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Dec. 13, 2005

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

Dear Mr. Secretary:

As an Oregon elector, who still possesses a few remaining First Amendment rights, I am writing to file comments on the draft ballot title for initiative # 111, which for the following reasons fails to comply with the statutory requirements for a ballot title.

I object to including the name of the proposed plan in the ballot title. The name was obviously designed to be appealing to voters. Including the name in the ballot title adds no useful information and biases the ballot title in favor of the measure.

I object to the ballot title not including the usual and customary phraseology like "provides no replacement funds". Clearly, this proposal would require enormous expenditures of money, yet nowhere in the ballot title is there a mention of that fact. I suggest a statement along the lines of:

"Measure requires substantial expenditure of state revenues, but provides no funding mechanism."

I also suggest that the ballot title state: "Unless taxes are increased, measure reduces revenue available for schools, public safety and other state financed services."

Absent these important pieces of information, the draft ballot titles misleads voters and reads more like a wish list for those favoring socialized health care.

Thank you for considering my comments.

Sincerely,

Bill Sizemore

BRUCE A. BISHOP
bruce.a.bishop@harrang.com

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December 13, 2005

HARRANG/LONG/GARY/RUDNICK P.C.
ATTORNEYS & COUNSELORS AT LAW

The Honorable Bill Bradbury
Oregon Secretary of State
Elections Division
Room 141, State Capitol
Salem, Oregon 97310-0772

Re: Comments on Proposed Initiative Petition Number 111

Dear Secretary Bradbury:

This law firm represents Steven C. Doty, an elector registered to vote in the State of Oregon. We write to state Elector Doty's comments regarding the draft ballot title, prepared by the Attorney General for your consideration, for Initiative Petition Number 111 ("Initiative 111"). This initiative is a proposal by Petitioners Dominga R. Lopez and Evan T. Saulino. A copy of the text of Initiative 111 is attached to this letter as Exhibit A.

BALLOT TITLE ISSUES

The Attorney General's draft ballot title does not substantially comply with the requirements of ORS 250.035(2). The caption of the title drafted by the Attorney General does not "reasonably identif[y]" the subject of the measure. ORS 250.035(2)(a). The draft ballot title does not provide simple and understandable statements that adequately describe the results if the measure is approved or rejected. ORS 250.035(2)(b) and (c) and 250.035(3). Moreover, the draft ballot title does not present a "concise and impartial statement" adequately summarizing the measure and its "major effect." ORS 250.035(2)(d).

On November 29, 2005, the Attorney General furnished you with a draft ballot title for Initiative 111. This letter describes specific deficiencies in the Attorney General's draft caption, draft statements of results and draft summary, all of which are attached as Exhibit B. We submit an alternative ballot title for consideration by the Attorney General and for his transmittal to you, the Secretary of State, for certification.

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The primary subject, as well as the major effect, of Initiative 111 is to establish a plan “. . . to improve the health of all Oregonians.” (Section 1.) To accomplish this purpose, the proposal directs the 2007 legislature to adopt “. . . legislation that establishes the organizational and financial framework for the Healthy Oregon Plan.” (Section 2.) The proposal also directs that the “Plan” “. . . must also incorporate the following principles” and then lists seven features. (Section 2.) In accordance with these principles, the proposal also directs that the “Plan” legislated by the 2007 legislature “. . . shall achieve universal coverage no later November [sic] 7, 2008.” (Section 3.)

The Caption

The Attorney General’s draft caption reads:

**“CREATES ‘HEALTHY OREGON PLAN,’ WHICH REQUIRES
LEGISLATURE TO ESTABLISH FRAMEWORK TO ACHIEVE
UNIVERSAL HEALTH COVERAGE”**

This draft caption is deficient because it does not reasonably identify the subject matter of the measure. ORS 250.035(2)(a). A caption should “convey the full scope of [a] proposed measure.” *Bendl v. Kulongoski*, 322 Or 160, 165, 902 P2d 1189 (1995). The specific deficiencies in the draft caption are detailed below.

First, the use in the caption of the name “Healthy Oregon Plan” is unwarranted because it is promotional, rather than descriptive, of the proposal’s main subject and major effect. To inform voters adequately of the proposal’s subject, the caption should describe its provisions, not just repeat its proponents’ name for their program. Otherwise, proponents will be able to propose program names that appeal to voters, regardless of how well—or whether—they relate to the proposal’s terms. To use an extreme example of the reason this practice should not be adopted in the preparation of ballot titles, a 15-word program name could be proposed as the entire caption.

