



# OFFICE OF THE SECRETARY OF STATE

## NEWS RELEASE

**BILL BRADBURY**

**For Immediate Release:**  
February 11, 2005

**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 February 11, 2005, for initiative petition #20, proposing a statutory 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:

**RESTRICTS HOW INDIVIDUALS, ORGANIZATIONS RECEIVING MONEY  
COLLECTED WITH PUBLIC RESOURCES MAY USE, MANAGE THAT MONEY**

**RESULT OF "YES" VOTE:** "Yes" vote prohibits individuals, organizations from using money collected with public resources for "political purposes" (defined) and from commingling government-collected money with political funds.

**RESULT OF "NO" VOTE:** "No" vote retains current law, which prohibits neither using money collected with public resources for political purposes nor commingling government-collected money with political funds.

**SUMMARY:** Current law prohibits neither using money collected with public resources for political purposes nor commingling government-collected money with political funds. Unless spent preparing/distributing voters' pamphlet, measure prohibits individuals and organizations from using money collected with any public resources for "political purposes." Money is used for "political purposes" when any portion is: contributed to candidate, political committee, party; or spent supporting/opposing ballot measure or public-office candidate. Money is not used for "political purposes" when spent lobbying, unless spent on communications identifying public-office candidate within 90 days of election. If an individual, organization uses money collected by a government entity for "political purposes" or commingles that money with political funds, measures bars individual, organization from collecting money through government entities. 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 75,630. These signatures must be filed in this office not later than July 7, 2006.

# # #



**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  
DEPARTMENT OF THE STATE

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Re: Proposed Initiative Petition — Restricts How Individuals, Organizations Receiving Money Collected With Public Resources May Use, Manage That Money  
DOJ File #BT-20-05; Elections Division #20

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 says that, under the proposed measure, “GOVERNMENT-COLLECTED MONEY CANNOT BE USED FOR ‘POLITICAL PURPOSES’ (DEFINED) OR COMMINGLED WITH POLITICAL FUNDS.”

Commenters 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 the term “GOVERNMENT-COLLECTED MONEY” is inaccurate because it does not encompass the full scope of the proposed measure’s limitations. We agree that it would be preferable for use to replace the term “GOVERNMENT-COLLECTED MONEY” with the term “MONEY COLLECTED WITH PUBLIC RESOURCES.” Therefore, we have made that change.

These commenters also say that that draft caption is flawed because it fails to identify the true subject of the proposed measure, which they describe as “restricting how organizations and individuals spend money that has been collected using public resources.” These commenters add that the voters should not have to guess *who* the proposed measure would affect. According to these commenters, the voters “must clearly be told that the proposal restricts how private

organizations and individuals spend their own money.” To that end, these commenters recommend that the caption state “INDIVIDUALS, ORGANIZATIONS CANNOT USE OWN MONEY FOR ‘POLITICAL PURPOSES’ IF COLLECTED USING ANY PUBLIC RESOURCE.” 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 #23 (2004). Although that measure was more limited in its scope, it was similar to the proposed measure at issue here. Specifically, it stated that a public payroll system “shall not be used to collect or help collect political funds. In addition, proposed measure #23 stated that if an entity used for a political purpose money collected for it by means of a public payroll system or commingled political funds with funds collected by means of a public payroll system, that entity could not again collect any funds through a public payroll system.

The Attorney General’s caption for proposed measure #23 (2004) said that that measure “PROHIBITS COLLECTING PUBLIC EMPLOYEE PAYROLL DEDUCTIONS FOR ORGANIZATIONS USING DEDUCTED FUNDS FOR ‘POLITICAL PURPOSES’ (DEFINED).” 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 focused on those who collect public employees’ payroll deductions, but instead was focused on how organizations receiving those deductions could spend them.

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

[P]etitioners assert that the use of the phrase “prohibits collecting public employee payroll deductions” focuses on, and makes it appear as if the proposed measure focuses on, activities of public employers when, in fact, the entire measure is aimed at the activities of those who receive the money so collected. We agree with that criticism. *The true focus of the proposed measure—its true “subject”—is what organizations who receive money from payroll deductions may do with those deductions.*

*Kain v. Myers*, 335 Or 228, 232, 64 P3d 1129 (2003) (emphasis added).

