



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
August 26, 2004

Contact: Carla Corbin
Elections Division
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The Office of the Secretary of State received a certified ballot title from the Attorney General on August 25, 2004, for initiative petition #6, 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: LIMITS BIENNIAL PERCENTAGE INCREASE IN STATE SPENDING TO PERCENTAGE INCREASE IN STATE POPULATION, PLUS INFLATION

RESULT OF "YES" VOTE: "Yes" vote amends constitution to limit the percentage increase in state spending from biennium to biennium to the percentage increase in state population plus inflation.

RESULT OF "NO" VOTE: "No" vote retains existing statute capping appropriations on basis of personal income in Oregon; rejects adding constitutional provision limiting spending increases to population increase, inflation.

SUMMARY: Amends constitution. Oregon statute currently limits state appropriations to 8% of projected personal income in Oregon (with certain exceptions). If Governor declares emergency, legislature may exceed current statutory appropriations limit by 60% vote of each house. Measure adds constitutional provision limiting increase in state spending from one biennium to next biennium to percentage increase in state population, plus inflation, over previous two years. Certain exceptions to limit, including spending of: federal, donated funds; proceeds from selling certain bonds, real property; money to fund emergency funds; money to fund tax, "kicker," other refunds. Measure provides that spending limit may be exceeded by amount approved by two-thirds of each house of legislature and approved by majority of voters voting in general election. Other provisions.

Chief Petitioner(s): Don McIntire, 929 SE Phoebe Ct, Gresham, OR 97080.

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 September 9, 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.

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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

August 25, 2004

RECEIVED
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BILL STEADY
SECRETARY OF STATE

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

Re: Proposed Initiative Petition — Amends Constitution: Amends Constitution: Limits Biennial Percentage Increase In State Spending To Percentage Increase In State Population, Plus Inflation
DOJ File #BT-6-04; Elections Division #6

Dear Mr. Lindback:

We have reviewed the three comments submitted on the draft ballot title for the above-referenced proposed measure. This letter summarizes the comments we received, our responses to those comments, and the reasons we changed the ballot title in response to the comments and our further review of the proposed measure. This letter should be included in the record if the Oregon Supreme Court is asked to review this ballot title.

The caption

The draft caption used the phrase “LIMITS BIENNIAL PERCENTAGE INCREASE IN LEGISLATIVE APPROPRIATIONS” to describe the proposed measure’s subject matter. Commenter McIntire objects to that phrase on the ground that the measure would limit actual disbursements by state government, *i.e.*, state spending, not merely legislative appropriations. We agree and have changed the phrase “legislative appropriations” to “state spending” in the caption and other sections of the ballot title.

Commenters Kain and Terhune assert that the caption should make clear that population increases and inflation “are the *only* factors that may be considered in determining whether spending can increase from one legislative session to the next.” They suggest adding the word “exclusively” to the caption. Commenter Novick argues similarly. We do not agree with the suggested addition. The phrase “LIMITS BIENNIAL PERCENTAGE INCREASE IN STATE SPENDING TO PERCENTAGE INCREASE IN STATE POPULATION, PLUS INFLATION” accurately informs voters that spending can increase *only* if the state population increases or there is inflation. Put another way, the word “limits” adequately conveys the information that the commenters seek to express by adding the word “exclusively” to the caption. Adding the word “exclusively” would, therefore, repeat information that the caption already provides,

putting inappropriate emphasis on that aspect of the proposed measure. We acknowledge that we added the word “exclusively” to the caption for the ballot title of a similar proposed measure earlier this year; upon further reflection, however, we have concluded that the word is superfluous for the reasons just stated.

Commenter Novick asserts that the word “constitutional” should be added to the caption to emphasize that the measure would make a constitutional change. We disagree; that information is adequately conveyed by the preliminary phrase “AMENDS CONSTITUTION.”

As certified, the caption provides:

**AMENDS CONSTITUTION: LIMITS BIENNIAL PERCENTAGE
INCREASE IN STATE SPENDING TO PERCENTAGE INCREASE IN
STATE POPULATION, PLUS INFLATION**

“Yes” result statement

Commenters Kain, Terhune and Novick contend that the “yes” result statement should state explicitly that population increases and inflation are the only bases on which state spending could change from biennium to biennium under the proposed measure. We reject that suggestion for the same reasons that we decided not to add the word “exclusively” to the caption.

