

COMMENTS ON PROCEDURAL CONSTITUTIONAL REQUIREMENTS APPLICABLE
TO PETITION 7 (2006)

2004 SEP 10 PM 4:44

Daniel Meek
Lloyd K. Marbet

September 10, 2004

BILL BRADBURY
SECRETARY OF THE STATE

We, Daniel W. Meek and Lloyd K. Marbet, are electors residing at the addresses provided below. We offer these comments on the procedural constitutional requirements applicable to submittal of Petition 7.

In compliance with your unworkable and unfair procedures for accepting comments on whether a measure proposed in a prospective petition complies with the constitutional procedural requirements, we offer these comments in anticipation of the comments others may submit.¹

Perhaps someone will argue that Petition 7 does not comply with the requirements of Article IV, Section 1(1)(d), which states:

- (d) An initiative petition shall include the full text of the proposed law or amendment to the Constitution. A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith.

As for including the full text of the proposed law, Petition 7 obviously does so. There is no requirement that an initiative petition set forth in ~~redline and strikeout~~ form all of the changes it may make to existing statutes. Petition 7 sets forth a comprehensive system of political campaign finance reform and expressly states in Subsection (14):

The provisions of this Act shall supersede any provision of law with which they may conflict.

Thus, the full text requirement is clearly fulfilled.

Regarding the "one subject" requirement, the subject of Petition 7 is campaign finance reform for the conduct of candidate elections in Oregon (except elections for federal office). This is clearly one subject.

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1. Under your current procedure, anyone who wishes to challenge a prospective petition on constitutional procedural grounds can file comments, issuing such a challenge, on the same day that comments on the Draft Ballot Title are due. Theoretically, supporters of a prospective petition can file comments stating that the measure complies with constitutional procedural, but they cannot know the specific challenges that may be contained in the comments of opponents. Thus, your procedure allows opponents of a measure to assert numerous specific constitutional procedural-type challenges with no opportunity for the chief petitioners or anyone else to respond.

As the Oregon Supreme Court stated in *Armatta v. Kitzhaber*, 327 Or 250, 273, 959 P2d 49 (1998):

Rather, the court must examine the body of the measure to determine whether the proposed law or amendment contains "a unifying principle logically connecting all provisions in the act [or amendment], such that it can be said that the measure embraces one subject only." *Ibid.* (internal quotation marks and brackets omitted). See also *McIntire v. Forbes*, 322 Or. 426, 443-44, 909 P.2d 846 (1996) (setting out that approach under Article IV, section 20). The *Caleb* court concluded that, because the provisions of the enactment at issue facilitated a single goal and were pertinent and germane to one overall subject, the enactment did not violate Article IV, section 1(2)(d). 326 Or. at 92-93, 949 P.2d 724.

The unifying principle logically connecting all provisions in Petition 7 is to control the use of money in Oregon candidate elections.

Thank you for considering these comments.

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COMMENTS ON DRAFT BALLOT TITLE FOR PETITION 7 (2006)**RECEIVED**

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September 10, 2004

BILL BRADBURY
SECRETARY OF THE STATE

We, Daniel W. Meek and Lloyd K. Marbet, are electors residing at the addresses provided below. We offer these comments on the Draft Ballot Title (DBT) for Petition 7. We were members of the committee that drafted this petition and thus have knowledge of the intent of the chief petitioner.

I. CAPTION.

ORS 250.055(2)(a) requires a "caption of not more than 15 words that reasonably identifies the subject matter of the state measure." The DBT reads:

REVISES OREGON CAMPAIGN FINANCE LAWS BY LIMITING, OR IN SOME CASES PROHIBITING, CONTRIBUTIONS AND EXPENDITURES

For reasons explained below, we offer these captions, in order of preference:

LIMITS POLITICAL CAMPAIGN CONTRIBUTIONS IN CANDIDATE ELECTIONS; REQUIRES ADVERTISEMENTS TO IDENTIFY CONTRIBUTORS, FASTER FINANCIAL DISCLOSURE.

or

POLITICAL CAMPAIGN FINANCE REFORM; LIMITS CONTRIBUTIONS, EXPENDITURES ON CANDIDATE CAMPAIGNS; REQUIRES CONTRIBUTOR DISCLOSURES, FINANCIAL REPORTING.