Second, the phrase “. . . which requires legislature to establish framework” is erroneous because it modifies “Healthy Oregon Plan.” It is not the “Plan” which directs the 2007 legislature to act, it is the proposal itself in section 2. In fact, the “Plan” is nothing more than a name (“Healthy Oregon Plan”) and an aspiration (“improv[ing] the health of all Oregonians”) expressed in section 1 of the proposal. That is all the measure “creates.” Until the legislature has acted, there is no “Plan.” The draft caption is wrong and would mislead voters about the measure’s subject matter.

Third, the caption is inaccurate because it suggests that the legislative “framework” will “achieve universal health coverage.” That is not what the proposal accomplishes. Instead, the proposal

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seeks “. . . to improve the health of all Oregonians.” Section 1. It envisions the legislature’s doing so in adherence to “principles” that include “universal health care.”

But “health” (a condition) and “health care” (a service) are not the same as “health coverage” (a type of benefit) or as “access.” The proposal does not mention “health coverage,” and the draft caption is deficient in suggesting that it does. The measure does identify as part of its first “principle” that “. . . all Oregonians [have] access to comprehensive basic coverage for necessary and effective health care services.” That is a substantially more narrow class of benefits than the “universal health coverage” now contained in the draft caption. Finally, the proposal mandates that the 2007 legislative “plan” “. . . achieve universal coverage no later [than] November 7, 2008.” Section 3. But because this requirement is predicated on the measure’s “principles,” it is not reasonable to speculate, as the draft caption does, about the proposal’s likely effects or that the “universal coverage” deadline in section 3 constitutes a substantive requirement—particularly since it is much broader than the “comprehensive basic coverage” expressed in section 2.

Finally, the draft caption fails to describe adequately the scope of the measure, which clearly goes beyond “universal health coverage” (even if that were the proposal’s goal). Among other actions, the proposal directs the 2007 legislature to determine the “most effective use” of all government spending on health. By its terms, this requirement has enormous ramifications, sweeping in spending well beyond the state legislature’s reach, from benefits for members of the armed services to local public works projects to improve domestic water quality. Whether 2007 legislation could even affect such expenditures, the legislature must somehow consider them and comment on their most effective use. The silence of the caption (and the draft ballot title on this aspect of the proposal) clearly makes the caption (and the entire draft title) inadequate to inform voters of the measure’s subjects and scope.

For all these reasons, Elector Doty concludes that the draft caption fails to meet the legal requirements for a ballot title and should be modified substantially. To remedy the draft caption’s deficiency, Mr. Doty recommends that the following alternative caption be certified in lieu of the Attorney General’s draft caption:

**REQUIRES 2007 LEGISLATURE TO ADOPT AND FINANCE PLAN
ACHIEVING BASIC HEALTH CARE COVERAGE BEFORE 2009**

[15 words]

Unlike the Attorney General’s draft, this caption describes the full scope of the proposed initiative and informs voters of the measure’s major effect.

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Comments on Proposed Initiative Petition Number 111
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The Result Statements

The Attorney General has drafted result statements for Initiative 111 that are inadequate and misleading. Result statements must be “simple and understandable” statements that describe the result if the measure is approved or rejected. ORS 250.035(2)(b) and (2)(c). The Attorney General’s result statements do not substantially comply with those requirements for the following reasons.

First, the draft “Yes” result statement mirrors the draft caption. For the reasons expressed in the previous section of comments, this result statement also fails to adequately describe the result of approval of the measure, which is substantially broader in scope than the statement explains. More specifically, the use of the name “Healthy Oregon Plan,” the suggestion that the measure “creates” anything other than a name, and the reference to “universal health care coverage” are all misleading and inadequate to explain what would result from the measure’s approval.

Second, the draft “No” result statement is deficient because it too follows the caption’s flawed analysis and fails to explain clearly the result if the proposal fails. More specifically, the use of 11 words in a 25-word result statement to suggest that current law does “not requiring legislature to establish plan for universal health care coverage” is erroneous, misleading and unwarranted. For example, even if current law does not require the legislature to establish a plan for universal health care coverage, neither does the proposal, at least not by its specific terms. While it may be a result the proponents would want their proposal to have, that hope has no place in an objective statement of the results of a “no” vote on the matter.

