



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
April 9, 2004

Contact: Summer Davis
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on April 8, 2004, for initiative petition #150, proposing a constitutional amendment, for the General Election of November 2, 2004.

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:

**AMENDS CONSTITUTION: ONLY MARRIAGE BETWEEN ONE MAN AND ONE
WOMAN IS VALID OR LEGALLY RECOGNIZED AS MARRIAGE**

RESULT OF "YES" VOTE: "Yes" vote adds to Oregon constitution declaration of policy that only marriage between one man and one woman is valid or legally recognized as marriage.

RESULT OF "NO" VOTE: "No" vote retains existing constitution without a provision declaring that only marriage between one man and one woman is valid or legally recognized as marriage.

SUMMARY: Amends constitution. Oregon statutes currently provide that marriage is a civil contract entered into in person between individuals of the opposite sex, that is, between males and females at least 17 years of age who solemnize the marriage by declaring "they take each other to be husband and wife." The existing Oregon Constitution contains no provision governing marriage. Currently, the State of Oregon recognizes out-of-state marriages that are valid in the state where performed, unless the marriage violates a strong public policy of Oregon. Measure adds to Oregon Constitution a declaration that the policy of the State of Oregon and its political subdivisions is that "only a marriage between one man and one woman shall be valid or legally recognized as a marriage."

Chief Petitioner(s): Kent Walton, 6869 SE 182nd, Portland, OR 97236 and Dennis R. Tuuri, 784 NW 3rd Ave, Canby, OR 97013.

Copies of the text of this initiative are available at Room 141 State Capitol, for \$.25. 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 April 22, 2004. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2004 general election ballot is 100,840. These signatures must be filed in this office not later than July 2, 2004.

#



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

April 8, 2004

John Lindback
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

RECEIVED
04 APR 8 PM 2 41
DEPT. OF JUSTICE
SECRETARY OF STATE

Re: Proposed Initiative Petition — Amends Constitution: Only Marriage Between One Man And One Woman Is Valid Or Legally Recognized As Marriage
DOJ File #BT-150-04; Elections Division #150

Dear Mr. Lindback:

We have reviewed the comments submitted in response to the draft ballot for the above-referenced prospective initiative petition. On the basis of the comments and our further review of the measure, we provide the enclosed certified ballot title.

This letter summarizes the comments we received, our response to those comments, and any changes made to the ballot title. We suggest that this letter be included in the record in the event the Oregon Supreme Court is asked to review this ballot title.

Discussion

Comments were submitted by: Jann Carson/Roey Thorpe/Bonnie Tinker, represented by Charles F. Hinkle; M. Dennis Moore; Steven Novick; Robert S. Richardson; and Mike White, represented by Gregory W. Byrne.

Commenter Moore suggests no alternative language for any part of the ballot title. Commenters Novick and Richardson make no criticism of the summary.

Commenter White makes no criticism whatsoever of the ballot title; he asks that his comments be deemed "withdrawn" if no other comments were submitted. We have not hitherto recognized "provisional" comments. As other comments were submitted, however, it is a moot point.

Caption

Commenters Carson/Thorpe/Tinker characterize the subject matter of this measure as being whether the measure confirms or changes the status quo: “Simply put, the question is whether the Oregon Constitution currently requires the State to permit marriage between same-sex couples.” These commenters propose the following caption: AMENDS CONSTITUTION: REMOVES CONSTITUTIONAL GUARANTEE OF EQUAL TREATMENT FOR CIVIL MARRIAGE BETWEEN OPPOSITE SEX, SAME SEX COUPLES.

Commenters Moore and Novick similarly take the position that this measure prohibits equal treatment and requires government discrimination against gays and lesbians, contrary to Article I, Section 20, of the existing Oregon Constitution. Although commenter Moore proposes no language,¹ commenter Novick proposes this caption: AMENDS CONSTITUTION: AMENDS CONSTITUTIONAL PROHIBITION AGAINST DISCRIMINATION; PROHIBITS LEGALLY RECOGNIZING MARRIAGES OF SAME-SEX COUPLES.

In essence, all of the foregoing commenters desire the ballot title to resolve the constitutional question identified by commenters Carson/Thorpe/Tinker: “whether the Oregon Constitution currently requires the State to permit marriage between same-sex couples.” To be more precise, the constitutional question identified by these commenters is whether Article I, Section 20, of the Oregon Constitution currently prohibits limiting the civil contract of marriage to opposite-sex couples in issuing marriage licenses. That is the very question that will be resolved in the multi-party case in Multnomah County Circuit Court that has been designed to resolve that constitutional issue on its merits in the Oregon Supreme Court as soon as feasible.

