale and distribution of liquor.

(2) To achieve the primary purposes of state regulation of liquor, the laws of the state should be amended to:

- (a) Allow grocery and retail stores to sell liquor if the stores already have licenses in good standing to sell wine and beer;
- (b) Double fines and penalties for selling liquor to minors or intoxicated individuals;
- (c) Dedicate savings to local public safety resulting from the end of state liquor sales; and
- (d) Protect the will of voters by prohibiting the legislature from changing or repealing this 2016 Act for two years unless three-fifths of the legislators in each house of the legislature agree.

ENDS STATE AUTHORITY TO DISTRIBUTE AND SELL LIQUOR

SECTION 2. Beginning July 1, 2017, the state may not directly or indirectly manufacture, distribute or sell distilled liquor.

ALLOWS SALES OF LIQUOR IN GROCERY STORES

SECTION 3. (1) Beginning July 1, 2017, any holder of a license in good standing to sell beer and wine at retail may sell distilled liquor at retail from the licensee's licensed premises.

(2) To qualify to sell distilled liquor under subsection (1) of this section, a licensee must be in full compliance with:

- (a) The license to sell beer and wine;
- (b) All rules of the Oregon Liquor Control Commission that apply to the licensee's licensed premises and to a parent or subsidiary of the licensee or other entity that is similarly related to the licensee; and
- (c) The provisions of section 5 of this 2016 Act for the prevention of sales of distilled liquor to minors.

ALLOWS EXISITING LIQUOR STORES TO CONTINUE SELLING LIQUOR

SECTION 4. (1) Beginning December 8, 2016, any person who is authorized to sell distilled liquor at a state liquor store under ORS 471.750 may sell distilled liquor at retail from the state liquor store or other premises licensed by the Oregon Liquor Control Commission.

(2) To qualify to sell distilled liquor under subsection (1) of this section, a person must:

- (a) Notify the commission of the person's election to sell distilled liquor at retail;

- (b) Be in full compliance with:
- (A) The person's agreement with the commission;
 - (B) All rules of the commission that apply to the person's agency relationship; and
 - (C) The provisions of section 5 of this 2016 Act for the prevention of sales of distilled liquor to minors.
- (3) The commission shall issue a license to sell distilled liquor to a person who qualifies to sell distilled liquor under this section of this 2016 Act.

REQUIRES EMPLOYEE TRAINING TO PREVENT LIQUOR SALES TO MINORS

SECTION 5. To qualify to sell distilled liquor under section 3 or 4 of this 2016 Act, a person must have demonstrated the ability to effectively prevent sales of distilled liquor to minors by successfully completing the Responsible Vendor Program under ORS 471.344.

REQUIRES RETAILERS TO TAKE STEPS TO PREVENT LIQUOR THEFTS

SECTION 6. A licensee who sells distilled liquor at retail must:

- (1) Implement the theft prevention measures required by the Oregon Liquor Control Commission for state liquor stores as of January 1, 2016; and
- (2) Secure from public access any distilled liquor located within 25 feet of a public entrance or public exit of the licensed premises.

DOUBLES FINES FOR SELLING LIQUOR TO MINORS, INTOXICATED PERSONS

SECTION 7. (1) Notwithstanding ORS 471.410 (5), if the person who violates ORS 471.410 (2) is a person with authority to sell distilled liquor, the court shall impose at least a mandatory minimum sentence as follows:

- (a) Upon a first conviction, a fine of at least \$1,000;
- (b) Upon a second conviction, a fine of at least \$2,000; and
- (c) Upon a third or subsequent conviction, a fine of at least \$3,000 and not less than 30 days of imprisonment.

(2) Notwithstanding ORS 471.410 (6), if the person who violates ORS 471.410 (2) is a person with authority to sell distilled liquor and the person does not act knowingly or intentionally, the court shall impose at least a mandatory minimum sentence as follows:

(a) A first conviction is a Class A violation. Notwithstanding ORS 153.019, the presumptive fine for a violation under this subparagraph is an amount equal to twice the Class A violation presumptive fine established under ORS 153.019;

(b) A second conviction is a specific fine violation and the presumptive fine for the violation is \$1,720;

(c) A third conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$2,000; and

(d) A fourth or subsequent conviction is a Class A misdemeanor. The court shall impose a mandatory fine of not less than \$2,000 and a mandatory sentence of not less than 30 days of imprisonment.

(3) Notwithstanding ORS 471.410 (9)(a) and (b), if the person who violates ORS 471.410 (3) is a person with authority to sell distilled liquor, the presumptive fine is as follows:

- (a) Upon a first violation, \$1,000;

- (b) Upon a second violation, \$2,000; and
- (c) Upon a third or subsequent violation, \$4,000.

DEDICATES INCREASED FINES TO PUBLIC SAFETY

SECTION 8. For the purposes of enhancing public safety and preventing the sale of distilled liquor to minors, the Legislative Assembly shall each biennium appropriate, allocate or otherwise make available to local public safety agencies and associations the fines imposed under section 7 of this 2016 Act.

DEDICATES STATE SAVINGS TO PUBLIC SAFETY

SECTION 9. (1) Notwithstanding any other law, the net proceeds realized from the disposition of properties that result from the end of the state's sales and distribution of distilled liquor shall first be applied to offset the costs of the state to implement this 2016 Act and second to payments required by section 2, chapter 228, Oregon Laws 2015.

(2) The Oregon Liquor Control Commission may not use the expenditure limitations granted in the budget for the biennium beginning July 1, 2015, to upgrade the commission's shipping capacity to meet demand for distilled spirits or to repair warehouse and office facilities.

(3) The Legislative Assembly shall, for the purposes of enhancing public safety and preventing the sale of distilled liquor to minors, appropriate, allocate or otherwise make available to local public safety agencies and associations the funds not expended to upgrade shipping capacity and repair warehouse and other facilities and the net proceeds that remain after payments required under subsection (1) of this section.

PROHIBITS LIQUOR SALES IN GAS STATIONS

SECTION 10. A licensee may not sell distilled liquor on the premises of a gas station as described in ORS 646.932 unless the licensee operates a fully enclosed retail area encompassing at least 20,000 square feet and sells the distilled liquor from within the enclosed retail area.