Petition 7 is a comprehensive system for campaign finance reform, comprised of many detailed provisions. Petition 7 contains 4 major features:

1. limits on campaign contributions and expenditures for or against candidates;
2. disclosure of large contributors in campaign advertisements;
3. more frequent and detailed reporting of large contributions to the public, via the Voters Pamphlet and on the internet;

4. restriction of the current level of income tax credit for political contributions to committees which abide by voluntary contribution limits or which qualify as small donor committees.

The caption should convey as much as practicable about the major features of the proposed measure. The DBT caption refers to only one of the 4 major features and is thus incomplete. In *Novick v. Myers*, 332 Or. 493, 499, 32 P.3d 890 (2001), the court rejected a caption it deemed under-inclusive.

Rice involved an argument that a certified caption, "Increases Sentences for Persons with Prior Convictions for Listed Crimes," gave "a false impression that the measure would increase sentences only for repeat offenders when, in fact, [the measure] also would affect the sentences of first-time offenders." *Id.* Applying the principle quoted above, this court stated:

The Attorney General's caption is *under-inclusive*. By describing the impact of the measure on one class of offenders, while excluding any reference to another class of offenders, the Attorney General's certified caption misleads the voters as to the full breadth of the measure and fails reasonably to identify the subject matter of the measure. See, e.g., *Witt v. Kulongoski*, 319 Or. 7, 872 P.2d 14 (1994) (illustrating this court's application of the foregoing principle in modifying an under-inclusive and, therefore, inadequate ballot title caption)." *Id.* at 423-24, 952 P.2d 553.

Here we believe that mentioning only the contribution/expenditure limits but not the other major features of Petition 7 does not fulfill the statutory requirements for a caption. Thus, our recommended captions describe far more of the subject matter of Petition 7 than does the DBT's caption.

Elsewhere, the Court has indicated that a caption cannot be merely a listing of the provisions of the measure but "identify the subject matter" in a way that does not confuse or mislead potential signers or voters.

The caption is the "cornerstone for the other portions of the ballot title." *Greene v. Kulongoski*, 322 Or. 169, 175, 903 P.2d 366 (1995). As the "headline" for the ballot title, the caption "provides the context for the reader's consideration of the other information in the ballot title." *Id.* A caption complies substantially with the requirements of ORS 250.055(2)(a) if it identifies the subject matter of the proposed measure in terms that will not confuse or mislead potential petition signers and voters. *Id.* at 174-75, 903 P.2d 366. A caption that catalogues the

effect of a proposed measure, without identifying its subject matter, is inadequate. *Carson v. Myers*, 326 Or. 248, 254, 951 P.2d 700 (1998).

Mabon v. Myers, 332 Or 633, 637, 33 P3d 988 (2001). We offer our second alternative caption to comply with this approach. It is quite likely that signers and voters understand the commonly-used term "campaign finance reform," and that term does identify the subject matter of Petition 7 in a way not likely to confuse signers or voters. Although terse, our second alternative caption both complies with *Mabon v. Myers* (by identifying the subject matter, apart from a catalog of provisions) and with *Novick v. Myers* (by avoiding under-inclusiveness).

In addition, the DBT caption fails to convey that the limits and prohibitions in Petition 7 apply only to candidate campaigns and not at all to campaigns for or against ballot measures.

II. YES/NO STATEMENTS.

ORS 250.055(2)(b) requires a "simple and understandable statement of not more than 25 words that describes the result if the state measure is approved," while ORS 250.055(2)(c) requires a similar statement describing the result if the measure is not approved.

