



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
February 11, 2005

Contact: Carla Corbin
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on February 11, 2005, for initiative petition #17, 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: RESTRICTS HOW INDIVIDUALS AND
ORGANIZATIONS RECEIVING ANY EMPLOYEE'S PAYROLL DEDUCTIONS
MAY USE, MANAGE THOSE DEDUCTIONS**

RESULT OF "YES" VOTE: "Yes" vote prohibits individuals, organizations from using any employee's payroll deductions for "political purposes" (defined) without obtaining employee's written, annual authorization and satisfying additional requirements.

RESULT OF "NO" VOTE: "No" vote retains current law, which neither limits uses to which payroll deductions may be put nor requires segregating payroll deductions earmarked for political purposes.

SUMMARY: Amends constitution. Current law neither limits use of any employee's payroll deductions nor requires segregating deductions earmarked for political purposes. Measure prohibits individuals, organizations receiving any employee's payroll deductions from using them for "political purposes" without obtaining employee's permission annually granted on form used for this purpose. Deductions are used for "political purposes" when any portion is: contributed to candidate, political committee, party; or spent supporting/opposing ballot measure, public-office candidate. Deductions are not used for "political purposes" when spent lobbying, unless spent on communications identifying public-office candidate within 90 days of election. Anyone receiving payroll deductions for "political purposes" must keep them in segregated accounts. Anyone violating measure may be fined and barred from collecting funds through public payroll system. Other provisions.

Chief Petitioner(s): Bill Sizemore, PO Box 343, Beavercreek, OR 97004 and Grace I. Sizemore, PO Box 66921, Portland, OR 97290.

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 February 28, 2005. 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

February 11, 2005

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

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SECRETARY OF THE STATE

2005 FEB 11 PM 3:25

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Re: Proposed Initiative Petition — Amends Constitution: Restricts How Individuals And Organizations Receiving Any Employee's Payroll Deductions May Use, Manage Those Deductions
DOJ File #BT-17-05; Elections Division #17

Dear Mr. Lindback:

We have reviewed the comments submitted in response to the draft ballot title for the above-referenced prospective initiative petition. We provide the enclosed certified ballot title, which differs from the draft ballot title.

This letter summarizes the comments that we received, and explains why we accepted some, but not all, of the recommended changes. ORAP 11.30(7) requires that this letter be included in the record in the event the Oregon Supreme Court reviews this ballot title.

The caption

The draft caption states that the proposed measure "AMENDS CONSTITUTION: PROHIBITS USING ANY EMPLOYEES' PAYROLL DEDUCTIONS FOR 'POLITICAL PURPOSES' (DEFINED) WITHOUT COMPLYING WITH SPECIFIED REQUIREMENTS."

Commenters Kris Kain, the President of the Oregon Education Association, and Chip Terhune, the Assistant Executive Director for Public Affairs for the Oregon Education Association, say that that draft caption is flawed because it obscures the true subject of the proposed measure, which they describe as "limit[ing] what any recipient of public employee payroll deducted money can do with that money." To cure that deficiency, they propose that the caption state "AMENDS CONSTITUTION: INDIVIDUALS, ORGANIZATIONS RECEIVING PAYROLL DEDUCTIONS CANNOT USE THEM FOR 'POLITICAL PURPOSES' WITHOUT EMPLOYEE'S WRITTEN AUTHORIZATION." For the reasons that follow, we agree that commenters Kain's and Terhune's comment warrants modification, but we do not adopt their recommended language.

In 2002, the Attorney General prepared a ballot title for proposed measure #22 (2004). That measure was very similar to the propose measure at issue here. Specifically, it stated that “[n]o money shall be deducted from an employee’s paycheck * * * and used for a political purpose without the employee’s prior written permission.” That permission had to be “granted by the employee freely and renewed annually on a form used exclusively for this purpose.” Under the proposed measure, any organization that violated those provisions could be required to pay a penalty, refund double the amount of the illegally-used deduction, and pay attorney fees and costs incurred in recovering that deduction. In addition, proposed measure #22 (2004) stated that “[e]ntities using the payroll deduction process to collect money to be used for a political purpose shall maintain at all times one or more segregated accounts for such funds and shall not commingle political funds with other funds.” If an entity violated that requirement, the entity would not be allowed to use a public payroll system to collect any funds.