SETS GOVERNMENT TRANSPARENCY, ACCOUNTABILITY STANDARD

SECTION 11. From the effective date of this 2016 Act until January 1, 2018, the State of Oregon shall disclose documents requested under ORS 192.420 related to the implementation of this 2016 Act within five business days of the receipt of a request for disclosure.

PROTECTS VOTER INTENT REGARDING STATE LIQUOR REGULATION

SECTION 12. This 2016 Act represents the will of Oregon voters and shall be implemented as written. The Legislative Assembly may not modify, amend or repeal this 2016 Act for a period of two years from its passage without three-fifths votes of the members elected to each house.

PROTECTS PRODUCT QUALITY

SECTION 13. (1) A wholesale distributor may not import, purchase, sell, transport or receive a brand of distilled liquor without the written permission of the brand owner or the authorized agent of the brand owner for the sale of that brand in this state.

(2) A licensee with authority to sell distilled liquor at retail and a parent or subsidiary of the licensee or other entity that is similarly related to the licensee may not import, purchase, sell, transport or receive a brand of distilled liquor without the written permission of:

(a) The brand owner or the authorized agent of the brand owner for the sale of that brand in this state; or

(b) A person in the chain of distribution of the brand owner or the authorized agent of the brand owner that has the written permission of the brand owner or the authorized agent of the brand owner for the sale of that brand in this state.

(3) The limitations imposed by subsections (1) and (2) of this section apply to central warehouses designated under section 15 of this 2016 Act.

PROTECTS FREE MARKET

SECTION 14. (1) Except as otherwise provided in this 2016 Act, the state may not:

(a) Regulate the purchase, sale, transportation or storage of distilled liquor between persons authorized to purchase, sell, transport or store distilled liquor;

(b) Regulate the movement of distilled liquor between licensed premises of a person authorized to sell distilled liquor;

(c) Regulate the terms of an agreement for the purchase, sale, transportation or storage of distilled liquor between persons authorized to purchase, sell, transport or store distilled liquor; or

(d) Prohibit persons authorized to purchase, sell, transport or store distilled liquor from entering into agreements with other persons authorized to purchase, sell, transport or store distilled liquor.

(2) To protect a free market, the following provisions in agreements are prohibited as against public policy and are void and unenforceable:

(a) In an agreement between a manufacturer or distiller and a wholesale distributor, a requirement that prevents the manufacturer or distiller from choosing to sell distilled liquor directly to a licensee authorized to sell distilled liquor at retail or to a parent or subsidiary of the licensee or other entity that is similarly related to the licensee; and

(b) In an agreement between a manufacturer or distiller and a licensee authorized to sell distilled liquor at retail or a parent or subsidiary of the licensee or other entity that is similarly related to the licensee, a requirement that the licensee, parent, subsidiary or other entity obtain the distilled liquor through a wholesale distributor.

(3)(a) A wholesale distributor may not require a manufacturer or distiller to grant the wholesale distributor the rights of a wholesale distributor under ORS 474.005 to 474.095, ORS 474.105 or ORS 474.115 as a condition of the wholesale distributor's distribution of the manufacturer's or distiller's distilled liquor products.

(b) ORS 474.005 to 474.095 ORS 474.105 and 474.115 do not apply to an arrangement for the sale of distilled liquor by a manufacturer or distiller to a wholesale distributor or to the distribution of distilled liquor by a wholesale distributor on behalf of a manufacturer or distiller.

(4)(a) The Oregon Liquor Control Commission shall, by rule, establish licenses that permit the sale of distilled liquor in this state by manufacturers, distillers and wholesale distributors.

(b) A manufacturer or distiller may not obtain a license as a wholesale distributor.

(c) A wholesale distributor may not obtain a license as a manufacturer or distiller.

DELIVERY, STORAGE AND SHIPPING OF LIQUOR

SECTION 15. (1) A licensee authorized to sell distilled liquor at retail or a parent or subsidiary of the licensee or other entity that is similarly related to the licensee may designate one or more central warehouses inside or outside this state for the delivery, storage and shipping of distilled liquor.

(2) A central warehouse may be:

(a) A distribution center owned or operated by a licensee authorized to sell distilled liquor at retail or by a parent, subsidiary or other entity that is similarly related to the licensee;

(b) A distribution center operated by a cooperative of which a licensee authorized to sell distilled liquor at retail or by a parent, subsidiary or other entity that is similarly related to the licensee, is a member; or

(c) A warehouse of a wholesale distributor whose primary business is providing customers with products other than alcoholic beverages.

(3)(a) If the central warehouse designated by a retail licensee or by a parent or subsidiary of the licensee or other entity that is similarly related to the licensee, is located in this state, the Oregon Liquor Control Commission shall issue a distilled liquor central warehouse permit to the person who owns or operates the central warehouse.

(b) If the central warehouse is located outside this state, the commission shall issue a certificate of authority to operate a distilled liquor central warehouse to the person who owns or operates the central warehouse.

(4) A distilled liquor central warehouse permit and a certificate of authority to operate a central warehouse authorize the holder to:

(a) Purchase, receive and store distilled liquor at the distribution center or warehouse for a person who has designated the distribution center or warehouse as a central warehouse; and

(b) Sell and transport distilled liquor from a distribution center or warehouse for a person who has designated the distribution center or warehouse as a central warehouse.

(5) A central warehouse may hold distilled liquor in a common inventory.

(6) A distribution center operated by a cooperative that has been designated a central warehouse may purchase distilled liquor for a member of the cooperative who is authorized to sell distilled liquor under section 3 of this 2016 Act or for a parent or subsidiary of the member or other entity that is similarly related to the member.

(7) The commission shall, by rule, establish a permit that authorizes a parent or subsidiary of a retail licensee or other entity that is similarly related to the licensee to:

(a) Purchase, receive and store distilled liquor for the licensee; and

(b) Transport distilled liquor to a central warehouse or the licensed premises of the licensee.

(8)(a) A licensee authorized to sell distilled liquor at retail and a parent or subsidiary of the licensee or other entity that is similarly related to the licensee may purchase distilled liquor from any person authorized to sell distilled liquor in this state.

(b) Notwithstanding paragraph (a) of this subsection:

(A) A person authorized to sell distilled liquor at retail may not knowingly sell distilled liquor for resale by a person authorized to sell distilled liquor at retail; and

(B) A person who holds a license to sell distilled liquor on the person's premises may not purchase distilled liquor from a person who holds a license to sell distilled liquor off the person's premises.

