



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
May 4, 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 May 4, 2004, for initiative petition #2, proposing a constitutional amendment, for the General Election of November 7, 2006.

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: REQUIRES OREGON LEGISLATURE EACH SESSION TO
CALL FOR FEDERAL CONSTITUTIONAL CONVENTION UNTIL MARRIAGE
DEFINITION RESOLVED**

RESULT OF "YES" VOTE: "Yes" vote requires Oregon Legislature each session to call for United States Constitutional Convention until marriage is defined or states' right to define marriage ensured.

RESULT OF "NO" VOTE: "No" vote rejects requiring Oregon Legislature each session to call for United States Constitutional Convention until marriage defined or states' right to define marriage ensured.

SUMMARY: Amends constitution. Currently, Oregon Constitution contains no provision requiring Oregon Legislature to call for convening a United States Constitutional Convention. Under federal law, such conventions have unlimited power to change United States constitution. Measure requires Oregon Legislature at start of each legislative session to call for convening such a convention, until the United States Constitution is amended either to: define marriage as only between a man and a woman, or ensure to each state the right to decide for itself the definition of marriage for all of its residents. Requires appointment of representatives to meet each year to determine whether participation is adequate to allow convention to proceed. Requires legislature to take necessary acts to call, attend and fully participate in federal convention. Other provisions.

Chief Petitioner(s): Matthew Dean Zollinger, 3519 NW Glenridge DR, Corvallis, OR 97330, Bruce L. Alder, 4723 NW Veronica Pl, Corvallis, OR 97330 and Paula D. Sherman, PO Box 2310, Corvallis, OR 97339.

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 May 18, 2004. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2006 general election ballot is 100,840. These signatures must be filed in this office not later than July 7, 2006.

#



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

May 5, 2005

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

RECEIVED
04 MAY 4 AM 11 33
BILL BRADBURY
SECRETARY OF STATE

Re: Proposed Initiative Petition — Amends Constitution: Requires Oregon
Legislature Each Session To Call For Federal Constitutional Convention Until
Marriage Definition Resolved
DOJ File #BT-02-04; Elections Division #2

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 the 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 on the ballot title for this measure were submitted by Charles F. Hinkle on behalf of David Fidanque and Andrea Meyer. These commenters did not furnish any alternative language to demonstrate that their comments can be accommodated within the requisite word limits.

Caption

The commenters suggest that the caption incorrectly implies that the scope of a federal constitutional convention would be limited to marriage. They urge that the ballot title caption should inform voters that the scope of such a convention is unlimited.

We acknowledge that the draft caption might be read by some to imply that a convention would be limited to the issue of the definition of marriage. To remove that

possible implication in the caption, we have changed the phrase “regarding marriage definition” to the phrase “until marriage definition resolved.” The change from the word “regarding” to the word “until” helps remove the possible implication. To accommodate the extra word, we have changed the phrase “United States constitution” to “federal constitution.”

There is insufficient room in the caption to indicate the extent of the scope of a federal constitutional convention, which is a function of federal law that is unchanged by this measure. That information, however, has been added to the certified summary as part of the characterization of existing law. See discussion *post*.

Result Statements

The commenters repeat their point regarding the caption and urge that the result statements should make it clear that the scope of a federal constitutional convention is unlimited.

Unlike the draft caption, the draft result statements do not contain the phrase “regarding marriage definition” and do not otherwise imply that the scope of a federal constitutional convention would be limited to resolving the definition of marriage. The draft “yes” result statement accurately states only that the measure requires calls for a federal constitutional convention *until* either marriage is defined in a certain way or states’ right to define marriage is ensured.

As is true for the caption, there is not room to include in the result statements the information about the scope of a federal constitutional convention, which is a function purely of federal law and which would be unchanged by this measure, without sacrificing equally or more important information about the result if the measure is enacted or not enacted. We have, however, included information about the scope of a federal constitutional convention in the certified summary. See discussion *post*.

Summary

The commenters make three points regarding the summary: (1) the summary should clarify that the scope of a federal constitutional convention is unlimited as a matter of federal law; (2) the summary should describe the measure’s provision that a convention call is valid for seven years and then declare that that provision is a nullity; and (3) the summary should declare that the provision calling for the Oregon representatives to determine each year whether there is adequate participation to allow such a convention to go forward is either a nullity or redundant.