The Attorney General’s caption for proposed measure #22 (2004) said that that measure “PROHIBITS COLLECTING AND USING PAYROLL DEDUCTIONS FOR ‘POLITICAL PURPOSES’ (DEFINED) WITHOUT EMPLOYEE’S WRITTEN, ANNUAL AUTHORIZATION.” Several petitioners—including Kris Kain and another petitioner representing the Oregon Education Association—challenged that caption. In their petition for review, they argued that proposed measure was entirely addressed to the conduct of entities that receive money deducted from employee paycheck. Therefore, they argued, the ballot title had to make it clear that the proposed measure would impact organizations that receive that type of money. To that end, they proposed a draft caption that would have stated that proposed measure #22 (2004) “RESTRICTS PURPOSES FOR WHICH ORGANIZATIONS RECEIVING PAYMENTS BY PAYROLL DEDUCTION MAY SPEND SUCH FUNDS.” Although that caption was general in that it did not describe any of the specific restrictions that would have been imposed by proposed measure #22 (2004), they contended that that approach was preferable because it made it clear that the proposed measure would apply to the organizations that receive payroll deductions.

The Oregon Supreme Court agreed with the petitioners. In its opinion, that court stated:

Petitioners argue—and we agree—that the pivotal consideration respecting the purpose, scope, and meaning of the proposed measure is to be found in its first sentence. That sentence states: “No money shall be deducted from an employee’s paycheck, including by electronic transfer, and used for a political purpose without the employee’s prior written permission. Obviously, at first blush, the introductory words of the first sentence, “No money shall be deducted * * *,” might lead the reader to believe that the proposed measure is aimed at activities of employers. A careful reading of the balance of the proposed measure, however, demonstrates that that is not true.

Under the proposed measure, the money that is deducted from an employee’s paycheck will not go to the employer. Instead, it will go to a union, charitable organization, bank, credit union, or other entity that the employee has authorized to receive it. The balance of the proposed measure, following its opening sentence, is directed at and focused on those latter entities that will “use” the money, and the uses to

which those entities will apply that money. Indeed, the use to which the deducted money is put commonly may not be a matter within the knowledge of the employer. *The proposed measure would place various restrictions on and impose various requirements respecting the entities that receive the payroll-deducted funds, but would place no such restrictions or requirements on employers. It follows that the ballot title must alert potential voters to that theme.*

Nesbitt v. Myers, 335 Or 228, 223, 64 P3d 1129 (2003) (emphasis added).

With regard to the caption for proposed measure #22 (2004), the court stated:

Petitioners assert that the Attorney General's caption in this proceeding fails to comply with the statutory standard because, in their view, the caption focuses too heavily on the payroll deduction itself, when the actual subject of the proposed measure is how a deduction is spent.

We agree with petitioners that the caption as written obscures the subject matter of the proposed measure. Although it is inescapable that the process toward which the proposed measure is aimed must begin with an authorized payroll deduction, it is equally inescapable that the proposed measure would do nothing to the collection process. *Instead, the proposed measure focuses wholly on what organizations that receive money through payroll deductions may do with that money. That focus is the "subject" of the proposed measure, and the caption needs to say so.* We hold that, as written, the caption does not comply substantially with the requirement of ORS 250.035(2)(a) that it state "the subject matter" of the proposed measure.

Nesbitt v. Myers, 335 Or at 223-24 (emphasis added).

In response to that holding, the Attorney General modified the caption to state "ENTITIES RECEIVING PAYROLL DEDUCTIONS CANNOT USE THEM FOR 'POLITICAL PURPOSES' (DEFINED) WITHOUT EMPLOYEE'S WRITTEN AUTHORIZATION." The Oregon Supreme Court certified that caption. *Nesbitt v. Myers*, 335 Or 424, 71 P3d 530 (2003); *Nesbitt v. Myers*, 335 Or 506, 73 P3d 291 (2003).

The proposed measure at issue here is substantially similar to proposed measure #22 (2004). Specifically, the proposed measure states that "[n]o employer shall deduct or allow to be deducted from the paycheck of an employee, any money that shall be used for a political purpose, unless the employer has on file current, written authorization from each employee from which the political money will be collected." That permission must be "granted by the employee freely and renewed annually on a form used exclusively for this purpose." Under the proposed measure, a "person, company, or organization" that violates those provisions could be required to pay a penalty, refund double the amount of the illegally-used deduction, and pay attorney fees and costs incurred in recovering that deduction. In addition, the proposed measure states that "[e]ntities using the payroll deduction process to collect money to be used for a political purpose shall maintain at all times one or more segregated accounts for such funds and shall not

commingle political funds with other funds.” If a person, company, or organization violates that requirement, that person, company, or organization cannot use a public payroll system to collect any funds.