(9) This 2016 Act does not authorize a person to violate the Federal Alcohol Administration Act, 27 U.S.C. 205, or regulations adopted to implement the Federal Alcohol Administration Act.

PROMOTING OREGON'S LIQUOR DISTILLERS

SECTION 16. Nothing in this 2016 Act prevents the state from promoting Oregon's distilled liquor industry through a semi-independent state agency subject to ORS 182.456 to 182.472.

ADMINISTRATIVE PROVISIONS

SECTION 17. Section 4 of this 2016 Act applies to persons who hold appointments under ORS 471.750 on the date of the election on this 2016 Act.

SECTION 18. Beginning December 8, 2016, any holder of a license to sell beer and wine at retail may take any action necessary to allow the holder to exercise the authority granted by section 3 of this 2016 Act.

SECTION 19. The fines imposed under section 7 of this 2016 Act apply to violations occurring on or after December 8, 2016.

SECTION 20. Sections 11 and 12 of this 2016 Act are repealed January 1, 2020.

SECTION 21. If any part of this 2016 Act is held unconstitutional or otherwise unenforceable, the remaining parts shall remain in force.

SECTION 22. This 2016 Act takes effect December 1, 2016.

SECTION 23. The captions used in this 2016 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any intent in the enactment of this 2016 Act.

RECEIVED
2015 OCT 28 AM 10 49
SECRETARY OF STATE

JEANNE P. ATKINS

SECRETARY OF STATE

ROBERT TAYLOR

DEPUTY SECRETARY OF STATE



JIM WILLIAMS

DIRECTOR

255 CAPITOL STREET NE, SUITE 501

SALEM, OREGON 97310-0722

(503) 986-1518

INITIATIVE PETITION

To: All Interested Parties
 FROM: Lydia Plukchi, Compliance Specialist
 DATE: December 1, 2015
 SUBJECT: Initiative Petition **2016-071** Draft Ballot Title

The Elections Division received a draft ballot title from the Attorney General on December 1, 2015, for Initiative Petition **2016-071**, proposed for the November 8, 2016, General Election.

Caption

Allows qualified retail stores to sell liquor; prohibits state liquor sales, distribution; eliminates liquor revenue

Chief Petitioners

Gerry Dory 8565 SW Salish Lane, Suite 100 Wilsonville, OR 97070
 Lynn Gust 8565 SW Salish Lane, Suite 100 Wilsonville, OR 97070

Comments

Written comments concerning the legal sufficiency of the draft ballot title may be submitted to the Elections Division. Comments will be delivered to the Attorney General for consideration when certifying the ballot title.

Additionally, the Secretary of State is seeking public input on whether the petition complies with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. The Secretary will review any procedural constitutional comments received by the deadline and make a determination whether the petition complies with constitutional requirements.

To be considered, draft ballot title comments and procedural constitutional requirement comments must be received in their entirety by the Elections Division no later than 5 pm:

Comments Due	How to Submit	Where to Submit
December 15, 2015	Scan and Email Fax Mail	irrlistnotifier.sos@state.or.us 503.373.7414 255 Capitol St NE Ste 501, Salem OR 97310

ELLEN F. ROSENBLUM
Attorney General



FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

December 1, 2015

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

Re: Proposed Initiative Petition — Allows Qualified Retail Stores to Sell Liquor; Prohibits
State Liquor Sales, Distribution; Eliminates Liquor Revenue
DOJ File #BT-71-15; Elections Division #2016-071

Dear Mr. Williams:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to liquor sales and revenue.

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.

Legal Secretary

AFT/6974434

Enclosure

Gerry R. Dory
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Wilsonville, OR 97070

Lynn T. Gust
2203 NE 17th Ave
Portland, OR 97212

DRAFT BALLOT TITLE

**Allows qualified retail stores to sell liquor; prohibits state liquor sales, distribution;
eliminates liquor revenue**

Result of “Yes” Vote: “Yes” vote allows sales of liquor by qualified retailers; establishes requirements for sales, distribution, storage; prohibits state from selling, distributing; eliminates state revenue from sales.

Result of “No” Vote: “No” vote retains current system of retail liquor sales exclusively through Oregon Liquor Control Commission agents, retains state authority to sell, distribute, and set prices.

Summary: Currently, retail sales of liquor by the bottle are made exclusively by agents of Oregon Liquor Control Commission (OLCC); OLCC is authorized to sell, distribute, and set prices. Measure prohibits state sale/distribution of liquor; eliminates revenue from sales. Allows current beer/wine retailers to qualify as liquor retailers. Allows continued sales by current retail liquor agents, if qualified. Doubles existing fines for sales to minors/intoxicated persons. Dedicates fines/savings from measure to local public safety. Regulates agreements between distributors, manufacturers, and retailers. Prohibits state from regulating purchase, sale, transportation, or storage of liquor, except as provided by measure. Prohibits sales in gas stations. Prohibits amendment/repeal of measure by legislature for two years without supermajority vote. OLCC retains regulatory functions. Other provisions.

THE ROMAIN GROUP, LLC
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December 2, 2015

Jeanne P. Atkins
Secretary of State, Elections Division
255 Capitol Street NE, Suite 501
Salem, Oregon 97310

Re: Written Comments on Draft Ballot Title for Initiative Petition No. 71
For the General Election of November 8, 2016

Dear Secretary Atkins:

I am Paul Romain, an elector and a person dissatisfied with the Attorney General's draft ballot title for Initiative Petition 71. The draft ballot title does not substantially comply with ORS 250.035(2).

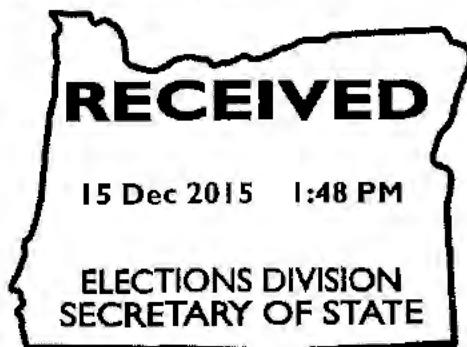
For the reasons set forth below, I respectfully request that the alternative ballot title caption, "Yes" vote statement, and summary set forth in this submission be certified in lieu of the draft ballot title.

