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BILL BRADBURY
SECRETARY OF STATE

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April 19, 2004

By Facsimile and Regular Mail

The Honorable Bill Bradbury
Secretary of State
Elections Division
141 State Capitol
Salem, OR 97310

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Re: Ballot Title for Initiative Petition 2 (2006)

Dear Secretary Bradbury:

I am writing on behalf of Andrea Meyer and David Fidanque, Oregon electors, regarding the draft ballot title for Initiative Petition 2 (2006).

1. Caption. The draft caption states that the measure requires the Legislature to call for a federal constitutional convention "regarding marriage definition." That statement implies that a federal constitutional convention convened in response to the Legislature's call would be limited to a consideration of a possible federal constitutional amendment relating to marriage. That implication is incorrect.

The device of a federal constitutional "convention" is authorized by Article V of the United States Constitution. That Article contains no provision for a "limited" convention; any convention that is called into existence by Congress pursuant to that Article would have plenary power to propose amendments to every part of the Constitution. Such a convention could, for example, propose the repeal of the entire Bill of Rights, or the elimination of judicial review, or the repeal of federal authority to regulate interstate commerce.

If the terms of Article V were not clear enough on that point, the language of Initiative Petition 2 dispels any doubt. The second sentence of the proposed measure provides that the Legislature shall call for a Convention "with the *same authority* and rules as the original founding Convention ***." (Emphasis added.)

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Furthermore, the text of the measure reveals that the lack of a federal constitutional provision regarding the definition of marriage is merely an incidental condition in order to achieve repeated (and possibly endless) mandatory requests by the Oregon Legislature for Congress to "call" a convention with an unlimited agenda to amend or revise the U.S. Constitution. According to the measure, "until" Congress proposes a constitutional amendment relating to marriage, the Oregon legislature must "call" for a constitutional convention. The measure places no termination on that obligation.

The caption should be revised to inform the voters about the breadth of the proposal, and it should not leave the impression that the proposed convention would deal only with marriage. If this measure is adopted, and a federal constitutional convention is convened, there will be no limit to the amendments that such a convention may propose.

2. Result Statements. The Result of "Yes" and "Result of "No" statements, as with the caption, should be revised to incorporate the information noted above concerning the breadth of the constitutional convention which would result if the Legislature's request is approved by the requisite number of states.

3. Summary. The Summary must summarize the measure and its major effect in an impartial and concise manner. ORS 250.035(2)(d). "The purpose of the 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/Nichols v. Myers*, 336 Or 128, 139 (2003) (internal quotation marks, citation, brackets, and ellipses omitted).

The draft summary does not satisfy the statutory requirements because it does not make it clear that any convention convened in response to a call by the Oregon legislature would not be limited to amendments relating to marriage. As noted above, such a convention would have authority to propose amendments to any and every part of the existing United States Constitution (including its Bill of Rights and all of its other amendments).

In addition, the draft summary does not take into account the second clause in the second sentence in the amendment proposed by Initiative Petition 2. That clause states that the legislature's "call" for a convention "shall be valid for a period of seven years once made." It is doubtful that this provision would have any legal effect, because the question of the validity of a "call" for a convention is a question of federal law, not of state law. Article V of the United States Constitution authorizes "the Application of the Legislatures" in seeking a constitutional convention, but that Article is silent as to whether any such "Application" would be valid for only a certain period of time. In any event, it is unlikely that a legislature could itself prescribe the length of time that its "Application" would remain effective. Furthermore, the purported seven-year temporal limit on the "validity" of the legislature's action appears to be meaningless,

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in light of the fact that the proposed measure would require the legislature to "call for the convening" of a convention at "each session" of the legislature. Since the Oregon legislature meets every two years, the measure would apparently require the legislature to "call" for a convention, even though at least two of its prior "calls" would presumably remain in effect.

In addition, the draft summary does not take into account the fourth sentence in the amendment proposed by Initiative Petition 2. That sentence appears to be a directive to Oregon delegates to a future federal constitutional convention, and it provides that those delegates would have authority "to determine whether there is adequate participation so that a Convention has authority to proceed." If that is the meaning of that sentence, it is a nullity, since Oregon's delegates to a federal constitutional convention would have no authority to make any determination as to whether there was "adequate participation" in the Convention.

When a proposed initiative petition contains provisions that are meaningless, or legally ineffective, the Summary should say so. Voters – at least conscientious voters – will read the measure before they sign petitions to support it, and if the measure makes it to the ballot, voters will once again read it. They will wonder what it means, and they are entitled to have an explanation from the Secretary of State (or Attorney General) as to its meaning.

The Summary should be revised to inform voters that any federal constitutional convention would have unlimited authority to propose amendments to all parts of the Constitution. It should state whether the second clause of the second sentence will have any effect. It should explain the meaning and significance of the fourth sentence in the text of the proposed amendment. And it should mention that every session of the Oregon Legislature would be required to adopt a new resolution requesting an unlimited constitutional convention even though at least two previous requests had not yet expired.

Very truly yours,

Charles F. Hinkle

cc: Mr. Dave Fidanque
Ms. Andrea Meyer

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