As certified, the “yes” result statement provides:

RESULT OF “YES” VOTE: “Yes” vote amends constitution to limit the percentage increase in state spending from biennium to biennium to the percentage increase in state population plus inflation.

“No” result statement

Commenters Kain, Terhune and Novick argue that the “no” result statement should include the word “exclusively.” We reject that argument for the same reasons that we rejected it in conjunction with the caption and the “yes” result statement.

Commenters Kain and Terhune also argue that the “no” result statement should more clearly inform voters that the proposed measure would *add* a constitutional limit on state spending to the existing statutory limit on legislative appropriations. Commenter McIntire asserts that the draft “no” result statement left an incorrect impression that passage of the proposed measure would repeal the existing statutory provision. We have addressed these comments by changing the wording of the “no” result statement to clarify that the measure would add a constitutional provision to the existing statutory appropriations limit, although we have not used the wording suggested by any of the commenters.

Commenter McIntire also argues that the “no” result statement should not say anything about existing law, but should state merely that a “no” vote rejects what a “yes” vote would

accomplish. The Oregon Supreme Court has disapproved that approach, suggesting that the “no” result statement should add information beyond that provided by the “yes” result statement. *Nesbitt v. Myers*, 335 Or 424, 432-33, 71 P3d 530 (2003) (ORS 250.035(2) “states an expectation that, when possible, the ‘no’ vote result statement will provide information that should assist the voter to understand the state of affairs that will exist if the voters reject the proposed measure. It is no news to a voter that voting ‘no’ means ‘not yes.’”). Accordingly, we have included information respecting closely related existing state law in the “no” result statement, so voters will understand “the state of affairs that will exist” if the proposed measure does not pass.

As certified, the “no” result statement provides:

RESULT OF “NO” VOTE: “No” vote retains existing statute capping appropriations on basis of personal income in Oregon; rejects adding constitutional provision limiting spending increases to population increase, inflation.

Summary

Commenters Kain, Terhune and Novick assert that the draft summary suggests, incorrectly, that all money spent on emergencies would be exempt from the spending limit when, in fact, the exemption is only for money used to *fund* an emergency fund. We agree, and have changed the wording of the summary to more accurately reflect the scope of the exception.

In discussing the draft summary, commenter McIntire repeats his assertion that the ballot title should not discuss existing law; we reject that argument for the reasons outlined above. In the alternative, McIntire suggests that it would be equally appropriate for the ballot title to discuss other provisions that he deems “constitutional spending limits”: the “kicker,” Measure 5 and Measure 50. But – unlike the statutory provision referenced in the “no” result statement and summary – those constitutional provisions do not directly limit either legislative appropriations or state spending. The “kicker” returns money to taxpayers when state revenues exceed projections by a certain amount. Or Const, Art IX, § 14. Measures 5 and 50 limit property taxation. Or Const, Art XI, §§ 11, 11b. Thus, those constitutional provisions are not tied as closely to the subject of the proposed measure as is the existing statutory appropriations limit, and it is appropriate for the ballot title to explain the latter without also discussing the former.

As certified, the summary provides:

SUMMARY: Amends constitution. Oregon statute currently limits state appropriations to 8% of projected personal income in Oregon (with certain exceptions). If Governor declares emergency, legislature may exceed current statutory appropriations limit by 60% vote of each house. Measure adds constitutional provision limiting increase in state spending from one biennium to next biennium to percentage increase in state population, plus inflation, over previous two years. Certain exceptions to limit, including spending of: federal,

donated funds; proceeds from selling certain bonds, real property; money to fund emergency funds; money to fund tax, "kicker," other refunds. Measure provides that spending limit may be exceeded by amount approved by two-thirds of each house of legislature and approved by majority of voters voting in general election. Other provisions.

Sincerely,

Erika L. Hadlock
Assistant Solicitor General

ELH:mlk/APP70650

Enclosure

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BALLOT TITLE

**AMENDS CONSTITUTION: LIMITS BIENNIAL PERCENTAGE
INCREASE IN STATE SPENDING TO PERCENTAGE INCREASE IN
STATE POPULATION, PLUS INFLATION**

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