Initiative 71 is very poorly drafted, and that is probably intentional. Internal conflicts make it difficult to determine the true meaning of various sections, so writing a ballot title that is informative and correct is a very difficult task.

THE MEASURE INCREASES LIQUOR SALES OUTLETS SIGNIFICANTLY

The proposed measure takes effect December 1, 2016. A week later the current state liquor stores may sell distilled spirits at retail. (Section 4) The state is taken out of the distilled liquor sales business on July 1, 2017, and "any holder of a license in good standing to sell beer and wine at retail" can sell distilled spirits from its licensed premises. (Sections 2 & 3) The proposed measure makes no distinction between a current licensee who can sell on premise or one who can sell off premise, and both types of licenses are able to sell beer and wine at retail, so the number of distilled spirits outlets who can sell bottles of distilled spirits to be taken off the premises goes from the current 250 stores to approximately 12,000 stores.

There are currently almost 13,000 licensees in the state who can sell beer and wine at retail, but the proposed measure tries to limit that number by not allowing some gas stations to sell distilled spirits, even though they can sell beer and wine, if their enclosed retail area is less than 20,000 square feet.



(Section 10) This is a blatant move to allow large grocery chains with gas stations to sell distilled spirits, yet deny that same right to smaller convenience stores who compete with them. If this measure passes, the limited gas station restriction will lower the number of distilled spirits outlets to the 12,000 number quoted above.

The requirement in the proposed measure to limit licensees to those who complete the Responsible Vendor Program under ORS 471.344 (Section 5) could possibly stop any store from selling distilled spirits because a store never “completes” the program. Under that statute, it is an ongoing monitoring and enforcement effort, and a retailer can lose its license if it makes any sale to a minor.

The Oregon Liquor Control Commission, by rule, has to establish licenses for the sale of distilled spirits by manufacturers, distillers and wholesalers. (Section 14(4)) However, there are no criteria for issuance or revocation of a license in the proposed measure, and the provisions of the measure are not added to ORS Chapter 471. In addition, there are no fees associated with the issuance of a license, and there is no bond requirement for any license.

THE MEASURE ELIMINATES ANY TAX OR FEE ON DISTILLED SPIRITS, REDUCING REVENUE BY OVER \$400 MILLION BIENNIALLY

The proposed measure eliminates any tax on distilled spirits. Currently, the State of Oregon collects over \$400 million in net revenue each biennium from the sale of distilled spirits, and there is nothing in this measure that would replace that revenue. This money is divided approximately 57% to the State for its general fund, and that money is used for all state programs, including education, health care, etc. Approximately 30% of the money goes to cities for their general fund, 9% to counties for their general fund, and approximately 4% goes to mental health and addiction programs. Since a ballot title must reflect what a measure actually does, it would not be sufficient to say that the legislature could impose a tax because the legislature is not compelled to impose anything. The measure itself removes over \$400 million each biennium from the state, county, city, and mental health and addiction programs.

THE MEASURE PROHIBITS MOST REGULATION OF LIQUOR SALES

The state is prohibited from regulating almost everything involved with the movement and promotion of distilled spirits. (Section 14(1)) The prohibitions in the statutes requiring all retailers to be treated the same with pricing, service and other things of value would not apply to distilled spirits sales. The proposed measure is designed to give a huge advantage in the marketplace to large retailers over their smaller competitors.

The proposed measure also gives a huge advantage to large manufacturers and distillers over their smaller Oregon competitors. Those local distillers will not be able to compete with the almost unlimited promotional budgets of their larger competitors.

The proposed measure allows a retailer to obtain a wholesaler license, and conversely, allows a wholesaler to obtain a retailer license. (Section 14(4)) There are no restrictions on who can obtain what license, except as stated in Section 14(4) (b) & (c). A manufacturer cannot obtain a wholesale distributor license, and a wholesaler cannot obtain a license to be a manufacturer. Thus, a retailer with a wholesale license can sell directly to other retailers pursuant to that wholesale license. In addition, a retailer can set up a central warehouse either within or outside of the state, and other retailers can designate that warehouse as its supplier of distilled spirits. (Section 15)

There are many other provisions of this proposed measure that are not relevant to a ballot title because they are things that are not meaningful to the voter. Those issues are substantial but do not merit a place in the title.

The key provisions of the proposed measure that must be in a ballot title are the fact that it allows all qualified retailers to sell liquor, that it eliminates all liquor revenue for state, local, and mental health and addiction programs, and that it eliminates any regulation of liquor sales except sales to minors. The draft title has some of these elements, but it also does not describe the measure accurately.

The draft caption is confusing. By saying that the measure “prohibits state liquor sales, distribution”, it gives the impression that no liquor can be sold in this state if the measure goes into effect. A caption should highlight the two most important issues. The caption should read:

Allows qualified retail stores to sell liquor; eliminates liquor revenue for state, county, city programs.

The “Yes” Vote statement also should highlight the most important elements, adding to the two items mentioned in the caption. The “Yes” Vote statement should read:

“Yes” vote expands retail sales of liquor by qualified retailers; eliminates liquor revenue for state, local programs; eliminates regulation of liquor sales except minor sales.

The “No” Vote statement is accurate.

The draft summary is deficient in that it has incorrect statements taken from the measure, and it gives the impression that the measure does things that it does not do.

First, the measure cannot prohibit amendment of the measure by the legislature by a supermajority vote. This is not a constitutional amendment, so any legislature can modify or repeal anything passed in an earlier measure by a simple majority. That provision in the measure is there for pure political reasons. It does not belong in a ballot title.

Second, the measure does not “prohibit sales in gas stations.” It attempts to prohibit small gas stations with convenience stores from selling liquor, but it does not prevent larger grocery stores with gas pumps from doing the same. In addition, those small convenience stores would still be able to sell beer, wine and cider. It is simply a move to eliminate competition for the bigger stores.

Third, the measure does anything but “regulate agreements between distributors, manufacturers, and retailers.” If anything, it prohibits the regulation of those agreements. It says that the state may not regulate the terms of agreements (Section 14(1) (c)), and that statutes that do not even apply to anything but malt beverages may not apply to distilled spirits. Sections 14(2) & (3).