In lieu of the Attorney General’s proposal, Elector Doty requests that the following result statements be certified for the ballot title:

RESULT OF “YES” VOTE: “Yes” vote requires 2007 Legislative Assembly to adopt and finance plan achieving basic health care coverage before 2009 to improve the health of all Oregonians. [25 words]

RESULT OF “NO” VOTE: “No” vote retains current state law and health care programs, without requiring 2007 legislative action for requiring and financing all Oregonians’ basic health care coverage. [25 words]

The Summary

A summary must be a “concise and impartial statement” that describes a prospective initiative and its “major effect.” ORS 250.035(2)(d). The Attorney General’s draft summary for Initiative 111 is inadequate because it fails to provide a concise, impartial statement describing the prospective initiative and its major effect.

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The draft summary perpetuates the flawed description adopted for the draft ballot title's caption and result statements. For the reasons specified with regard to these other portions of the ballot title, and because these same problems pervade the summary, the summary should be modified to provide a clear, objective and understandable explanation of the proposal and its major effect.

Of particular concern is the complete omission from the Summary of the requirement in the measure that the legislative enactment of the Healthy Oregon Plan ". . . determine the most effective use of all current Federal, State, County, and local health funding." As written, this is either a restatement of the state budget process that the legislature undertakes every two years or a new requirement for allocating public resources which constitute "health funding." Because it encompasses ". . . *all* . . . Federal, State, County, and local *health funding*," (emphasis added) however, it appears to be substantially broader than the usual state budgeting process. For this reason, the determination of how to allocate all health funding from government coffers at all levels should not be ignored altogether in the measure's ballot title.

To incorporate this important element of the proposal in the summary and to conform the summary to the amended versions of the caption and result statements requires substantial revision so that the ballot title meets the required legal standards. Petitioner Doty has made the changes necessary to satisfy these requirements, as set forth below. These have involved both corrections of erroneous descriptions in the draft summary, as well as editorial improvements to keep the summary within the prescribed 125-word limit. For example, the revised summary should remove the phrase in the first sentence that reads, ". . . but does not require legislature to establish plan for universal health care coverage" because, as previously discussed, this phrase is an inaccurate statement both of current law and of the proposed measure. Similarly, the expression of the deadline for universal coverage as "no later than November 7, 2008" is nearly verbatim from the proposed text, but unnecessary to be so included in the summary. Instead, the revised summary uses four fewer words by saying "before 2009." This communicates sufficient information for voters to understand the measure's deadline without merely repeating the measure's text and allows other, more important provisions of the proposal to be summarized instead.

To remedy the deficiencies in the Attorney General's draft summary of the ballot title, Elector Doty recommends that you certify the following summary instead:

SUMMARY: Currently, Oregon law establishes goals for universal health care and authorizes the Oregon Health Plan, among other programs, to help achieve that goal. Measure adds new "Healthy Oregon Plan" to improve all Oregonians' health. Mandates 2007 Legislative Assembly to establish organizational, financial framework for plan with public and expert comment. Requires determination of most effective use of all federal, state, county, local health

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funding. Incorporates seven principles addressing affordable health care access: comprehensive, basic coverage for necessary, effective health care services; cost management strategies, regulatory authority to keep costs sustainable; mandate on employers, employees to share costs; simplified administration; focus on preventative care and incentives; assessment and improvement of medical care outcomes; and reduced organizational barriers. Plan to achieve universal coverage before 2009. Other provisions. [125 words]

CONCLUSION

For all of the foregoing reasons, Elector Doty respectfully requests that the Attorney General's draft ballot title for Proposed Initiative 111 not be certified and that the following ballot title be used in place of the Attorney General's draft:

**REQUIRES 2007 LEGISLATURE TO ADOPT AND FINANCE PLAN
ACHIEVING BASIC HEALTH CARE COVERAGE BEFORE 2009**

RESULT OF "YES" VOTE: "Yes" vote requires 2007 Legislative Assembly to adopt and finance plan achieving basic health care coverage before 2009 to improve the health of all Oregonians.

