

COMMENTS ON DRAFT BALLOT TITLE FOR PETITION 8 (2006)

Daniel Meek
Lloyd K. Marbet

September 10, 2004

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2004 SEP 10 PM 3:55
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 8. We were members of the committee that drafted this petition and thus have knowledge of the intent of the petitioners.

The entire text of the measure is this:

Be it enacted by the People of the State of Oregon, Article II, Section 24, of the Constitution of Oregon, is amended by the addition of the following:

Notwithstanding any other provision of this Constitution, the people through the initiative process, or the Legislative Assembly by a three-fourths vote of both Houses, may enact and amend laws to prohibit or limit contributions and expenditures, of any type or description, to influence the outcome of any election.

I. CAPTION.

ORS 250.035(2)(a) requires a "caption of not more than 15 words that reasonably identifies the subject matter of the state measure." The DBT reads:

AMENDS CONSTITUTION: ALLOWS LAWS ADOPTED BY INITIATIVE OR 3/4 OF EACH LEGISLATIVE HOUSE REGULATING CAMPAIGN CONTRIBUTIONS, EXPENDITURES.

First, this caption is that it does not indicate that the term "campaign" refers to political campaign or has anything to do with elections.

Second, this caption elevates process over substance by first stating how such laws would be enacted, followed by what those laws could accomplish. The "subject matter" of Petition 8 is, obviously, political campaign finance reform. The "subject matter" is not how to use the initiative process. Thus, the substance of the measure should precede a description of process.

Third, this caption refers to laws adopted by 3/4 of "each legislative house." To be technically accurate, it should refer to laws adopted by 3/4 of "both legislative houses."

To remedy these flaws, we recommend:

AMENDS CONSTITUTION: ALLOWS LAWS REGULATING POLITICAL CONTRIBUTIONS, EXPENDITURES, IF ADOPTED BY INITIATIVE OR 3/4 OF BOTH LEGISLATIVE HOUSES.

II. YES/NO STATEMENTS.

ORS 250.035(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 250.035(2)(c) requires a similar statement describing the result if the measure is not approved. The DBT reads:

RESULT OF "YES" VOTE: "Yes" vote amends Constitution to allow laws limiting or prohibiting campaign contributions and expenditures if adopted by initiative process of 3/4 of each legislative house.

RESULT OF "NO" VOTE: "No" vote retains current constitutional prohibition on laws that limit or prohibit political campaign contributions or expenditures.

The "yes" statement suffers some of the same flaws as the DBT's caption. The "no" statement is worded as a double prohibition (a "constitutional prohibition on laws that . . . prohibit"), which is confusing and akin to a double negative.

To correct the flaws, we offer these statements:

RESULT OF "YES" VOTE: "Yes" vote amends Constitution to allow laws limiting or prohibiting political campaign contributions, expenditures, if adopted by voter initiative or by 3/4 of both legislative houses.

RESULT OF "NO" VOTE: "No" vote retains current ban in Oregon Constitution on laws that limit or prohibit political campaign contributions or expenditures by any person or entity.

III. SUMMARY.

ORS 250.035(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 recommend substituting the word "bans" in place of "prohibits" in the second line, so it would read "bans laws that . . . otherwise prohibit" instead of "prohibits laws that . . . otherwise prohibit." This is again a prohibition of a prohibition, in the DBT version.

We would also add "by any person or entity" at the end of the first sentence, which adds clarity.

The second-to-last sentence is incorrect. The phrase "of any type of description" in Petition 8 does not, as the DBT states, modify "limitations or prohibitions." Instead, the phrase "of any type of description" modifies "contributions and expenditures." Thus, a correct rewrite of that sentence in the DBT would read:

The measure allows such limitations or prohibitions to apply to political campaign contributions and expenditures of any type or description.

Overall, much clarity could be added to the DBT summary. We offer this summary:

SUMMARY: Amends Oregon Constitution. Currently, the Oregon Constitution bans enactment of laws prohibiting or limiting contributions of money to political campaigns or expenditures of money to influence the outcome of elections by any persons or entities, such as corporations and labor unions. This includes campaigns of candidates for state or local public office and campaigns for or against statewide or local ballot measures. This measure amends the Oregon Constitution to allow laws prohibiting or limiting contributions or expenditures to influence the outcome of any election, if those laws are enacted by voter initiative or by a three-fourths vote of both houses of the Oregon Legislature. These limitations or prohibitions can apply to political campaign contributions and expenditures of any type or description.