In the light of those provisions and the Oregon Supreme Court’s clear holding with regard to the substantially similar provisions of proposed measure #22 (2004), we have no doubt that that court would hold that proposed measure # 17 (2006) focuses on the conduct of those who receive the affected payroll deductions. We also have no doubt that the court would hold that the true subject of the proposed measure is what those who receive money through payroll deductions may do with that money.

For these reasons, we believe that we must modify the caption so it refers to “INDIVIDUALS AND ORGANIZATIONS RECEIVING” the affected payroll deductions.

The next question that arises is whether we should use the remainder of the caption to explain a specific aspect of the proposed measure—*e.g.*, that it would prohibit using the affected deductions for “political purposes” without obtaining an employee’s written and annually-renewed authorization—or, instead, we should describe the proposed measure in a more general way so as to avoid understating the proposed measure’s scope and to avoid emphasizing certain effects of the measure at the expense of other effects. For the following reasons, the inescapable conclusion is that we must follow the more general route.

First, in *Nesbitt*, the court described the subject of proposed measure #22 (2004) in very general terms and without describing any specific aspect of that proposed measure; as discussed, the court stated that proposed measure #22 (2004) “focuses wholly on what organizations that receive money through payroll deductions may do with that money. That focus is the ‘subject’ of the proposed measure, and the caption needs to say so.” *Nesbitt*, 335 Or at 224. Given that generalized description of the subject of proposed measure #22 (2004), it seems appropriate that we describe the subject of proposed measure #17 (2006) in equally general terms.

Second, as certified, the caption for proposed measure #15 (2006) is general: it states that that measure “RESTRICTS HOW INDIVIDUALS AND ORGANIZATIONS RECEIVING PUBLIC EMPLOYEES’ PAYROLL DEDUCTIONS MAY USE, MANAGE THOSE DEDUCTIONS.” Since proposed measure #15 (2006) is identical to proposed measure #17 (2006) with the single exception that the former affects only public employee’s deductions and the latter affects all deductions, drafting the caption for proposed measure #17 in a manner that highlights the written authorization requirement might incorrectly cause the voters to assume that proposed measure #15 does not contain that requirement. Therefore, it is preferable that we use similar captions for both proposed measures. *See, e.g., Rooney v. Kulongoski*, 322 Or 15, 44, 902 P2d 1142 (1995) (noting that “different ballot titles for two measures that are nearly identical * * * would run too great a risk of confusing voters by suggesting that there are differences in the measures when such differences do not exist.”).

Finally, even if we could accurately and fully describe in the caption one aspect of the proposed measure, the Oregon Supreme Court has, since *Nesbitt*, emphasized that a caption

should not emphasize certain effects of a measure at the expense of other effects. *Kain v. Myers*, 336 Or 116, 120-21, 79 P3d 864 (2003). Likewise, the court has stressed that a caption must not understate the scope of the legal changes that a proposed measure would enact. *Kain v. Myers*, 337 Or 36, 40-41, 93 P3d 62 (2004). In the light of those recent decisions, it appears it would be inappropriate for the caption to focus on the requirement of obtaining an employee's written authorization at the expense of language necessary to capture the requirement that entities keep payroll-deducted funds in segregated accounts and the prohibition against commingling payroll-deducted funds with other funds.

For these reasons, we conclude that we must draft the caption in general terms. Therefore, we reject these commenters' proposed caption because it focuses on only one aspect of the proposed measure, and, instead, we have modified the caption so it explains that the proposed measure "RESTRICTS HOW INDIVIDUALS AND ORGANIZATIONS RECEIVING ANY EMPLOYEE'S PAYROLL DEDUCTIONS MAY USE, MANAGE THOSE DEDUCTIONS."

Before proceeding to the next comment, we note that because the word "ANY" precedes the word "EMPLOYEES", it is appropriate that we use the singular form of the latter word. Therefore, the caption now refers to "EMPLOYEE'S."

Commenter Art Towers says that the caption must convey *who* the proposed measure would affect, that the phrase "SPECIFIED REQUIREMENTS" is unduly ambiguous, and that the phrase "POLITICAL PURPOSES (DEFINED)" is redundant. These comments are either addressed or mooted by the changes we have made in response to commenters Kain and Terhune.