RESULT OF "NO" VOTE: "No" vote retains current state law and health care programs, without requiring 2007 legislative action for requiring and financing all Oregonians' basic health care coverage.

SUMMARY: Currently, Oregon law establishes goals for universal health care and authorizes the Oregon Health Plan, among other programs, to help achieve that goal. Measure adds new "Healthy Oregon Plan" to improve all Oregonians' health. Mandates 2007 Legislative Assembly to establish organizational, financial framework for plan with public and expert comment. Requires determination of most effective use of all federal, state, county, local health funding. Incorporates seven principles addressing affordable health care access: comprehensive, basic coverage for necessary, effective health care services; cost management strategies, regulatory authority to keep costs sustainable; mandate on employers, employees to share costs; simplified administration; focus on preventative care and incentives; assessment and improvement of medical care outcomes; and reduced organizational barriers. Plan to achieve universal coverage before 2009. Other provisions.

These revisions will fix the deficiencies in the draft ballot title for Initiative 111.

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Thank you for your consideration of these comments on the problems in the draft ballot title for this proposed initiative and for your certification of a ballot title that meets both the legal standards required for such titles and your expectation that voters be given understandable explanations of the scope and effects of proposed measures.

Sincerely,

HARRANG LONG GARY RUDNICK P.C.

✓ Bruce A. Bishop ✓

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In recognition that our current health care system is financially unsustainable, and is not sufficiently providing for the health care needs of our population,

Be it enacted by the people of the State of Oregon:

SECTION 1. PLAN FOR A HEALTHY OREGON

There is created the Healthy Oregon Plan which is established to improve the health of all Oregonians.

SECTION 2. ORGANIZATION, FUNDING, PRINCIPLES

The 2007 Oregon Legislative Assembly must enact legislation that establishes the organizational and financial framework for the Healthy Oregon Plan. The Plan must be developed with the advice of interested individuals and organizations through public comment and expert testimony. The Plan will determine the most effective use of all current Federal, State, County, and local health funding. The Plan may include any current or proposed model(s) of health care delivery and coverage, but must also incorporate the following principles:

- (a) Universal health care that ensures all Oregonians access to comprehensive basic coverage for necessary and effective health care services.
- (b) Affordable health care for all Oregonians.
- (c) Cost management strategies and regulatory or administrative authority to keep total Plan costs sustainable, rising at a rate not greater than Oregon real Gross State Product.
- (d) An employer and employee mandate to proportionally share coverage costs with consideration of direct negotiations between employers and employees.
- (e) Simplified administration with system administrative overhead no greater than 6% of total health care costs under the Plan.
- (f) A focus on preventative care and incentives to maintain health.
- (g) Action to assess and improve outcomes of medical care and organizational barriers to effective care.

SECTION 3. IMPLEMENTATION

Following the principles stated in Section 2, the Healthy Oregon Plan shall achieve universal coverage no later November 7, 2008.

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EXHIBIT A
PAGE 1 OF 1

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

November 29, 2005

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

Re: Proposed Initiative Petition — Creates "Healthy Oregon Plan," Which Requires
Legislature To Establish Framework To Achieve Universal Health Coverage
DOJ File #BT-111-05; Elections Division #111

Dear Mr. Lindback:

We have prepared and hereby provide to you a draft ballot title for the above-referenced prospective initiative petition. The proposed measure relates to the creation of the "Healthy Oregon Plan."

Written comments from the public are due to you within ten business days after your receipt of this draft title. A copy of all written comments provided to you should be forwarded to this office immediately thereafter.

A copy of the draft ballot title is enclosed.

Sincerely,

Misty Kintz
Legal Secretary

RPK:mlk/APP86937

Enclosure

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

Dominga R. Lopes
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Evan T. Saulino
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EXHIBIT B
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DRAFT BALLOT TITLE

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**CREATES "HEALTHY OREGON PLAN," WHICH REQUIRES
LEGISLATURE TO ESTABLISH FRAMEWORK TO ACHIEVE
UNIVERSAL HEALTH COVERAGE**

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RESULT OF "YES" VOTE: "Yes" vote creates "Healthy Oregon Plan," which requires 2007 legislative assembly to establish organizational and financial framework for plan to achieve universal health care coverage.