Our summary provides more useful information to voters than does the DBT. It explains the current status of the ability of the Legislature or voters to enact laws which limit or prohibit political campaign contributions or expenditures. It indicates that Petition 8 applies to "any election," which would include elections for ballot measures.

Thank you for considering these comments.

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COMMENTS ON PROCEDURAL CONSTITUTIONAL REQUIREMENTS APPLICABLE
TO PETITION 8 (2006)

2004 SEP 10 PM 4: 05 Daniel Meek
Lloyd K. Marbet

BILL BRADBURY
SECRETARY OF THE STATE September 10, 2004

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 8.

The entire text of the measure is this:

Be it enacted by the People of the State of Oregon, Article II, Section 24, of the Constitution of Oregon, is amended by the addition of the following:

Notwithstanding any other provision of this Constitution, the people through the initiative process, or the Legislative Assembly by a three-fourths vote of both Houses, may enact and amend laws to prohibit or limit contributions and expenditures, of any type or description, to influence the outcome of any election.

This measure is similar to Petition 52 (2004), which stated:

Be it enacted by the People of the State of Oregon, Article I, Section 8, of the Constitution of Oregon, is amended by the addition of the following:

Notwithstanding, the people are entitled to the conduct of elections free of the undue influence of monied interests, in accordance with laws enacted or amended through the initiative process to prohibit or limit contributions and expenditures, of any type or description, to influence the outcome of any election.

The Secretary of State certified that Petition 52 (2004) complied with the constitutional procedural requirements.

The difference between Petition 52 (2004) and Petition 8 is that Petition 8 also authorizes the Oregon Legislature to enact and amend laws to prohibit or limit contributions or expenditures, upon a three-fourths vote of both legislative houses. Thus, Petition 8 adds to and does not remove any existing authority of the Oregon

Legislature in this area. The Oregon Supreme Court *Vannatta v. Keisling*, 324 Or. 514, 931 P.2d 770 (1997), concluded that the existing Oregon Constitution does not allow either the Legislature or the voter initiative process to adopt laws which prohibit or limit political campaign contributions or expenditures. Allowing the Legislative Assembly to adopt any laws doing so is thus an expansion of the authority of the Legislative Assembly under the Oregon Constitution and is not a limitation on any authority that the Legislature may already possess.

We expect that some persons may file comments stating that Petition 8 violates Article IV, Section (1)(2)(d). That section 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.

Petition 8 does "include the full text of the proposed law or amendment to the Constitution." It contains every single word of the proposed amendment. There is no requirement that the measure include words which are not part of the proposed amendment. *Barnes v. Paulus*, 36 Or App 327, review denied 284 Or 81 (1978); *Schnell v. Appling*, 238 Or 202 (1964).

Others may also suggest that Petition 8 is a revision of the Oregon Constitution. Previous comments to that effect have depended upon the feature of earlier petitions that would have removed authority from the Legislature to enact, amend, or repeal laws pertaining to political campaigns. Petition 8, however, contains no language which in any way limits the existing authority of the Legislature.

Thank you for considering these comments.

September 10, 2004

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September 10, 2004

By Facsimile: 503-373-7414
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Re: Initiative Petition #8 (2006) – Procedural Defects

RECEIVED
 2004 SEP 10 PM 3:15
 BILL BRADBURY
 SECRETARY OF THE STATE

Dear Secretary Bradbury:

I write on behalf of myself and David Fidanque, Oregon electors, regarding the procedural defects to IP #8 (2006) submitted by David E. Delk.

Multiple Amendments

This constitutional proposal, although drafted as adding a new section to Article II of the Oregon Constitution, actually would make multiple amendments to the existing constitution that are not closely related.

First, IP #8 amends Article I, section 8 of the Oregon Constitution and this appears to be its primary purpose; i.e., to weaken Article I, section 8 – the Oregon guarantee of free expression – in order to make an exception allowing for enactment of restrictions on campaign contributions and expenditures.

Second, IP #8 would have the effect of amending Article IV, section 1 by establishing new hurdles for the Legislature to amend or enact laws related to campaign finance. Under this provision of IP #8, the people, through the initiative process, would be able to adopt or amend laws by a bare majority of those voting on a proposed initiative. However, the Legislature's power would be diminished because it would be required to muster a three-fourth's majority in both houses in order to amend or enact laws related to campaign finance.