Commenter Sizemore states that the proposed measure differs from proposed measure #22 (2004) because, in his view, the proposed measure is "expressly directed at the employer." For example, he notes, "it expressly [prohibits] public [*sic*] employers from making the payroll deduction, unless they have an employee's consent form on file." Therefore, commenter Sizemore says, the caption should state that the proposed measure "PROHIBITS PAYROLL DEDUCTIONS FOR POLITICAL PURPOSES (DEFINED) WITHOUT AN EMPLOYEE'S ANNUALLY RENEWED, WRITTEN AUTHORIZATION."

We recognize that the proposed measure does differ in that it says "[n]o *employer* shall deduct or allow to be deducted * * * any money that shall be used for a political purpose, unless *the employer* has on file current, written authorization" whereas proposed measure #22 (2004) stated "[n]o money shall be deducted from an employee's paycheck, including by electronic transfer, and used for a political purpose without the employee's prior written permission." But as the court explained in *Nesbitt*, those types of "introductory words" do not mean a proposed measure is aimed at activities of employers who make deductions. 335 Or at 222-23 (noting "[o]bviously, the deduction from the employee's paycheck will have to be made by an employer"). And the remainder of the proposed measure focuses on those who receive and use payroll deductions—at least it does so as much as proposed measure #22 (2004). Therefore, we believe the rationale in *Nesbitt* is fully applicable to the proposed measure.

Commenter Sizemore also says that the requirement the political funds be kept segregated is not important enough to be placed in the caption. Given the Oregon Supreme Court's admonition that a caption should not emphasize certain effects of a measure at the expense of other effects, we are not at liberty to describe the requirement of written authorization at the expense of language necessary to capture the requirement of segregation and prohibition against commingling. Therefore, we retain our more general approach to drafting the caption.

The "yes" vote result statement

The draft "yes" vote result statement explains that a "yes" vote "prohibits anyone from using any employees' payroll deductions for 'political purposes' (defined) without obtaining employee's written, annual authorization and complying with additional requirements.

Commenters Kain and Terhune assert that the word "anyone" is too informal and general. They recommend that we replace that word with a reference to individuals and organizations.

Although we do not believe that the word "anyone" is too informal and general, we agree that we can improve the "yes" vote result statement by adding a specific reference to the affected individuals and organizations. To make room for that modification, we have replaced the phrase "complying with additional requirements" with the phrase "satisfying additional requirements." The "yes" vote result statement now explains that a "yes" vote "prohibits individuals, organizations from using any employee's payroll deductions for 'political purposes' (defined) without obtaining employee's written, annual authorization and satisfying additional requirements."

Commenters Kain and Terhune also state that the "yes" vote result statement should capture the prohibition on commingling non-political money with political money. To that end, they recommend that we add the phrase "if any portion" so the ballot title will state that the proposed measure "prohibits individuals, organizations from spending any portion of funds received through payroll deductions on 'political purposes' without employee's specific written authorization; other requirements."

Adding the phrase "if any portion" would not achieve these commenters' stated objective of clarifying that the proposed measure would prohibit commingling non-political money with political money. In all events, with respect to the general nature of the restrictions it would impose, the proposed measure is substantially similar to proposed measure #22. For that proposed measure, the Attorney General prepared a "yes" vote result statement would have explained that a "yes" vote "prohibits: collecting and using payroll deductions for 'political purposes' (defined) without employee's written, annual authorization; commingling payroll-deducted political funds with non-political funds." The petitioners challenge that statement because (1) it was unclear; and (2) "the Attorney General's selection of the 'no commingling of political and nonpolitical funds' aspect of the proposed measure * * * focuses too much on one aspect of the proposed measure at the expense of the proposed measure's overall theme." *Nesbitt*, 335 Or at 224-25 (emphasis added). The Oregon Supreme Court agreed "for reasons

that essentially amalgamate petitioners' two arguments." *Nesbitt*, 335 Or at 225. The court added, "The 25-word 'yes vote result statement is the appropriate point at which to alert voters that *the proposed measure would enact a complete regime of limitations on the use for 'political purposes' of any funds obtained by any organization, public or private, through payroll deductions.*" *Id.* at 225 (emphasis added). In the light of that holding, it appears that it would be improper for the "yes" vote result statement to specifically highlight the commingling prohibition. Therefore, even if we could craft language that would accurately describe that prohibition, we would not use that language.

