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BILL BRADBURY
SECRETARY OF THE STATE

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March 1, 2005

Secretary of State
Elections Division
Room 141 State Capitol
Salem, OR 97310

Dear Mr. Secretary:

As an Oregon elector, I am writing to offer my comments on the draft ballot title for Initiative #29, which makes federal income taxes fully deductible on state tax returns.

I believe the draft ballot title is misleading and therefore fails to comply with ORS 250.035.

I couldn't help but chuckle when I read the draft ballot title for Initiative #29, because the proposal clearly doesn't create an unlimited deduction. If it did, no one would ever pay Oregon Income taxes again. Taxpayers would claim a deduction equal to the amount of income they had and "presto" owe no state taxes.

In reality, the deduction proposed by Initiative 29 is limited to the amount of federal income taxes one paid. The measure does create an unlimited deduction, but rather makes all of a taxpayer's federal income taxes deductible on his or her state tax return or said another way, makes federal income taxes fully deductible on a taxpayer's personal state income tax return.

As there is a clear limitation on the amount of income taxes one can deduct on one's state tax return, it is inaccurate to say that the measure creates an unlimited deduction. There is some clarification of this in the summary, but if a person votes without reading the

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summary, he or she will be left with what is clearly a false view of what the measure does.

It also seems that the statement that the measure reduces revenue is less important than the fact that the measure does not apply to corporate taxpayers, as Measure 91 did in the year 2000. The reduction in state revenue can easily be addressed in the summary.

I suggest the following ballot title, which more closely tracks the ballot title approved by the Oregon Supreme Court for a similar measure in 2000:

MAKES FEDERAL INCOMES FULLY DEDUCTIBLE ON OREGON STATE INCOME TAX RETURNS FILED BY INDIVIDUALS.

Result of a yes vote: Yes vote makes federal income taxes fully deductible on individual state income tax returns. Does not affect corporate income or excise taxes. Reduces state revenue.

I do not object to the draft No statement.

The only problem I see with draft summary is the statement that the measure creates an unlimited deduction. This language should be changed to say that the measure makes paid federal income taxes fully deductible on state tax returns.

Thank you for considering my comments.

Sincerely,

Bill Sizemore
Oregon Elector

S M I T H
D I A M O N D
& O L N E Y
ATTORNEYS AT LAW

Barbara J. Diamond
Margaret S. Olney*
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* Member Oregon and Washington Bars

March 4, 2005

VIA FACSIMILE 503-373-7414
AND REGULAR MAIL

John Lindback
Director of Elections
Office of the Secretary of State
State Capitol, Room 141
Salem, OR 97310-0722

Re: Initiative Petition 29 (2006) – Draft Ballot Title Comments
Our File No. 328

Dear Mr. Lindback:

This firm represents Kris Kain, an Oregon elector and President of the Oregon Education Association, and Chip Terhune, an Oregon elector and Assistant Executive Director for Public Affairs for the Oregon Education Association. We write in response to your News Release dated February 18, 2005 which invites comments to the draft ballot title for Initiative Petition 29 (2006).

1. INTRODUCTION

Initiative Petition 29 (2006) seeks to make all federal income taxes deductible for purposes of calculating Oregon's income tax. The proposal is a familiar one to Oregonians. A similar proposal was defeated in November, 2004 (Measure 88), and submitted in subsequent election cycles. *See e.g.* IP 11 (2004). The draft ballot title submitted for this initiative tracks that certified for IP 11 (2004) and is generally acceptable. However, we urge that the following revisions be adopted.

2. RESULT OF "YES" VOTE

The current draft is acceptable, with one correction. The word "expenditures" should be replaced with the word "services." This change is necessary in order for

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voters to understand the real impact of their “yes” vote – to reduce money available to pay for government services. The reference to expenditures is inadequate to do so.

Notably, the Oregon Supreme Court has approved of a reference to “services” when talking about the impact of a tax cut. In *Adams v. Kulongoski*, 322 Or 122, 130, 902 P2d 1191 (1995), the court inserted the following phrase to clarify the major effect of the property tax cap: “Limits revenue available for schools, other local services funded by property taxes.” The use of the word “services” is similarly accurate and necessary here.

3. SUMMARY

There are two problems with the draft summary. First, it fails to plainly tell voters that the proposal prohibits local governments from assessing income tax on money paid as federal income tax.¹ In light of Multnomah County’s income tax, voters need to have this information in order to evaluate the impact of their vote.

Second, the draft does not adequately describe the major effect of the proposal, to reduce revenues that are available to fund education, public safety, human resources and other state programs. This is exactly the kind of information that has been provided in other proposals reducing income tax. *See e.g. Novick v. Meyers*, 322 Or 361, 29 P3d 1098, (2001); *Novick v. Meyers*, 332 Or 447, 30 P3d 413 (2001); *Novick v. Meyers*, 333 Or 592, 42 P3d 908 (2002) (certifying ballot titles which specified that currently, state income tax revenue is directed to the State’s general fund and is used for “education, public safety, human services, and other state programs.”). A similar explanation is necessary here. Word space is found by deleting the lengthy quotation from the measure itself. What the proposal does – prohibit local governments from taxing money paid as federal income tax – can be described more succinctly. There is nothing so confusing about the wording of the measure that would require it to be quoted verbatim.

In light of these comments, we propose the following:

SUMMARY: Amends Constitution. Currently, personal income taxpayers may deduct limited amount of federal income taxes when calculating Oregon

¹ The draft quotes the initiative itself on this issue, but the point is effectively lost in the confusing language.

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taxable income (limit is \$5000 in 2006 and \$5500 in 2007; thereafter, limit is adjusted yearly for cost-of-living). This measure creates unlimited deduction for federal income taxes on individual taxpayers' Oregon returns beginning in 2008; deduction applies only to federal income taxes paid on income taxed in Oregon. Prohibits local governments from assessing income tax on money paid as federal income tax. Does not apply to corporate excise/income taxes. Currently, state income taxes go to state general fund and are used for education, public safety, human resources, other state programs. Measure reduces revenue available for those services and provides no replacement funding. Other provisions.

Thank you for your careful consideration of these comments. Please send me a copy of the certified ballot title as soon as it is available.

Sincerely,

SMITH, DIAMOND & OLNEY

Margaret S. Olney

MSO/lck
cc: Chip Terhune
Mark Toledo

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