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This marks a dramatic shift in the balance of legislative power which is now equally shared by the Legislature and the People (through the initiative and referendum)¹.

The question of diminishing the legislative power of representatives and senators, who were elected by district and are directly accountable to the voters in each of those 90 separate districts, is completely different and distinct from the change that IP #8 would make to the freedom of expression guarantee in Article I, section 8.

The Oregon Constitution requires that these distinct and unrelated issues be submitted separately to the voters.

Republican Form of Government Guarantee

In addition, the language of IP #8, by placing the legislative branch of government in an inferior position to the power granted directly to the People through the initiative process would violate the guarantee of a republican form of government contained in Article IV, section 4 of the U.S. Constitution.

It is our position that for the initiative process to comply with the republican form of government guarantee, the representative branch of government—the Legislature—must be at least equal in legislative power to the People (who exercise legislative authority through the initiative and referendum process).

In the case of IP #8, there would no longer be co-equal partners with the power to legislate in Oregon on the topic of campaign finance. As noted above, the People could amend or adopt restrictions and prohibitions on campaign contributions and expenditures, but the Legislature would need to muster a three-fourth's vote of both houses in order to enact or make any changes to such laws.

Surely there can be no question that an amendment that would reserve certain legislative powers *unequally* to the people by initiative would leave the Legislative Assembly as no more than a second class partner in the process of enacting, amending and repealing laws. Such a system would clearly violate the republican form of government guarantee.

For all of these reasons, IP #8 should not be certified for circulation.

Andrea K. Meyer
Legislative Director/Counsel

cc: Honorable Hardy Myers

¹ The few exceptions to that principle have been adopted relatively recently and have not been subjected to multiple amendment challenges in the courts. See, e.g., Article IV, section 25(2), adopted in 1996, and Article IV, section 33, adopted in 1994.



September 10, 2004

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BILL BRADBURY
 SECRETARY OF THE STATE

2004 SEP 10 PM 3:39

RECEIVED

Re: Initiative Petition #8 (2006) – Ballot Title Comments

Dear Secretary Bradbury:

I write on behalf of myself and David Fidanque, Oregon electors, regarding the defects to the Ballot Title on IP #8 (2006) submitted by David E. Delk. We submitted under separate cover our opposition to certifying this initiative for constitutional defects. However, if you proceed with certifying this initiative for circulation, we submit the following ballot title comments.

This constitutional proposal, although purporting to add a new section to the Oregon Constitution, Article II, section 24, actually **amends Article I, section 8** of the Oregon Constitution. The primary effect of this measure would be to weaken Article I, section 8 – the Oregon guarantee of free expression – in order to make an exception for campaign contributions to any election.

While the draft ballot title mentions the restrictions that would be “permitted” if the measure is approved by voters, it says nothing about what would be *eliminated* by IP #8 – the protection of the right to “speak, write, or print freely on *any subject whatever*.”

Each part of the draft ballot title should include this very important information. We therefore recommend the following alternative language:

**AMENDS CONSTITUTION: ELIMINATES FREE EXPRESSION
 PROTECTION AGAINST LEGISLATIVE OR INITIATIVE LAWS
 PROHIBITING OR LIMITING CAMPAIGN CONTRIBUTIONS,
 EXPENDITURES**

RESULT OF “YES” VOTE: “Yes” vote eliminates constitutional free expression protection for laws prohibiting or limiting campaign contributions, expenditures if adopted by initiative or ¾ of each legislative house.

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RESULT OF "NO" VOTE: "No" vote retains current constitutional protection by Oregonians to "speak, write, or print freely on any subject whatever."

SUMMARY: Amends Constitution. The Oregon Bill of Rights currently guarantees the right "to speak, write or print freely on any subject whatever." This provision prohibits prohibitions and limitations on political campaign contributions and expenditures but allows for voluntary campaign restrictions. This measure amends the Oregon Constitution to permit involuntary prohibitions or limitations on campaign contributions and expenditures enacted or amended through the initiative process or by the Legislative Assembly by a three-fourths vote of both houses. This measure allows the limitations or prohibitions on campaign contributions and expenditures to be of any type or description.

Thank you for your consideration of our comments.

Andrea R. Meyer
Legislative Director/Counsel