Next, commenters Kain and Terhune state that the "yes" vote result statement should refer to "funds received through" payroll deductions instead of just "payroll deductions." We believe the voters will understand that the proposed measure would affect funds received through payroll deductions. In all events, we do not have room to add these commenters' proposed language. Therefore, we have not done so.

Commenter Towers says that the use of the plural possessive "employees' payroll deductions" is misleading because it implies that deductions always are "collective and unified." We do not agree that our formulation is misleading. But since the "yes" vote result statement uses the word "any," we do believe that using the singular form of the word "employee's" would make the statement more readable.

Commenter Towers also says the "yes" vote result statement is "flawed for the same reasons that the caption is flawed" and should not use the word "anyone." Those comments are either addressed by our responses to commenter Kain's and Terhune's comments or are mooted by the changes we have made in response those comments.

Commenter Sizemore says the proposed measure focuses on the conduct of employers making the affected deductions, and he says that result statements should not describe the requirement that political money be kept segregated from other funds. For the reasons discussed above, we have no doubt that the Oregon Supreme Court would hold that the proposed measure focuses on the conduct of those who receive the affected payroll deductions. In addition, the "yes" vote result statement does not specifically describe the segregation requirement. Therefore, these comments do not warrant further changes to the "yes" vote result statement.

The "no" vote result statement

The draft "no" vote result statement explains that a "no" vote "retains current law, which neither limits uses for which payroll deductions may be used nor requires segregating payroll deductions earmarked for political purposes."

Commenters Kain and Terhune say that the "no" vote result statement should explain that, under current law, individuals and organizations can spend payroll deductions "in the same manner" as other funds. They also contend that our reference to the segregation of deductions earmarked for political purpose is improper because (1) it comes "out of the blue"; and (2) it is inaccurate in even money not "earmarked" for a political purpose must be segregated if it ever is

used for political purposes. These commenters therefore propose that the “no” vote result statement explain that a “no” vote “retains current law allowing individuals, organizations to spend funds received through payroll deductions in the same manner as funds received by other means.”

We do not adopt those recommendations. In *Nesbitt*, the court held that it would be appropriate for the Attorney General “to refer to the fact that no current law limits the uses to which properly deducted funds may be put or to the fact that no current law requires that such funds that are earmarked for ‘political purposes’ be segregated by the entities that use them.” 335 Or at 432. The court so held even though the Attorney General has expressed concern about the difficulty of drafting an accurate statement and even though the court had approved a caption and “yes” vote result statement that contained no reference to a comparable segregation requirement. For these reasons, we do not agree that our description of current law is inaccurate, and we do not believe the “no” vote result statement is deficient in that it refers to a requirement not already referenced in the caption or “yes” vote result statement.

In the course of addressing this particular comment, we have noticed that our description of current law differs slightly from the court’s language. Moreover, since our language refers to the “uses” for which deductions may be “used,” it is somewhat redundant. Therefore, for the sake of clarity and consistency with the court’s decision in *Nesbitt*, we have modified the ballot title to explain that a “no” vote “retains current law, which neither limits uses to which payroll deductions may be put nor requires segregating payroll deductions earmarked for political purposes.”

Commenter Towers contends that the “no” vote result statement is misleading because it fails to state that the proposed measure would affect “individuals, organizations, and companies.” Since the caption and “yes” vote result statement make it clear that the proposed measure would affect individuals and organizations, and since the “no” vote result statement describes current law instead of the proposed measure, we do not believe it is necessary that the “no” vote result statement explicitly refer to “individuals, organizations, and companies.”

Commenter Towers also says that the reference to the segregation requirement is confusing because it addresses a concept not already referenced in the caption or “yes” vote result statement. For the reasons already noted, we disagree.

Commenter Towers also says that our “no” vote result statement is inaccurate because current law *does* impose some limits on how payroll deductions may be used. Specifically, he says, unions cannot *require* that employees’ payroll deductions be used for political purposes.

As noted, in *Nesbitt*, the court held that it would be appropriate for the Attorney General “to refer to the fact that no current law limits the uses to which properly deducted funds may be put or to the fact that no current law requires that such funds that are earmarked for ‘political purposes’ be segregated by the entities that use them.” 335 Or at 432. Commenter Towers’ assertion does not provide a basis for disregarding that statement; although unions cannot *require* that employees allow their payroll deductions to be used for political purposes, that does not

mean that our description of current law is inaccurate. Therefore, we have not further modified the “no” vote result statement in response to this comment.