With respect to the scope of a federal constitutional convention, we have added to the certified summary the following sentence: "Under federal law, such conventions have unlimited power to change United States constitution." That accommodates the commenters' view that the ballot title should describe the unlimited scope of a federal constitutional convention.

With respect to the second point, the word limit of 125 words for the summary does not allow mention of the provision that declares that the call for convention is valid for seven years, without sacrificing other equally or more important information about the major effect of the measure. The commenters' suggestion that the summary should mention this provision is undercut by their own assertion that the provision is a nullity. If that were indeed true, it would not be necessary to describe the provision, because it would not describe the major effect of the measure. Under the circumstances, we have not adopted the commenters' suggestion that we include mention of that particular provision. It is subsumed in the catch-all phrase: "Other provisions."

In their third point, the commenters assert the summary should declare that the provision specifying that the Oregon representatives would meet yearly to determine whether there is adequate participation for such a convention to proceed is a nullity, because Oregon cannot definitively determine for the rest of the country whether such a federal convention would proceed. We do not agree the provision is a nullity. Although it may be true that such a determination by the Oregon representatives would not be binding on other states, it is not necessarily true that the provision would have no effect in this state. Because the measure calls for the Oregon legislature to take such steps as are necessary to participate in such a convention, the determination by the Oregon representatives regarding whether there is adequate participation to allow such a convention to proceed has the function of informing the Oregon legislature whether or not to take the further actions required by the measure.

The commenters also suggest that the summary mention that the measure redundantly requires that each session the Oregon legislature must adopt a new resolution, even though the previous two requests, each with a seven year period of validity, would not have expired. The summary already makes it quite clear that the Oregon Legislature must call for a federal constitutional convention "at start of each legislative session." The nuance regarding the possible redundancy of calling for such a convention each session while previous calls are still valid is information that does not describe the major effect of the measure. Furthermore, it is not possible to include such information without sacrificing other equally or more important information in the summary. We decline to do so.

Finally, contrary to the commenters' suggestion in their second and third points, we disagree with their underlying premise that a proper function of a ballot title is to

inform voters about the perceived substantive invalidity of particular provisions of a proposed measure. It is well established that the function of a ballot title is not to resolve disputed questions of 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.”

Conclusion

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

Very truly yours,

✓ ~~Jas. Jeffrey Adams~~
Sr. Assistant Attorney General

JJA:mlk/APP66320.DOC

Enclosure

c: Peter Shepherd, Deputy Attorney General
Don Arnold, General Counsel Division
Steven A. Wolf, General Counsel Division

Matthew Dean Zollinger
3519 NW Glenridge Drive
Corvallis, Oregon 97330

Bruce L. Alder Jr.
4723 NW Veronica Place
Corvallis, Oregon 97330

Paula D. Sherman
P.O. Box 2310
Corvallis, Oregon 97339

John Lindback
May 4, 2004
Page 5

Charles F. Hinkle
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2300
Portland, Oregon 97204

BALLOT TITLE

**AMENDS CONSTITUTION: REQUIRES OREGON LEGISLATURE
EACH SESSION TO CALL FOR FEDERAL CONSTITUTIONAL
CONVENTION UNTIL MARRIAGE DEFINITION RESOLVED**

RESULT OF "YES" VOTE: "Yes" vote requires Oregon Legislature each session to call for United States Constitutional Convention until marriage is defined or states' right to define marriage ensured.

RESULT OF "NO" VOTE: "No" vote rejects requiring Oregon Legislature each session to call for United States Constitutional Convention until marriage defined or states' right to define marriage ensured.

SUMMARY: Amends constitution. Currently, Oregon Constitution contains no provision requiring Oregon Legislature to call for convening a United States Constitutional Convention. Under federal law, such conventions have unlimited power to change United States constitution. Measure requires Oregon Legislature at start of each legislative session to call for convening such a convention, until the United States Constitution is amended either to: define marriage as only between a man and a woman, or ensure to each state the right to decide for itself the definition of marriage for all of its residents. Requires appointment of representatives to meet each year to determine whether participation is adequate to allow convention to proceed. Requires legislature to take necessary acts to call, attend and fully participate in federal convention. Other provisions.

RECEIVED
04 MAY 4 AM 11 33
BILL BRADBURY
SECRETARY OF STATE