While the limit imposed by this proposed measure is broader than the limit in proposed measure #23 (2004), those limits are similarly focused. For example, the proposed measure states that, with some exceptions, no public resource shall be used to collect or help collect money that will be used for a political purpose. In addition, the proposed measure states that if a person, company, group, or organization uses for a political purpose money collected by a government entity or commingles political funds with funds collected by a government entity, that government entity cannot again collect funds for the person, company, group, or organization.

In the light of those provisions and the Oregon Supreme Court’s holding with regard to the similarly-focused provisions of proposed measure #23 (2004), we have no doubt that that

court would hold that proposed measure #20 (2006) focuses on the conduct of those who receive the affected payroll deductions. We also have no doubt that that the court would hold that the true subject of the proposed measure is what those who receive money collected with any public resources may do with that money.

For these reasons, we believe that we must modify the caption so it refers to "INDIVIDUALS" and "ORGANIZATIONS RECEIVING" money collected with public resources.

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 money for "political purposes"—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 *Kain*, the court described the subject of proposed measure #23 (2004) in very general terms and without describing any specific aspect of that proposed measure; as discussed, the court stated that "[t]he true focus of the proposed measure—its true "subject"—is what organizations who receive money from payroll deductions may do with those deductions." *Kain*, 335 Or at 232. Given that generalized description of the subject of proposed measure #23 (2004), it seems appropriate that we describe the subject of proposed measure #20 (2006) in equally general terms.

In addition, the Oregon Supreme Court has, since *Kain*, 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 prohibition against spending the affected money for political purposes at the expense of language necessary to capture the provisions that prohibit individuals and organizations from commingling political funds with government-collected money.

For these reasons, we conclude that we must draft the caption in general terms. Therefore, we have modified the caption so it explains that the proposed measure "RESTRICTS HOW INDIVIDUALS, ORGANIZATIONS RECEIVING MONEY COLLECTED WITH PUBLIC RESOURCES MAY USE, MANAGE THAT MONEY."

For their final comment about the caption, these commenters say that the caption should not state that the proposed measure would amend the constitution. We agree and have made the appropriate change.

Commenter Art Towers' comments about the caption are resolved by the foregoing responses to commenters Kain and Terhune.

Commenter Bill Sizemore contends the ballot title fails to explain that “political money could not be collected in government buildings” and fails to identify that the proposed measure would not affect money used preparing, printing, and distributing the voters pamphlet. We perceive that these comments are directed at the summary and, for that reason, will address them below.

### **The “yes” vote result statement**

The draft “yes” vote result statement says that a “yes” vote “means money collected with public resources (including through public payroll deductions) can neither be used for ‘political purposes’ nor commingled with political funds.”

Commenter Kain and Terhune say that that language obscures *who* is prohibited from using the affected money. They propose that the ballot title explain that a “yes” vote “prohibits individuals, organizations from using their own money for ‘political purposes,’ if money is collected using public resources, or commingled with such money.”

For the foregoing reasons, we agree that we should make the “yes” vote result statement more clear in that regard. Therefore, we have modified that statement so it explicitly refers to “individuals” and “organizations.” To make it clear that the phrase that addresses commingling also applies to those “individuals” and “organizations,” we also have added the word “from” to the beginning of that phrase.

Commenter Towers says that the “yes” vote result statement should not describe the proposed measure’s commingling provisions as a “prohibition” against commingling political funds with “money collected with public resources.” He explains that the commingling provision affects money only a “government entity” collected it. In addition, he says, the proposed measure would merely “penalize” anyone who commingles political funds with government-collected money, but would not “prohibit” that commingling.

We agree with the first point, but not the second. The proposed measure states:

If a person, company, group, or organization \* \* \* commingles political funds with funds collected wholly or in part by a government entity, no government entity or agent thereof, thereafter, shall collect money for any purpose for that person, company, group, or organization.

That language applies to only money collected by a government entity. Therefore, we have modified the “yes” vote result statement to more accurately explain that the commingling provision applies to that type of money. We do not agree, however, that it is inaccurate to describe the commingling provision as a “prohibition.”

Next, commenter Towers says that the “yes” vote result statement should not state that the money collected with public resources would includes money collected through public

payroll deductions. The changes we have made in response to the other comments have mooted this comment.