As noted, commenter Sizemore says the result statements should not describe the requirement that political money be kept segregated from other funds. For the reasons discussed, we have retained our reference to the segregation requirement.

The summary

The draft summary states:

Amends constitution. Current law neither limits use of any employees’ payroll deductions nor requires segregating deductions earmarked for political purposes. Measure prohibits anyone receiving any employee’s payroll deductions from using them for “political purposes” without obtaining employee’s permission annually granted on form used for this purposes; legislature must ensure personal information is neither on form nor publicly available. Deductions are used for “political purposes” when any portion is: contributed to candidate, political committee, party; or spent supporting/opposing ballot measure, public-office candidate. Deductions are not used for “political purposes” when spent lobbying, unless spent on communications identifying public-office candidate within 90 days of election. Anyone receiving payroll deductions for “political purposes” must keep them in segregated accounts. Establishes penalties for violations. Other provisions.

Commenters Kain and Terhune make seven separate comments about the summary. We address each of them in turn.

First, these commenters say that the summary should explain that, under current law, individuals and organizations “can spend funds received through payroll deductions the same as funds received by other means.” For the reasons noted with regard to the “no” vote result statement, we do not adopt this recommendation; instead, we retain the characterization of current law that the court set forth in *Nesbitt*.

Second, these commenters say the summary should explain that, under current law, “[u]nions cannot require political contributions.” Including that reference would subject the summary to the very criticism that petitioner Kain made, and the court accepted, in *Nesbitt*, namely, that the Attorney General should not devote too extensive a part of the summary to provisions of law that would not be affected if a proposed measure were to pass. We further note that while we included the proposed phrase in other ballot titles, we did so because those ballot titles also included a statement that current law allows payroll deductions authorized by collective bargaining agreement and, as a result, we felt it was important to ensure that that type of statement did not imply that unions may require payroll deductions for political purposes. Since our description of current law in this ballot title is different, the reference to unions is unnecessary.

Third, these commenters say we should replace the references to “anyone” with references to “individuals” and “organizations.” We agree that it would be helpful to explicitly refer to the affected individuals and organizations. Therefore, we have replaced the first reference to “anyone” with the words “individual” and “organization.” But given our decision (further discussed below) to adopt these commenters’ recommendation that we provide more detail about the proposed measure’s penalties, we do not have the necessary words to make that change throughout the summary. Since the caption, “yes” vote result statement, and summary now refer to “individuals” and “organizations” that receive the deductions at issue, the voters will fully understand the proposed measure’s scope. Therefore, in the remainder of the summary, we have retained our references to “anyone.”

Fourth, these commenters say that we should added the word “exclusively” so the second full sentence explains the affected deductions cannot be used for political purposes in the absence of an employee’s permission annually granted on form used “exclusively” for this purposes. We do not agree that the word “exclusively” is necessary to ensure that the ballot title summarizes the proposed measure and its major effects. Moreover, to find room for that word, we would have to delete another word that is equally or more important.

Fifth, these commenters address the portion of the summary that states:

Deductions are used for “political purposes” when any portion is: contributed to candidate, political committee, party; or spent supporting/opposing ballot measure, public-office candidate. Deductions are not used for “political purposes” when spent lobbying, unless spent on communications identifying public-office candidate within 90 days of election.

These commenters assert that the proposed measure’s definition of “political purposes” would not cover “lobbying,” and, therefore, the summary need not explain that the definition does not cover “lobbying.” These commenters also assert the foregoing language creates the incorrect impression that spending money on communications identifying a candidate for public office within 90 days of an election constitutes “lobbying.”

We disagree with these commenters’ premise that the word “lobbying,” as used in the proposed measure, cannot include any of the activities listed in the general explanation. We also disagree with their premise that an expenditure for a communication that identifies a candidate for public office cannot constitute “lobbying,” as that word is used in the proposed measure. Accordingly, we retain our definition of “political purposes” as well as its exceptions.

Sixth, these commenters contend that our definition of the term “political purposes” omits language necessary to explain that the proposed measure’s definition of that term covers “any effort to collect signatures to place a measure on the ballot, and any efforts to solicit signatures for initiative petitions or discourage electors from signing initiative petitions. These commenters are incorrect; the summary states that “[d]eductions are used for “political purposes” when any portion is: * * * spent supporting/opposing ballot measure.”

