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March 4, 2005

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Office of the Secretary of State  
141 State Capitol  
Salem, Oregon 97310-0722

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2005 MAR -4 PM 4:42  
BILL BRADBURY  
SECRETARY OF THE STATE

Re: Initiative Petition 30 (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 30 (2006).

1. INTRODUCTION

Initiative Petition 30 (2006), filed by Bill Sizemore, is a statutory proposal that seeks to ban any tax on internet access. The language in the proposal is identical to the current ban on internet access taxes passed by the 2001 legislature. ORS 305.882. The only difference is that current law allows taxes on the books as of October 6, 2001, to remain in effect. However, that may be a difference without any practical meaning. Commenters are unaware of any actual taxation in Oregon of internet access services at that time. Indeed, beginning in 1998, federal law imposed a moratorium on such access taxes. 1998 Internet Tax Freedom Act, 47 USC 151. That moratorium lapsed for one year (November 2003 to 2004), but President Bush signed a new moratorium in December, 2004. 2004 Internet Tax Non-Discrimination Act, Public Law 108.435. If, in fact, state or local governments were taxing internet



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access services as of October 6, 2001 in any significant degree, then the ballot title may properly refer the repeal of such taxes. However, if there are no current taxes being collected under this exception, then it is misleading to state that the proposal “repeals” any taxes.

Commenters will discuss their concerns below.

## 2. CAPTION

The draft ballot title fails to meet the statutory standards. First, the caption refers to both “internet” and “internet access.” However, the initiative clearly only applies to internet access services. The independent reference to “internet” is confusing, and suggests that the ban is broader than it is. Specifically, voters might be misled into believing that the measure is about taxing internet sales, which is clearly not the case.

Second, the caption should refer to both “internet access” and “use of internet access.” Presumably, the first type of tax would be one imposed on the ISP provider itself. The second would be a tax paid by the consumer. Both would be prohibited by the measure and therefore need to be referenced.

Finally, the caption should make clear that the proposal bans taxes *of any kind* on internet access or use of internet access.

We propose the following alternative:

**PROHIBITS STATE, LOCAL TAXES OF ANY KIND ON  
INTERNET ACCESS SERVICES, USE OF INTERNET  
ACCESS.**

## 3. RESULT STATEMENTS

The “yes” vote result statement is similarly deficient. It does not make clear that taxes “of any kind” are prohibited. It also continues to refer to “internet” and “internet access,” and omits any reference to “use of internet access.” Finally, the reference to repealing laws in effect is inappropriate unless there are actually taxes that are being collected. The mere possibility that there is some insignificant tax that remains on the books is not enough to warrant placement in the result statement.

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Voters should not be told that their vote will result in a specific action – particularly something as popular as repealing taxes – unless that is the actual result.

We propose the following:

**RESULT OF “YES” VOTE: “Yes” vote prohibits state and local government taxes of any kind on internet access services and the use of internet access.**

The draft “no” vote result statement appropriately attempts to describe current law, including the existence of current access taxes. However, the “no” vote result statement must also clearly tell voters that current law already contains a ban similar to that proposed by the initiative. The following alternative does so:

**RESULT OF “NO” VOTE: “No” vote retains current law banning taxes on internet access, use of internet access, except for those taxes, if any, in effect in October 2001.**

If there are no existing taxes on internet access being collected, then the reference to the exception should be deleted. In that event, voters should simply be told that a “no” vote will not change the status quo. We propose the following:

**RESULT OF “NO” VOTE: “No” vote does not change current law banning state or local government tax on internet access services or use of internet access.**

#### 4. Summary

The draft summary generally does a good job describing how the proposal works and its major effects. However, by quoting the text of the proposal itself, the summary fails to give voters a “simple and understandable” summary. The draft summary should also not contain any reference to the repeal of existing taxes unless, in fact, there are current taxes on the books that are being collected. In the alternative, the summary should make clear that the existence of such taxes is unknown, assuming that is true. Finally, the summary should tell voters in clearer language what is meant by “internet access” rather than simply stating the definition is consistent with current law. This point is particularly crucial in order to avoid any confusion over whether this proposal is about taxing internet commerce (*i.e.* a sales tax on internet transactions).

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We propose the following:

**SUMMARY: Current law prohibits state and local governments from taxing internet access or the use of internet access if the tax was not in effect on October 6, 2001. Beginning January 2, 2007, this measure prohibits state and local governments from imposing, assessing, collecting, or attempting to collect a tax of any kind on internet access or the use of internet access. Measure defines “internet access” to mean any service that give users access to the internet; does not include telecommunications or cable services. Measure supercedes any conflicting laws or “other enforceable government action.” Measure repeals the existing exception for internet access taxes in effect October 6, 2001, reducing revenue for those jurisdictions, if any, imposing such a tax. Provides no replacement revenue. Other provisions.**

Notably, this proposal does not use all of the words available. However, there is no need to put additional detail into the summary unless that detail truly helps voters understand how the proposal works or its major effects. For example, although there are sufficient words to talk about “state, cities counties and other political subdivisions” those taxing bodies can more simply be described as “state and local governments.” We urge that it be adopted.

Thank you for your careful consideration of these comments. Please forward the certified ballot title when it is prepared.

Sincerely,

SMITH, DIAMOND & OLNEY

Margaret S. Olney

MSO/lck  
cc: Chip Terhune  
Mark Toledo

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