In the absence of a ruling from the Oregon Supreme Court, it would be speculative in this ballot title to attempt to answer the underlying constitutional question in order to state whether the proposed measure would change existing constitutional law. Depending on how the Oregon Supreme Court rules, this measure would either change or confirm Oregon constitutional law in that respect.

¹ The gist of the comments submitted by commenter Moore is that the *intent* of the proposed measure is to prohibit equal treatment and require government discrimination against gays and lesbians. Describing the *purpose* of legislation is not something that is currently required to be accomplished in the ballot title. Former ORS 250.035(1)(b) required a question of not more than 20 words that “plainly phrases the chief purpose of the measure.” This court has said that the “chief purpose” formerly required to be set forth in the question was “the most significant aim or end that a measure is designed to bring about.” *Rooney v. Kulongoski*, 322 Or 15, 34, 902 P2d 1143 (1995); *Mabon v. Keisling*, 317 Or 406, 413, 856 P2d 1023. Current ORS 250.035 does not refer to the purpose of a state measure.

It is well established that the function of a ballot title is not to resolve disputed questions of constitutional interpretation beyond the extent necessary to describe the measure. In *Bernard v. Keisling*, 317 Or 591, 595-96, 858 P2d 1309 (1993), the Oregon Supreme Court said:

* * *. This court has held that, if a measure is enacted into law, the court may later be required to decide the meaning and significance of words used in the measure and, therefore, that it generally is inappropriate for the court to do so in a ballot title proceeding. *Hand v. Roberts*, 309 Or. 430, 438, 788 P.2d 446 (1990) (“This court * * * assiduously attempts to avoid deciding questions of interpretation of the practical effect of initiative * * * measures in its review of a certified ballot title.”); *Aughenbaugh v. Roberts*, 309 Or 510, 516, 789 P.2d 656 (1990) (same); *Sampson v. Roberts, supra*, 309 Or [335] at 339, 788 P2d 421 [(1990)] (same).

317 Or at 595-96. And as the Oregon Supreme Court noted in *Rooney v. Kulongoski*, 322 Or 15, 41, 902 P2d 1143 (1995): “Proponents and opponents of the measure are free to trumpet its purported effects or to point to its possible ambiguities, but it is not the court’s role to engage in an abstract exercise of pre-enactment constitutional interpretation.”

What can be said at this point in this ballot title, which in our view adequately conveys the subject matter of the proposed measure, is that the measure would add to the Oregon Constitution a declaration of public policy that Oregon and its political subdivisions will recognize as valid only those marriages that are between a man and a woman. In other words, the measure constitutionalizes what is already reflected in state statutes governing marriages in Oregon² and declares the public policy of the State of

² Existing Oregon statutes authorize issuance of a marriage license only to one man and one woman. On March 12, 2004, the Attorney General opined as follows:

To interpret a statute, we are to consider its text and context and, if its meaning remains unclear, legislative history. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11, 859 P2d 1143 (1993). Oregon’s marriage statutes are codified in ORS chapter 106. ORS 106.010 sets out the legal significance of and basic qualifications for marriage. It states: “Marriage is a civil contract entered into in person by males at least 17 years of age and females at least 17 years of age, who are otherwise capable, and solemnized in accordance with ORS 106.150.” Although this section does not state expressly that a marriage must consist of a man and a woman, other statutes that provide context for it leave no doubt that is the case. *See, e.g.*, ORS 106.150(1) (parties to marriage must declare that they take each other to be “husband and wife”); ORS 106.041(1) (requirements for marriage license specify that parties are to join as “husband and wife”). The

Oregon with regard to recognition of out-of-state marriages. We decline to change the caption along the lines suggested by the foregoing commenters.

Commenter Richardson urges that the ballot title in general should state not only that new same-sex marriage licenses could not be issued either to residents or out-of-state couples, but also that the measure would revoke *existing* marriages for same-sex couples and would refuse to recognize out-of-state same-sex marriages.