Finally, the measure actually eliminates enforcement mechanisms against selling liquor by the bottle, rather than doubling “existing fines for sales to minors/intoxicated persons.” There is no mechanism for the OLCC to impose a civil penalty on a law violator. The measure is not made a part of ORS Chapter 471, so any enforcement mechanism available to the OLCC under that chapter is not available for licensing and license revocation of liquor sales by the bottle.

The following proposed summary accurately describes what is in this measure, and what will be its major effects:

Currently, retail liquor sales by the bottle are made exclusively by agents of Oregon Liquor Control Commission (OLCC); OLCC distributes liquor, sets prices. Measure prohibits liquor sale/distribution by state; eliminates liquor revenue for state, local programs like education, mental health and addiction. Allows qualified liquor agents plus current beer/wine retailers, on or off premises, to be liquor retailers. Prohibits state from regulating purchase, sale, transportation or storage of liquor, except minor sales. OLCC retains licensing function only. Prohibits small retailers with gas pumps from selling liquor; allows them to sell beer/wine. Allows large retailers with gas pumps to sell liquor, beer/wine. Doubles criminal fines for sales to minors/intoxicated persons; does not allow OLCC to fine for law violations. Other provisions.

Thank you for your consideration of these comments.

Sincerely,

Paul R Romain

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



JIM WILLIAMS
DIRECTOR
255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

INITIATIVE PETITION

To: All Interested Parties
 FROM: Lydia Plukchi, Compliance Specialist
 DATE: January 4, 2016
 SUBJECT: Initiative Petition 2016-071 Certified Ballot Title

The Elections Division received a certified ballot title from the Attorney General on December 31, 2015, for Initiative Petition 2016-071, proposed for the November 8, 2016, General Election.

Caption

Allows qualified retail stores to sell liquor; prohibits state liquor sales, distribution; eliminates liquor revenue

Chief Petitioners

Gerry Dory 8565 SW Salish Lane, Suite 100 Wilsonville, OR 97070
 Lynn Gust 8565 SW Salish Lane, Suite 100 Wilsonville, OR 97070

Appeal Period

Any registered voter, who submitted timely written comments on the draft ballot title and is dissatisfied with the certified ballot title issued by the Attorney General, may petition the Oregon Supreme Court to review the ballot title.

If a registered voter petitions the Supreme Court to review the ballot title, the voter must notify the Elections Division. If this notice is not timely filed, the petition to the Supreme Court may be dismissed.

Appeal Due	How to Submit Appeal
January 15, 2016	Refer to Oregon Rules of Appellate Procedure, Rule 11.30 or contact the Oregon Supreme Court for more information at 503.986.5555.

Notice Due	How to Submit Notice	Where to Submit Notice
1 st business day after appeal filed with Supreme Court, 5 pm	Scan and Email Fax Mail	irrlistnotifier.sos@state.or.us 503.373.7414 255 Capitol St NE Ste 501, Salem OR 97310

JEANNE P. ATKINS
SECRETARY OF STATE

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CONSTITUTIONAL REQUIREMENT RULING

Initiative Petition No.	Date Filed	Comment Deadline	Certified Ballot Title Due
2016-071	October 28, 2015	December 15, 2015	December 31, 2015

Draft Ballot Title Caption

Allows qualified retail stores to sell liquor; prohibits state liquor sales, distribution; eliminates liquor revenue

Chief Petitioners

Gerry Dory 8565 SW Salish Lane, Suite 100 Wilsonville, OR 97070
 Lynn Gust 8565 SW Salish Lane, Suite 100 Wilsonville, OR 97070

Procedural Constitutional Requirement Commentors

Steven Berman 209 SW Oak Street, Suite 500
 Portland, OR 97204

Certification

I have reviewed the above-captioned initiative petition, including any comments submitted regarding constitutional requirements, and find that:

It complies with the procedural constitutional requirements.

It does not comply with the procedural constitutional requirements.

✓ Jeanne Atkins, Secretary of State

12-30-2015

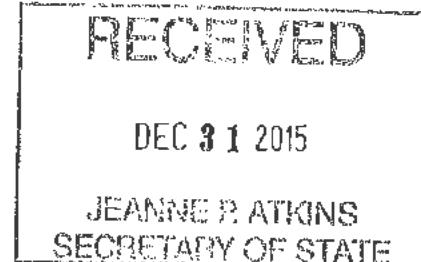
Dated



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

December 31, 2015

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



Re: Proposed Initiative Petition - Allows Qualified Retail Stores to Sell Liquor; Prohibits State Liquor Sales, Distribution; Eliminates Liquor Revenue
DOJ File #BT-71-15; Elections Division #2016-071

Dear Mr. Williams:

We received comments on the Attorney General's draft ballot title for Initiative Petition 71(2016) (IP 71) from Paul Romain; Marshall Coba; Gerry Dory and Lynn Gust (through counsel Gregory Chaimov); Trent Lutz; Ben Unger (through counsel Steven Berman); and Richard Kosesan (through counsel Nathan Rietmann).

In the remainder of this letter, we discuss why we made or did not make changes to each part of the ballot title in light of the comments.

Procedural constitutional requirements

Mr. Unger raises the issue of whether the proposed measure violates Article IV, section 1(4)(d), by providing an effective date that would be less than thirty days after the measure's adoption. That issue is beyond the scope of the ballot title drafting process. See OAR 1650-14-0028 (providing for separate review process by Secretary of State to determine whether measure complies with constitutional procedural requirements for proposed initiative measures). Accordingly, we do not address it here.

A. The Caption

The ballot title must include “[a] caption of not more than 15 words that reasonably identifies the subject matter of the state measure.” ORS 250.035(2)(a). The “subject matter” is “the ‘actual major effect’ of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words).” *Lavey v. Kroger*, 350 Or 559, 563, 258 P3d 1194 (2011). To identify the “actual major effect” of a measure, the Attorney General must consider

the “changes that the proposed measure would enact in the context of existing law.” *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011). The draft caption provides:

Allows qualified retail stores to sell liquor; prohibits state liquor sales, distribution; eliminates liquor revenue

1. Comments from Mr. Romain

Regarding the caption, Mr. Romain contends that the draft caption is confusing because the phrase “prohibits state liquor sales” could be read as a ban on all sale of liquor in the state instead a ban on sale of liquor by the state. He contends that the caption should be revised to remove that phrase and emphasize, instead, the loss of revenue to state and local governments. He proposes the following caption: “Allows qualified retail stores to sell liquor; eliminates liquor revenue for state, county, city programs”.