For his final comment about the “yes” vote result statement, commenter Towers also says that the proposed measure prohibits using public resources to collect public resources to collected money that “will” be used for political purposes. Therefore, he says, the draft “yes” vote result statement should reflect the prospective nature of the proposed measure.

We do not agree that the “yes” vote result statement must be modified to reflect this concern. In all events, clarifying that subtlety probably would lead to voter confusion and would require that we omit other language that is equally or more important. Therefore, we have made no changes in response to this particular comment.

Because of the changes we have made to the caption, we have added the word “defined” after the phrase “political purposes.” Although commenter Towers asserted, with regard to the draft caption, that the word “defined” is unnecessary and redundant, we disagree. Since the proposed measure uses the term “political purpose” in a unique and specific manner, it is critical that that term be placed in quotation marks. And if we place that term in quotation marks, it is important—in this particular context—that we use the word “DEFINED” in order to (1) place an appropriate degree of emphasis on the proposed measure’s unique use of the phrase “political purposes”; and (2) cure any pejorative connotation that might arise from the quotation marks.

For the foregoing reasons, the “yes” vote result statement now explains that a “yes” vote “prohibits individuals, organizations from using money collected with public resources for ‘political purposes’ (defined) and from commingling government-collected money with political funds.”

### **The “no” vote result statement**

The draft “no” vote result statement says that a “no” vote “retains current law, which neither prohibits using monies collected with public resources for political purposes nor prohibits commingling those monies with political funds.”

Commenters Kain and Terhune state that the “no” vote result statement must emphasize that current law does not restrict how “individuals” and “organizations” can use or commingle money collected with public resources. Since the caption and “yes” vote result statement already emphasize that the proposed measure would affect “individuals” and “organizations,” we do not agree that the description of current law must also refer to “individuals” and “organizations.” In all events, adding those words would require that we omit other language that is equally or more important.

Commenter Towers says that the “no” vote result statement should reflect the prospective nature of the proposed measure. We disagree and, therefore, have made no changes in response to this comment.

Commenter Towers also says that the “no” vote result statement is misleading because it implies that the proposed measure’s commingling provision constitutes a “prohibition” and affects “money collected with public resources.” As noted above, we do not agree that it is inaccurate to describe what current law does not “prohibit,” but we do agree that we should explain that current law does not prohibit the commingling of political funds with “government-collected money.” To make room for that change, we have reversed the words in the phrase “neither prohibits” and we have deleted the second use of the word “prohibits.”

As a final matter, we note that, upon review of the foregoing comments, we have determined that the “no” vote result statement would be more readable and more consistent with the caption and “yes” vote result statement if we were to replace the first use of the word “monies” with the word “money.”

For the foregoing reasons, the ballot title now explains that a “no” vote “retains current law, which prohibits neither using money collected with public resources for political purposes nor commingling government-collected money with political funds.”

### **The summary**

The draft summary states:

Amends constitution. Current law neither prohibits using monies collected with public resources for political purposes nor prohibit commingling those monies with political funds. Measure prohibits using money collected with any public resources for “political purposes.” Money is used for “political purposes” when any portion is: contributed to candidate, political committee, party; or spent supporting or opposing ballot measure or public-office candidate. Money is not used for “political purposes” when spent lobbying, unless spent on communications identifying public-office candidate within 90 days of election. Anyone receiving money collected by a government entity must keep that money segregated from political funds. If a person or entity violates measure’s requirements, no governmental entity or agent may collect any money for that person or entity. Other provisions.

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

First, commenters Kain and Terhune assert that our description of current law is insufficient because it uses the passive voice. They further contend we should explain that, under current law, individuals and organizations can “spend their own money on political matters” and they can do so “even when that money is collected using public resources.”

In *Kain*, the Oregon Supreme Court rejected a similar “passive voice” contention with regard to a similar description of current law. 335 Or at 232. Moreover, these commenters’ proposed language is biased against the proposed measure, incomplete, and fails to convey any

substantive and necessary information not already provided in our description of current law. We reject their proposal.

Second, these commenters say that the summary insufficiently explains that the proposed measure would affect “individuals” and “organizations.” We agree that it would be helpful to make that more clear, and we have room to do so. Therefore, we have made the recommended clarification.

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

Money is used for “political purposes” when any portion is: contributed to candidate, political committee, party; or spent supporting or opposing ballot measure or public-office candidate. Money is 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.

Third, 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, including but not limited to direct mail and media campaigns, 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.”

