



# OFFICE OF THE SECRETARY OF STATE

## NEWS RELEASE

**BILL BRADBURY**

**For Immediate Release:**

March 8, 2001

**Contact:** Sue Williams  
Elections Division  
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on March 7, 2001, for initiative petition #23, proposing a statutory amendment, for the General Election of November 5, 2002.

In addition, Secretary of State Bill Bradbury determined that the proposed initiative petition was in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions.

The certified ballot title is as follows:

**REQUIRES LABELING OF GENETICALLY-ENGINEERED FOODS (AS DEFINED)  
SOLD OR DISTRIBUTED IN OR FROM OREGON**

**RESULT OF "YES" VOTE:** "Yes" vote requires labeling of foods derived from or processed using genetically-engineered (as defined) materials with label prepared by the Oregon Department of Agriculture.

**RESULT OF "NO" VOTE:** "No" vote rejects requiring labeling of foods derived from or processed using genetically-engineered (as defined) materials with label prepared by Oregon Department of Agriculture.

**SUMMARY:** Requires label stating "Genetically Engineered" on surface or outside packaging of genetically-engineered foods (as defined) sold or distributed in or from Oregon. Defines "genetically engineered" to mean produced by biological changes to the molecular or cell biology of an organism by means not possible under natural conditions; definition excludes breeding, hybridization, tissue culture, certain other processes. Applies to all foods derived from, or prepared with, genetically-engineered material, regardless of whether that material is present in the final product. Creates additional labeling requirements for genetically-engineered foods whose composition or nutritional value is significantly altered and those resulting from gene transfers from other species to allow those with dietary restrictions to observe those dietary guidelines. Legislature to implement and enforce requirements. Other provisions.

Chief Petitioner(s): Donna Harris, PO Box 33628, Portland, OR 97292.

Copies of the text of this initiative are available at Room 141 State Capitol, for \$.50. Written requests for copies with your remittance of \$1.00 prepaid, should be addressed to: Elections Division, Room 141 State Capitol, Salem, OR 97310-0722.

There now follows an appeal period of 10 business days. Any elector dissatisfied with the ballot title certified by the Attorney General, who also submitted in a timely manner written comments which addressed the specific legal standards a ballot title must meet, may petition the Supreme Court for a different title. The appeal period ends at 5:00 p.m. on March 21, 2001. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2002 general election ballot is 66,786. These signatures must be filed in this office not later than July 5, 2002.

# # #



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

March 7, 2001

RECEIVED  
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BILL BRADBURY  
SECRETARY OF STATE

Lynn Rosik  
Director, Elections Division  
Office of the Secretary of State  
141 State Capitol  
Salem, OR 97310

Re: Proposed Initiative Petition — Requires Labeling Of Genetically-Engineered Foods (As Defined) Sold Or Distributed In Or From Oregon  
DOJ File #BT-23-01; Elections Division #23

Dear Ms. Rosik:

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

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

**Comments by Pat McCormick & Terry Witt**

The comments submitted by both Mr. McCormick and Mr. Witt are identical. Therefore, we address them together.

These commenters suggest that the draft ballot title fails to comply with ORS 250.035(6), which provides that, “[t]o avoid confusion, a ballot title shall not resemble any title previously filed for a measure to be submitted at that election.” They suggest that this title must be changed to distinguish it from two other ballot titles relating to proposed initiatives that are nearly identical to the proposed initiative to which the draft ballot title relates. They also suggest changes to the result statements and the summary. In response to the comments, we have modified some aspects of the draft ballot title.

**Avoiding confusion**

Initiative Petition No. 23 is identical to Initiative Petition No. 24. Initiative Petition No. 25 is substantially similar to the others. Although ORS 250.035(6) states that, to avoid confusion, a ballot title shall not resemble other ballot titles for measures to be submitted at the

same election, the Oregon Supreme Court has interpreted that statute less restrictively than the commenters suggest. In *Carlson v. Myers*, 327 Or 213, 227, 959 P2d 31 (1998), the court held that that provision does not prohibit unconditionally all resemblance between or among ballot titles. Rather, the statute conditionally prohibits resemblance between or among ballot titles only where such resemblance would cause voter confusion. *Carlson*, 327 Or at 227. “In other words, similar or identical ballot titles are appropriate when their similarities accurately reflect similarities between or among the measures under consideration.” *Ibid.* The court pointed out the competing legislative concern that, when proposed initiative measures are themselves very similar or nearly identical, there may be “too great a risk” of voter confusion created by the certification of different ballot titles. *Ibid.*, citing *Rooney*, 322 Or 15, 46, 48, 51, 902 P2d 1143 (1995).