2. Comments from Mr. Coba

Mr. Coba does not object to the specific wording of the ballot title. He contends generally that the draft ballot title does not describe the primary purpose of IP 71, which in his view, is “to give large, out-of-state retailers a competitive advantage in the liquor business.” Mr. Coba contends that IP 71 would expand the number of retailers but prevent the state from regulating the movement and promotion liquor. Mr. Coba also notes the loss in revenue for state and local governments.

3. Comments from Mr. Dory and Mr. Gust

Mr. Dory and Mr. Gust contend that that caption, “yes” result statement, and summary unnecessarily and inaccurately state that the measure would eliminate state revenue from liquor sales. In their view, any loss of revenue from the measure is uncertain, because state liquor sales continue until July 1, 2017 under the measure and because the legislature can take steps to tax liquor sales before that time. They also note that the loss of revenue would be a small percentage of the General Fund, and that the revenue impact of the measure will be separately addressed in the financial impact statement. Mr. Dory and Mr. Gust also contend that the state’s authority to collect revenue from some liquor sales continues until July 1, 2017. If a reference to revenue is appropriate, they contend it should go in the summary and not the caption or “yes” result

4. Comments from Mr. Lutz

Mr. Lutz raises two objections to all section of the ballot title. First, he asserts that the ballot title must inform voters that the IP 71 will eliminate revenue for education and other services. Second, he asserts that the ballot title must indicate that over 12,000 stores could be sell alcohol under IP 71, up from the 250 retail outlets currently operating as licensed agents of OLCC.

5. Comments from Mr. Unger

Mr. Unger contends that the draft caption does not accurately describe the major effects of the IP 71 because the phrase “eliminates liquor revenue” is too vague and is potentially misleading. He contends that the caption must describe the loss of revenue resulting from IP 71 more accurately and in more detail. He proposes the following caption: “Allows qualified store to sell liquor; eliminates education, health care, public safety, local program funding.”

6. Comments from Mr. Kosesan

Mr. Kosesan raises two objections that apply to the caption, “yes” result statement, and summary. He contends that those sections (1) fail to accurately describe the expansion of retail sales outlets allowed by IP 71, and (2) fail to adequately describe the impact to state and local revenue from liquor sales. Mr. Kosesan proposes the following: “Allows retail liquor sales, expands locations; eliminates government liquor operations/ revenues for state/ local programs.”

7. Our Response to the Comments

After considering the comments, we disagree that the caption should be revised. IP 71 has three major effects: permitting the sale of liquor by qualified retailers; prohibiting the state from selling and distributing liquor as it currently does; and eliminating the revenue from the sale of liquor, which is currently split between state and local governments. *See McCann v. Rosenblum*, 355 Or 256, 258, 323 P3d 955 (2014) (describing current liquor sales in Oregon). In light of the space constraints contained in ORS 250.035, the caption adequately and accurately describes those major effects.

Although we agree with the commenters who note that IP 71 will expand the number of retail outlets, we disagree that the caption must address that issue or attach a number to the increase in retailers, as Mr. Lutz contends, given the space limitations in the caption and uncertainty as to the precise number of qualified retailers.

We disagree with the commenters who propose adding a more detailed description of the measure’s impact to state and local revenue, because doing so would result in an inadequate description of the other major effects. We also disagree with Mr. Unger that the phrase “liquor revenue” is confusing. In light of the context of the caption, which notes that the state is prohibited from selling liquor, voters will likely read the phrase “liquor revenue” as referring to revenue to the state from liquor sales.

We disagree with Mr. Romain’s comment that the phrase “prohibits state liquor sales/distribution” is confusing. The caption begins by noting that “qualified retailers” will be able to sell liquor. In that context, it is clear that “state liquor sales” refers to sales or distribution of liquor by the state.

Regarding Mr. Coba's comment that the actual effect of IP 71 is "to give large, out-of-state retailers a competitive advantage in the liquor business," we disagree that that is a legal effect arising from the text of the measure.

Regarding the comments from Mr. Dory and Mr. Gust, we disagree that the ballot title should omit any mention of the revenue impacts of IP 71 and disagree that the elimination of liquor sales revenue to state and local government is not a major effect of the measure. Under ORS 471.805 and ORS 471.810, the OLCC is authorized to collect revenue from liquor sales and distribute that revenue to the General Fund and to local governments. IP 71's prohibition on state liquor sales eliminates that specific revenue stream and is one of the measure's major effects, in the context of existing law. The fact that the legislature could impose a tax on liquor sales in the future does not render the elimination of sales revenue speculative, particularly in light of the Constitutional supermajority requirement for the legislature to pass any laws increasing state revenue. Rather, the loss of that specific stream of revenue is a direct effect of the measure; the requirement for a financial impact statement to state the magnitude of the loss in revenue does not change that fact. Nor does the fact that some revenue will be generated by sales of OLCC assets for a short period of time mean that the long term elimination of sales revenue can be omitted. Lastly we disagree that the phrase "eliminates liquor revenue" is too general, given the limited space available in the ballot title.

We therefore certify the following caption:

Allows qualified retail stores to sell liquor; prohibits state liquor sales, distribution; eliminates liquor revenue

B. The "Yes" Vote Result Statement

We next consider the draft "yes" vote result statement. A ballot title must include "[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is approved." ORS 250.035(2)(b). The "yes" vote result statement should identify "the most significant and immediate" effects of the measure. *Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). The draft "yes" vote result statement provides:

Result of "Yes" Vote: "Yes" vote allows sales of liquor by qualified retailers; establishes requirements for sales, distribution, storage; prohibits state from selling, distributing; eliminates state revenue from sales.

1. Comments from Mr. Romain

Regarding the "yes" result, Mr. Romain raises the same issues he raised regarding the caption. He also asserts that one of the major effects of IP 71 is that it eliminates all state regulation of liquor sales except for sales to minors and contends that the "yes" result should describe that effect. He proposes the following "yes" result statement: "'Yes' vote expands retail sales of liquor by qualified retailers; eliminates liquor revenue for state, local programs; eliminates regulation of liquor sales except minor sales."