For reasons explained below, we offer these yes/no statements:

RESULT OF "YES" VOTE: "Yes" limits contributions, expenditures on candidate campaigns; limits candidate's spending of personal funds; requires advertisements disclose large contributors; faster [additional] financial reporting; tax credit restrictions.

RESULT OF "NO" VOTE: "No" allows continued unlimited contributions, expenditures by all entities and individuals on candidate campaigns; no disclosing large funders [contributors] in advertisements; no faster reporting requirements.

The word "[additional]" is in brackets to indicate that it may be substituted for the word "faster." For the same reason, the word "[contributors]" is also in brackets, as a possible substitute for "funders."

Our suggested yes/no statements convey more useful information, we believe, because they include reference to all of the 4 major elements of Petition 7 (contribution/expenditure limits, disclosures, reporting, tax credit restrictions).

Further, the Oregon Supreme Court has ruled that a "no" statement cannot be merely the "yes" statement in reverse.

We agree with petitioners that the statement is not understandable, because it provides no new information to the reader. Instead, it simply attaches the word "rejects" to the same summary of the proposed measure that appeared in the "yes" vote result statement. That is, the substantive message of the Attorney General's "no" vote result statement is that " 'no' rejects 'yes'." That is not a sufficient explanation to meet the requirement of ORS 250.055(2)(c). We hold that the Attorney General's "no" vote result statement fails substantially to comply with the requirement of ORS 250.055(2)(c).

Kain v. Myers, 355 Or 228, 64 P3d 1129 (2003). The DBT's "no" statement is very close to being just the "yes" statement but with an added, and misleading, phrase: "retains existing reporting requirements." This phrase very strongly implies that Petition 7 somehow eliminates those reporting requirements, particularly since the DBT's "yes" statement contains not a single word about reporting requirements.

Our alternative "no" statement meets the statutory requirements, as applied by the Oregon Supreme Court, by providing more useful information about the effects of a "no" vote. We offer the word "contributors" in brackets, because the disclosure requirements apply both to those making large contributions and those making large independent expenditures. Thus, "funders" is more accurate than "contributors."

III. SUMMARY.

ORS 250.055(2)(d) requires a ballot title summary consisting of a "concise and impartial statement of not more than 125 words summarizing the state measure and its major effect."

We believe that this summary falls short, as it is not accurate and is not "concise" in the sense of conveying the actual provisions of the proposed measure. Further, it begins by emphasizing what current law does require, which Petition 7 does not eliminate (reporting of certain contributions and expenditures), instead of pointing voters to the substantive provisions of Petition 7. We offer this alternative:

SUMMARY: Current law does not limit contributions or expenditures on campaigns for state or local public office. This measure:

limits individual contributions to candidates, political committees, and political parties;

bans corporations, unions, other entities from contributing to or making "independent expenditures" for candidates (except a single

\$500 annual contribution for administering a committee accepting only voluntary contributions by individuals);

allows "small donor committees" to spend on candidates contributions received from individuals of \$50 or less per year;

limits contributions, expenditures for candidates by political committees, parties, and candidates spending personal funds;

limits "independent expenditures" on candidates;

requires disclosing major funders in political advertisements, faster public reporting of large contributions, including lists in Voters Pamphlet;

limits current political tax credit level to campaigns complying with voluntary limits

Our summary more accurately and completely describes the major provisions of Petition 7. It also states far more clearly that Petition 7 applies only to campaigns for public office. Unlike the very similar Petition 55 (2004), Petition 7 does not apply to ballot measure campaigns or to any sort of contributions or expenditures related to ballot measure campaigns.

The DBT also contains a major inaccuracy. It states that Petition 7 "Prohibits corporate, union, organizational contributions, expenditures, except through political committees funded solely by individuals." This is not the case. Instead, Petition 7 flatly prohibits corporate, union, and organizational contributions and expenditures, whether or not they are made "through political committees" and whether or not those political committees are "funded solely by individuals." There is a single \$500 per entity annual administrative cost provision, which might be considered an exception, as noted below.