Because Proposed Initiatives No. 23, 24, and 25, are highly similar, we believe that there is very little risk of voter confusion due to ballot titles that resemble each other; moreover, to alter them so as to avoid that resemblance would lead to the very confusion that ORS 250.035(6) seeks to avoid.

### **Result statements**

Next, these commenters propose an alternative “yes” statement stating “‘Yes’ vote requires labeling, superseding federal requirements, of foods derived from or processed using genetically-engineered (as defined) materials sold/distributed in Oregon.” We decline to include a statement that the proposed measure would “supersede” federal labeling requirements. That word accurately reflects the proposed measure’s text. Nonetheless, although the proposed measure would purport to supersede any federal requirements, whether it lawfully could do so depends on whether any federal legislation Congress may enact expressly or impliedly preempts state law. Therefore, telling the voters that the proposed measure would “supersede” federal law would be speculative and potentially misleading. Telling the voters that the proposed measure *states* that it would “supersede” federal law would create a different problem. That formulation would hint to the voters that the proposed measure purports to do something that it might not lawfully be able to do, thus creating bias against the proposed measure. Thus, any attempt to discuss the point would undermine the ballot title’s accuracy and neutrality. Thus, we decline to adopt these commenters’ proposed “yes” statement.

The commenters propose the following alternative “no” statement: “‘No’ vote makes no change to current laws and regulations in place regarding genetically-engineered foods.” The commenter’s proposed “no” statement is potentially misleading, as it implies that there currently exist Oregon regulations regarding the labeling of genetically-engineered foods. Thus, we decline to adopt the proposed “no” statement.

### **Summary**

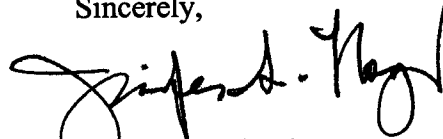
The commenters propose an alternative summary, based on a number of complaints. We have adopted one of their suggestions in our certified title.

First, the commenters express concern that the measure does not adequately summarize the measure and its major effect, as required by ORS 250.035(2)(d). They represent that the summary “makes no reference whatsoever” of the requirements that a label advise vegetarians and those with religious dietary restrictions as to whether foods comply with their dietary guidelines. Review of the draft ballot title, however, reveals that it describes that part of the proposed measure to create “additional labeling requirements” for foods “resulting from gene transfers from other species to allow those with dietary restrictions to observe those dietary guidelines.” Although that sentence does not contain the words “vegetarians” or qualify dietary restrictions as “religious,” we are of the belief that it nonetheless summarizes the effect of the proposed initiative. Although the stated *purpose* of that portion of the proposed initiative is to allow vegetarians and those with religious dietary restrictions to comply with those restrictions, its *effect* is simply to require additional labeling when foods are genetically-engineered by means of gene transfers from other species. The proposed measure provides an example of such a label, which refers to neither vegetarianism nor religion: “[T]his tomato contains genetic material derived from the flounder, a fish of the family Bothidae.” We believe that the *reasons* for citizens’ dietary restrictions are irrelevant to the effect of the proposed measure, and may mislead voters into believing that the measure has an effect on only vegetarians and those with religious dietary restrictions. Consequently, we do not make any changes to that section of the draft ballot title.

In addition, we do not set forth in the summary that “[s]ubstantive legislative changes must be approved at a statewide election.” Although the proposed measure purports to contain such a requirement, we believe that that provision has no legal effect, because the people may not adopt a statute through the initiative process that limits the Legislative Assembly’s authority. Consequently, mentioning the point would mislead the voters. We also do not incorporate language stating that the measure “[s]upercedes less stringent requirements[,]” for the reasons set forth above regarding the “yes” statement.

Finally, however, the commenters accurately point out that “more than just the product must be labeled[,]” and that the label must be placed on the outside container, wrapper, or package. Thus, we incorporate the suggestion that the certified title state this fact.

Sincerely,



Jennifer S. Lloyd  
Assistant Attorney General

JSL:mlk/APP27937

Enclosure

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Lynn Rosik  
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