To address the last point first, we believe that the summary does suggest that if the declaration of policy reflected in this measure were deemed to be a strong state policy, then out-of-state marriages contrary to that policy fall within the exception mentioned in the summary and would not be recognized. As to revocation of existing same-sex marriage licenses, the proposed measure does not literally call for such revocation. Whether existing marriage licenses would be revoked after passage of this measure is a matter that would depend on questions of retroactivity and the appropriate remedy in applying the measure. Finally, the effect on same-sex marriages is implicit in the ballot title's repetition of the measure's text stating that only marriage between a man and a woman would be valid or legally recognized.

Result statements

The foregoing commenters make similar points about the result statements. We adhere to the result statements as drafted, for the reasons expressed above.

Summary

Commenter Moore criticizes the summary's description of existing law ("Currently, no provision in the Oregon Constitution defines what constitutes a valid or legally recognized marriage in Oregon") as suggesting that the Oregon Constitution *should* contain such a definition. As commenter Moore notes, the State of Oregon has existed for more than 150 years without a definition of marriage in the Oregon Constitution.

legislature has not defined "husband" or "wife" for purposes of chapter 106, but we see no basis for giving them other than their "plain, natural and ordinary meaning." *PGE* at 611. The plain meaning of those terms is unambiguous. "Husband" means "a married man," and "wife" means "a married woman." Webster's Third New International Dictionary, 1104, 2614 (unabridged ed 1993). [footnote omitted]. Thus, we conclude that existing Oregon statutes authorize issuance of a marriage license only to one man and one woman.

(Attorney General's Letter of advice to Governor, March 12, 2004, p 2).

We did not intend the wording of the draft ballot title summary to suggest that the lack of a definition of marriage is a shortcoming in the Oregon Constitution. The opposite inference – that the absence of such a definition is perfectly appropriate – arguably can also be drawn. Nonetheless, to help dispel the possible inference that commenter Moore has noted, we have moved that sentence to a later point in the summary and have shortened that description of current law to the following: “The existing Oregon Constitution contains no provision governing marriage.” We believe it is important for voters to be informed that the current constitution does not contain any provision governing marriage, particularly given that the measure, insofar as it relates to marriages in Oregon, constitutionalizes what is already reflected in the state statutes.

Commenters Carson/Thorpe/Tinker carry forward their criticisms of the caption and result statements to the summary. For the same reasons expressed above, we decline to state a position in this ballot title whether the proposed measure changes Article I, Section 20.

Conclusion

For the reasons stated above, we have changed the summary in response to the comments and our further review of the measure. We certify the attached ballot title pursuant to ORS 250.067(2).

Sincerely,

Jas. Jeffrey Adams
Assistant Attorney General

JJA:mlk/APP65809

Enclosure

c: Peter Shepherd, Deputy Attorney General
Don Arnold, General Counsel Division
Lynn Rosik, General Counsel Division

Kent Walton
6869 SE 182nd
Portland, Oregon 97236

Dennis R. Tuuri
784 NW 3rd Avenue
Canby, Oregon 97013

Robert S. Richardson
P.O. Box 13607
Portland, Oregon 97213

Gregory W. Byrne
Attorney at Law
5550 SW Macadam Ave., Suite 220
Portland, Oregon 97239

Charles F. Hinkle
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, Oregon 97204

Steven Novick
1653 SE Nehalem, #4
Portland, Oregon 97202

John Lindback
April 8, 2004
Page 6

M. Dennis Moore
P.O. Box 1851
Portland, Oregon 97207

BALLOT TITLE

**AMENDS CONSTITUTION: ONLY MARRIAGE BETWEEN ONE MAN
AND ONE WOMAN IS VALID OR LEGALLY RECOGNIZED AS
MARRIAGE**

RESULT OF "YES" VOTE: "Yes" vote adds to Oregon constitution declaration of policy that only marriage between one man and one woman is valid or legally recognized as marriage.

RESULT OF "NO" VOTE: "No" vote retains existing constitution without a provision declaring that only marriage between one man and one woman is valid or legally recognized as marriage.

SUMMARY: Amends constitution. Oregon statutes currently provide that marriage is a civil contract entered into in person between individuals of the opposite sex, that is, between males and females at least 17 years of age who solemnize the marriage by declaring "they take each other to be husband and wife." The existing Oregon Constitution contains no provision governing marriage. Currently, the State of Oregon recognizes out-of-state marriages that are valid in the state where performed, unless the marriage violates a strong public policy of Oregon. Measure adds to Oregon Constitution a declaration that the policy of the State of Oregon and its political subdivisions is that "only a marriage between one man and one woman shall be valid or legally recognized as a marriage."

RECEIVED
APR 8 2 41 PM '04
DIT
SECRET