Seventh, these commenters say that the summary should describe the proposed measure's penalties with greater specificity. We agree that that would be helpful, and we believe providing that specificity is more important than describing the requirement that the legislature ensure that personal information is neither on the required form nor publicly available. Therefore, we have deleted the statement that the "legislature must ensure personal information is neither on form nor publicly available," and we have replaced the explanation that the proposed measure "[e]stablishes penalties for violations" with an explanation that "[a]nyone violating measure may be fined and barred from collecting funds through public payroll system."

Commenter Towers says that the summary's statement that current law does not impose limits on how payroll deductions may be used is inaccurate because unions cannot *require* that employees' payroll deductions be used for political purposes. As discussed above with regard to the "no" vote result statement, the Oregon Supreme Court has held that current law may be described as not limiting the uses to which properly deducted funds may be put, and commenter Towers' observation does not warrant a different conclusion.

Commenter Towers also says the summary should describe the extent of the penalties the proposed measure would authorize. As noted above, we have modified the summary to include a greater description of those penalties.

Commenter Sizemore makes no comments about the summary.

As final matter, we note that the second sentence uses the word "purposes" in a place where it should refer to "purpose." We have corrected that word. In addition, because the word "any" precedes the word "employees", it is appropriate that we use the singular form of the latter word. Therefore, the first sentence of the summary now refers to "employee's."

With the modifications outlined above, the summary now states:

Amends constitution. Current law neither limits use of any employee's payroll deductions nor requires segregating deductions earmarked for political purposes. Measure prohibits individuals, organizations receiving any employee's payroll deductions from using them for "political purposes" without obtaining employee's permission annually granted on form used for this purpose. Deductions are used for "political purposes" when any portion is: contributed to candidate, political committee, party; or spent supporting/opposing ballot measure, public-office candidate. Deductions are not used for "political purposes" when spent lobbying, unless spent on communications identifying public-office candidate within 90 days of election. Anyone receiving payroll deductions for "political purposes" must keep them in segregated accounts. Anyone violating measure may be fined and barred from collecting funds through public payroll system. Other provisions.

Conclusion

For the reasons stated above, we have modified the ballot title. We certify the attached ballot title pursuant to ORS 250.067(2).

Sincerely,

Brendan C. Dunn
Assistant Attorney General

BCD:mlk/APP76721

Enclosure

c: Peter Shepherd, Deputy Attorney General
Don Arnold, General Counsel Division
Steve Wolf, General Counsel Division

Bill Sizemore
P.O. Box 343
Beavercreek, Oregon 97004

Grace I. Sizemore
P.O. Box 66921
Portland, Oregon 97290

Margaret S. Olney
Smith, Diamond & Olney
1500 NE Irving Street, Suite 370
Portland, Oregon 97232

Steven C. Berman
Attorney at Law
209 SW Oak St., Suite 500
Portland, Oregon 97204

BALLOT TITLE

AMENDS CONSTITUTION: RESTRICTS HOW INDIVIDUALS AND ORGANIZATIONS RECEIVING ANY EMPLOYEE'S PAYROLL DEDUCTIONS MAY USE, MANAGE THOSE DEDUCTIONS

RESULT OF "YES" VOTE: "Yes" vote prohibits individuals, organizations from using any employee's payroll deductions for "political purposes" (defined) without obtaining employee's written, annual authorization and satisfying additional requirements.

RESULT OF "NO" VOTE: "No" vote retains current law, which neither limits uses to which payroll deductions may be put nor requires segregating payroll deductions earmarked for political purposes.

SUMMARY: Amends constitution. Current law neither limits use of any employee's payroll deductions nor requires segregating deductions earmarked for political purposes. Measure prohibits individuals, organizations receiving any employee's payroll deductions from using them for "political purposes" without obtaining employee's permission annually granted on form used for this purpose. Deductions are used for "political purposes" when any portion is: contributed to candidate, political committee, party; or spent supporting/opposing ballot measure, public-office candidate. Deductions are not used for "political purposes" when spent lobbying, unless spent on communications identifying public-office candidate within 90 days of election. Anyone receiving payroll deductions for "political purposes" must keep them in segregated accounts. Anyone violating measure may be fined and barred from collecting funds through public payroll system. Other provisions.

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