The DBT incorrectly states that corporations and unions can make contributions "through political committees funded solely by individuals." That is simply not the case. It also does not make sense and cannot possibly be a true statement. If a corporation can make a contribution through a political committee "funded solely by individuals," then that political committee is not "funded solely by individuals" but by a combination of individuals and corporations. Thus, a corporation could not make such a contribution, because the committee would not be one "funded solely by individuals." This brings us back to square one and reminds us of the philosopher, Marx, who said: "I don't care to belong to any club that will have me

as a member."¹ Fortunately, the sentence is also incorrect, so we need not try to make sense of it.

Subsections (3)(a)(1) and 7(c) ban corporations, unions, and other organizations [hereinafter CUOs] from making contributions and from making independent expenditures, except as specifically allowed by other subsections. As the DBT notes, however, such entities can establish political committees, pursuant to Subsection (9). But corporations, unions, and other entities cannot then contribute money to such political committees, except for a single allowance of "\$500 per year of treasury funds to create and administer the fund." Apart from that \$500 per year administrative cost contribution, all of the funds received by such committees must come from individuals. Subsection (9)(a) states:

- (a) The fund consists solely of voluntary contributions from the employees, officers, shareholders, or members of the organization and, for a political committee, are within the limits established by subsection (3) for contributions by individuals to a political committee;**

The "limits established by subsection (3)" allow contributions only from individuals. Subsection (3) expressly bans contributions by CUOs and allows contributions **only by individuals**. This means that CUOs can set up political committees, but those committees can be funded **only by contributions by individuals** and not also by contributions by corporations, as the DBT indicates. Thus, the measure does not allow CUOs to make contributions or to make any expenditures except from funds voluntarily contributed by individuals. The \$500 annual administrative contribution cannot be used to otherwise support or oppose a candidate. **Thus, the CUO cannot make a contribution to a political committee that can be used for campaign purposes.**

It is not accurate to leave the impression that corporations and unions can make political contributions, as long as they go "through political committees funded solely individuals." In fact, Petition 7 would allow no such thing. Our summary, above, handles this topic accurately.

1. Groucho Marx, 1895-1977.

Thank you for considering these comments.

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September 10, 2004

By Facsimile: 503-373-7414
 The Honorable Bill Bradbury
 Secretary of State
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BILL BRADBURY
 SECRETARY OF THE STATE

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Re: Initiative Petition #7 (2006) – Procedural Defect

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Dear Secretary Bradbury:

I write on behalf of myself and David Fidanque, Oregon electors, regarding the procedural defect of IP #7 (2006) submitted by David E. Delk.

Whole Text Requirement

As you are well aware, the ACLU recently prevailed in a whole text challenge of a proposed statutory initiative in the 2004 election cycle. See *Kerr v. Bradbury*, 193 Or App 304, 89 P3d 1227 (2004).

That case was less clear-cut than the violations present with IP #7. In the case of the Oregon Citizens Alliance petition at issue in *Kerr*, the petitioners at least had the sense to cite the specific statutes they intended to amend— even though they did not include the whole text of those statutes.

In the case of IP #7, the Chief Petitioner, David E. Delk, purports to cite the ORS statutes that would be “amended” by the petition—stating: “New language is in bold. Deleted language is in [brackets].”

However, the entire petition is in bold and current statutes regulating campaign finance and reporting—now codified in Chapter 260 and which would be dramatically altered by IP #7—are nowhere to be found within the 10 pages of the petition.

IP #7 would purports to “amend” ORS Chapter 259, which used to relate to special district elections before those statutes were re-codified in Chapter 255. In fact, IP #7 would have the effect of completely rewriting Chapter 260 of the ORS.

The Honorable Bill Bradbury
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This proposed petition represents a clear violation of the full text requirement and IP #7 should be summarily rejected for that reason.

Andrea R. Meyer
Legislative Director/Counsel