2. Comments from Mr. Unger

Mr. Unger raises the same objections to the “yes” statement that he raised regarding the caption, and contends that the “yes” result must more accurately and specifically describe the impacts of the measure on revenue. Mr. Unger also contends that the “yes” result statement inaccurately states that IP 71 “establishes requirements for sales, distribution, and storage,” when, in fact, the measure eliminates most current requirements on those topics. He proposes the following “yes” result: “‘Yes’ vote increases number of liquor retailers; prohibits state sales/distribution; eliminates liquor regulation (except minors); eliminates funding for education, health care, public safety, other services.”

3. Comments from Mr. Coba; Mr. Lutz; Mr. Kosesan; and Messrs. Dory and Gust

In their respective letters, Mr. Coba, Mr. Lutz, Mr. Kosesan, and Messrs. Dory and Gust raise the same objections to the “yes” result as they raised regarding the caption, detailed above.

4. Our Response to the Comments

After considering the comments, we agree that the “yes” result statement should be revised. We agree with the commenters that the “yes” result should reflect that IP 71 will expand retail sales of liquor to retail outlets that meet the qualifications in IP 71. As above, we disagree that the ballot title must attach a specific number to the potential expansion of retail outlets.

We also agree with the commenters seeking more detail regarding the revenue impacts and revise the “yes” result to reflect that state and local governments will lose liquor revenue. We do not agree that the specific program areas that could be affected—education, public safety, etc.—need to be mentioned because the actual impact to specific programs is a decision for the legislature or local governments in allocating their respective budgets.

We disagree with Mr. Romain and Mr. Unger that IP 71 eliminates all state regulation of liquor sales except sales to minors. First, existing liquor laws will continue to prohibit sales to intoxicated persons in addition to minors. Second, the requirements for maintaining a beer and wine license will continue to apply to retailers selling liquor. IP 71, § 3; ORS 471.186. We also disagree that the phrase “establishes requirements for sales, distribution, storage” is misleading and inaccurate. Sections 3 and 4 requires retailers to qualify for a license under existing law; section 5 requires employee training for a retailer to get a license; section 10 prohibits sales in certain gas stations; section 13 requires permission from brand owner or agent of the owner for wholesale and retail sales; section 14 establishes requirements for agreements between retailers, wholesalers, and distributors; section 15 establishes requirements for storage and distribution. To be sure, those requirements are different and involve less regulation by the state than the current system. Nevertheless, the “yes” result description is accurate.

We reject the remaining comments for the same reasons stated above, regarding the caption.

In light of the comments concerning the draft “yes” result statement, we modify the statement as follows:

Result of “Yes” Vote: “Yes” vote expands number of liquor retailers; establishes retailer qualifications, sales, distribution requirements; prohibits state from selling, distributing liquor; eliminates state/local revenue from sales.

C. The “No” Vote Result Statement

We next consider the draft “no” vote result statement. A ballot title must include “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected.” ORS 250.035(2)(c). The “no” vote result statement “should ‘address[] the substance of current law *on the subject matter of the proposed measure*’ and ‘summarize [] the current law accurately.’” *McCann v. Rosenblum*, 354 Or 701, 707, 320 P3d 548 (2014) (quoting *Novick/Crew*, 337 Or at 577) (emphasis added in *Novick/Crew*). The draft “no” vote result statement provides:

Result of “No” Vote: “No” vote retains current system of retail liquor sales exclusively through Oregon Liquor Control Commission agents, retains state authority to sell, distribute, and set prices.

1. Comments from Mr. Unger

Mr. Unger contends that the “no” result statement should inform voters how revenues from liquor sales are distributed under current law. He proposes the following “no” result: ““No” vote retains retail liquor sales exclusively through state licensed agents, retains state authority to sell, distribute set prices; retains revenues for state, local programs.”

2. Our Response to the Comments

After considering the comments, we agree that the “no” result statement should be revised to reflect the revenue generated by liquor sales under current law.

We modify the “no” result as follows:

Result of “No” Vote: “No” vote retains current retail liquor sales exclusively through state agents; retains state authority to sell, distribute, set prices, generate state/ local revenue through sales.

D. The Summary

We next consider the draft summary. A ballot title must include “[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” ORS 250.035(2)(d). “The purpose of a ballot title’s summary is to give voters enough

information to understand what will happen if the initiative is adopted.” *McCann*, 354 Or at 708. The draft summary provides:

Summary: Currently, retail sales of liquor by the bottle are made exclusively by agents of Oregon Liquor Control Commission (OLCC); OLCC is authorized to sell, distribute, and set prices. Measure prohibits state sale/distribution of liquor; eliminates revenue from sales. Allows current beer/wine retailers to qualify as liquor retailers. Allows continued sales by current retail liquor agents, if qualified. Doubles existing fines for sales to minors/intoxicated persons. Dedicates fines/savings from measure to local public safety. Regulates agreements between distributors, manufacturers, and retailers. Prohibits state from regulating purchase, sale, transportation, or storage of liquor, except as provided by measure. Prohibits sales in gas stations. Prohibits amendment/repeal of measure by legislature for two years without supermajority vote. OLCC retains regulatory functions. Other provisions.

1. Comments from Mr. Romain

Mr. Romain has a number of objections to the summary. First, he objects that the description of Section 12—which purports to limit the legislature’s ability to amend or repeal IP 71—is inaccurate because that section is unconstitutional. Second, Mr. Romain objects that the phrase “prohibits sales in gas stations” is inaccurate because the measure excepts large gas stations with over 20,000 feet of retail space. Third, Mr. Romain contends that the summary inaccurately states that IP 71 “regulates agreements between distributors, manufacturers, and retailers,” when the actual effect of the measure is to prevent state regulation of those agreements. Fourth, Mr. Romain contends that the increased fines are unenforceable and that other “enforcement mechanisms against selling liquor by the bottle” are eliminated by IP 71 because the measure is not made a part of ORS Chapter 471.

2. Comments from Mr. Unger

In addition to the objections regarding the other sections of the draft ballot title, Mr. Unger objects to the summary using the phrase “doubles existing fines for sales to minors/intoxicated person.” He asserts that the phrase is misleading and inaccurate because Section 7 does not modify or amend ORS 471.410, which contains the existing penalties on sales of alcohol to minors and intoxicated persons. Mr. Unger asserts that the increased fines are unenforceable for that reason. Mr. Unger also objects to the wording “doubles * * * fines” because the same wording is used in the caption of the section 7 and is politically motivated.