Fourth, these commenters say that the summary should describe the proposed measure’s penalties with greater detail; specifically, they assert that we should explain that an individual or organization that violates the commingling provision will be “permanently barred” from obtaining government-collected money. We do not agree that we must use the phrase “permanently barred.” But we do agree that that we can describe the proposed measure’s penalties with greater accuracy and specificity. Therefore, we have replaced the penultimate sentence with a sentence that explains “[i]f an individual, organization uses money collected by a government entity for “political purposes” or commingles that money with political funds, measures bars individual, organization from collecting money through government entities.”

Commenter Towers says the summary should make it clear that the spending prohibition applies to money collected “with the help” of public resources. We disagree; the phrase “*any* public resources” is sufficient to convey the proposed measure’s reach.

Commenter Towers also says that the summary “does not cover the massive sweep” of the proposed measure, but he does not explain what he believes if necessary to cover that “massive sweep.” If commenter Towers intends to suggest that we must adopt his proposed explanation that the affected money “could include check received in the mail, social security check or collection on a court judgment,” we disagree. That type of description is not necessary to summarize the proposed measure and its major effects. Moreover, commenter Towers list of examples is biased against the proposed measure and, to include it, we would have to engage in undue interpretation and we would have to omit other information that is equally or more important.

As noted above, commenter Sizemore says the ballot title fails to explain that the proposed measure would prohibit collecting political money in government buildings and fails to explain that the proposed measure would not affect money spent preparing, printing, and distributing the voters’ pamphlet. We do not believe that the summary should explicitly state that proposed measure would affect money collected in government buildings. But we do agree that we should make it clear that the prohibition against spending money collected with public resources does not apply to money spent for preparing and distributing the voters’ pamphlet. Therefore, we have added the phrase “[u]nless spent preparing/distributing voters’ pamphlet” to the beginning of the sentence that describes that prohibition.

In the course of reviewing the foregoing comments, we have determined that, for the reasons provided in response to commenter Towers’ observations about the result statements, we should revise the first sentence so it more clearly explains that current law does not prohibit commingling political funds with “government-collected money.” In addition, we have determined that the first sentence of the summary would be more readable and more consistent with rest of the ballot title if we were to replace the word “monies” with the word “money.” Finally, we have determined that we should delete any indication that the proposed measure would amend the constitution.

With the modifications outlined above, the summary now states:


Current law prohibits neither using money collected with public resources for political purposes nor commingling government-collected money with political funds. Unless spent preparing/distributing voters’ pamphlet, measure prohibits individuals and organizations from using money collected with any public resources for “political purposes.” Money is used for “political purposes” when any portion is: contributed to candidate, political committee, party; or spent supporting/opposing ballot measure or public-office candidate. Money is not used for “political purposes” when spent lobbying, unless spent on communications identifying public-office candidate within 90 days of election. If an individual, organization uses money collected by a government entity for “political purposes” or commingles that money with political funds, measures bars

individual, organization from collecting money through government entities. 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/APP76723

Enclosure

c: Peter Shepherd, Deputy Attorney General  
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**BALLOT TITLE**

**RESTRICTS HOW INDIVIDUALS, ORGANIZATIONS RECEIVING  
MONEY COLLECTED WITH PUBLIC RESOURCES MAY USE,  
MANAGE THAT MONEY**

**RESULT OF "YES" VOTE:** "Yes" vote prohibits individuals, organizations from using money collected with public resources for "political purposes" (defined) and from commingling government-collected money with political funds.

**RESULT OF "NO" VOTE:** "No" vote retains current law, which prohibits neither using money collected with public resources for political purposes nor commingling government-collected money with political funds.

**SUMMARY:** Current law prohibits neither using money collected with public resources for political purposes nor commingling government-collected money with political funds. Unless spent preparing/distributing voters' pamphlet, measure prohibits individuals and organizations from using money collected with any public resources for "political purposes." Money is used for "political purposes" when any portion is: contributed to candidate, political committee, party; or spent supporting/opposing ballot measure or public-office candidate. Money is not used for "political purposes" when spent lobbying, unless spent on communications identifying public-office candidate within 90 days of election. If an individual, organization uses money collected by a government entity for "political purposes" or commingles that money with political funds, measures bars individual, organization from collecting money through government entities. Other provisions.

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