Second, Mr. Unger asserts that summary inaccurately states that sales from gas stations are prohibited when that limitation only applies to some gas stations, specifically those that have an enclosed retail area of at least 20,000 square feet. Third, Mr. Unger contends that Section 12 of IP 71—which purports to require a supermajority in the legislature to modify, amend, or repeal IP 71 within 2 years of its passage—violates existing law because the people may not use the initiative power to hinder the legislature’s ability to pass laws.

3. Comments from Mr. Coba; Mr. Lutz; Mr. Kosesan; and Messrs. Dory and Gust

In their respective letters, Mr. Coba, Mr. Lutz, Mr. Kosesan, and Messrs. Dory and Gust raise the same objections to the “yes” result as they raised regarding the caption, detailed above.

4. Our Response to the Comments

After considering the comments, we agree that the summary should be revised.

In light of the revisions to the other parts of the ballot title, the summary will be revised to reflect those changes, as detailed above.

We agree that the limitation on gas station sales should reflect that only certain gas stations are prohibited from selling liquor. We also agree that there are serious questions about whether Section 12 is constitutional. The summary will be revised to reflect that uncertainty.

We disagree with Mr. Romain and Mr. Unger that the description of the fines should be revised or omitted. The description in the draft summary is accurate. Section 7 doubles the mandatory minimum fines contained in ORS 471.410 when the violation is by “a person with authority to sell distilled liquor.” *Compare* ORS 471.410(5) with IP 71, § 7(1). Nor do we agree with their assertion that the increased fines are unenforceable. The underlying offense—selling alcohol to minors or intoxicated persons—remains a criminal violation under ORS 471.410. Violations of ORS 471.410 are investigated by law enforcement officers and prosecuted by a district attorney. ORS 471.605. Once a conviction is obtained, the court then imposes fines and jail time pursuant to ORS 471.410. Section 7 increases (doubles) the existing minimum fines in ORS 471.410 when the person is authorized to sell distilled liquor. We also note the phrase “doubles fines” is used in Section 1 of IP 71.

We disagree with Mr. Romain that the phrase “regulates agreements between distributors, manufacturers, and retailers” is inaccurate. Sections 13 requires the permission of the liquor brand or authorized agent for wholesale and retail sales. Section 14(2) prohibits certain agreements between distributors, manufacturers, and retailers as against public policy. The phrase is accurate.

In light of the comments, we modify the summary as follows:

Summary: Currently, retail sales of liquor by the bottle are made exclusively by agents of Oregon Liquor Control Commission (OLCC); OLCC is authorized to sell, distribute, and set prices. Measure prohibits state sale/distribution of liquor; eliminates revenue from sales for state and local programs. Allows current beer/wine retailers to sell liquor. Allows continued sales by current retail liquor agents. Doubles existing fines for sales to minors/intoxicated persons. Dedicates fines/savings from measure to local public safety. Regulates agreements between distributors, manufacturers, and retailers. Prohibits state from regulating purchase, sale, transportation, storage of liquor,

December 31, 2015

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except as provided by measure. Prohibits sales in certain gas stations. Prohibits amendment/ repeal by legislature for two years without supermajority vote (effect unclear). OLCC retains regulatory functions. Other provisions.

E. Conclusion

We certify the attached ballot title.

Sincerely,

/s/ Carson L. Whitehead

Carson L. Whitehead
Assistant Attorney General
carson.l.whitehead@doj.state.or.us

CW7:aft/7058454

Enclosure

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Certified by Attorney General on December 31, 2015.

/s/ Carson L. Whitehead

Assistant Attorney General

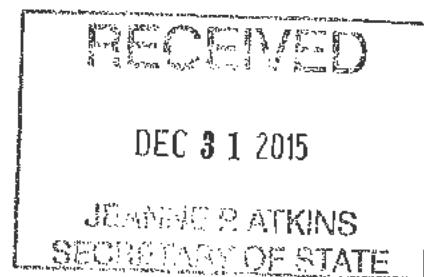
BALLOT TITLE

Allows qualified retail stores to sell liquor; prohibits state liquor sales, distribution; eliminates liquor revenue

Result of “Yes” Vote: “Yes” vote expands number of liquor retailers; establishes retailer qualifications, sales, distribution requirements; prohibits state from selling, distributing liquor; eliminates state/local revenue from sales.

Result of “No” Vote: “No” vote retains current retail liquor sales exclusively through state agents; retains state authority to sell, distribute, set prices, generate state/local revenue through sales.

Summary: Currently, retail sales of liquor by the bottle are made exclusively by agents of Oregon Liquor Control Commission (OLCC); OLCC is authorized to sell, distribute, and set prices. Measure prohibits state sale/distribution of liquor; eliminates revenue from sales for state and local programs. Allows current beer/wine retailers to sell liquor. Allows continued sales by current retail liquor agents. Doubles existing fines for sales to minors/intoxicated persons. Dedicates fines/savings from measure to local public safety. Regulates agreements between distributors, manufacturers, and retailers. Prohibits state from regulating purchase, sale, transportation, storage of liquor, except as provided by measure. Prohibits sales in certain gas stations. Prohibits amendment/repeal by legislature for two years without supermajority vote (effect unclear). OLCC retains regulatory functions. Other provisions.



Certified by Attorney General on December 31, 2015.

/s/ Carson L. Whitehead

Assistant Attorney General

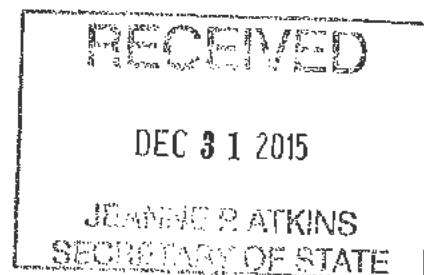
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CERTIFICATE OF FILING

I hereby certify that on the 15th day of January, 2016, I caused to be electronically filed the foregoing **PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL** with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system.

CERTIFICATE OF SERVICE

I further certify that on the 15th day of January, 2016, I served a copy of the foregoing **PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL** upon the following individuals by first-class mail:

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Chief Petitioner

DATED this 15th day of January, 2016.

BLACK HELTERLINE LLP

s/ Margaret E. Schroeder
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