RESULT OF "NO" VOTE: "No" vote retains current law, which establishes goals for universal health care, but does not require legislature to establish plan for universal health care coverage.

SUMMARY: Currently, Oregon law establishes goals for universal health care, but does not require legislature to establish plan for universal health care coverage. Measure creates "Healthy Oregon Plan"; requires 2007 legislative assembly to establish the organizational, financial framework for plan. Plan must be developed with advice of interested individuals, organizations through public comment, expert testimony; must determine most effective use of funding; must incorporate seven principles, including: ensuring all Oregonians access to comprehensive, affordable basic health care coverage for necessary health services; cost management strategies, regulatory authority to keep costs sustainable; mandate for employers, employees to share costs; simplified administration; focus on preventative care, incentives; assess, improve medical care outcomes and organizational barriers. Plan shall achieve universal coverage no later than November 7, 2008. Other provisions.

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EXHIBIT B
PAGE 2 OF 2

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December 13, 2005

The Honorable Bill Bradbury
Oregon Secretary of State
Elections Division
Room 141, State Capitol
Salem OR 97310-0772

Re: Comments on Constitutionality of Proposed
Initiative Petition Number 111

Dear Secretary Bradbury:

This law firm represents Steven C. Doty, an elector registered to vote in the State of Oregon. Please accept this letter as a statement from Elector Doty regarding the reasons proposed initiative petition number 111 ("Initiative 111") does not comply with constitutional procedural requirements for submission of proposed initiative petitions. For the reasons set forth below, you should decline to certify a ballot title for Initiative 111.

SINGLE SUBJECT RULE

Initiative 111 violates the requirements of Article IV, sections 1(2)(d) and 20, of the Oregon Constitution. Those sections provide in relevant part:

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. (Article IV, section 1(2)(d).)

Every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be embraced in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title. (Article IV, section 20.)

To determine whether an initiative contains more than one subject, Oregon courts "attempt to identify a unifying principle logically connecting all provisions of the act." *State ex rel Caleb v. Beesley*, 326 Or 83, 89, 949 P2d 724 (1997). As discussed below, no unifying principle logically connects the

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various provisions of Initiative 111. In fact, the measure includes a wide range of terms, which it neither defines nor uses consistently, making it seem like the measure declares substantive policy when instead, it may only initiate a process by which such actions will occur. These aspects of the proposal directly contravene Article IV, section 1(2)(d) of the Oregon Constitution. The multiple subjects of Initiative 111 include the following:

Plan For A Healthy Oregon

The main subject of the proposal is expressed in section 1, where the "Healthy Oregon Plan (HOP) is created ". . . to improve the health of all Oregonians."

Organization, Funding, Principles

The next subjects of Initiative 111 are expressed in section 2, where a series of directives and principles are outlined. These directives include requirements that (1) the legislature "enact legislation that establishes the organizational and financial framework for the Healthy Oregon Plan"; (2) the plan ". . . be developed with the advice of interested individuals and organizations through public comment and expert testimony," (3) the plan ". . . determine the most effective use of all current Federal, State, County, and local health funding; and (4) the plan ". . . also incorporate . . . principles." In addition to these directives, the plan *may* ". . . include any current or proposed model(s) of health care delivery and coverage." While some of these directives might be considered "properly connected" with the measure's subject, not all of them can be.

For example, in addition to the legislature's enactment of "frameworks" for the HOP, the plan must identify the most effective use of all government health funding and adhere to specified principles. If, like the construction of a residence, the HOP created by the proposal is its foundation and the legislative plan is its framework, then the determination of the effective use of government funds might be its fixtures, and the principles its furnishings. Voters cannot constitutionally be asked to approve all four of these assignments in one proposed initiative by showing them just a blank blueprint.

For these reasons, the Secretary of State should refuse to certify a ballot title for Initiative 111.

SUBJECT AND TITLE

Initiative 111 violates the requirements of Article IV, section 20, of the Oregon Constitution. This provision specifies:

Every Act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title.

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Constitutionality of Proposed Initiative Petition Number 111
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As explained previously, the proposal contains more than one subject. In addition, it does not express its subject in the title. In fact, the measure has no title. Neither the preamble before the “Be it enacted” declaration nor the first section after it satisfies this constitutional requirement.

For this reason, the Secretary of State should refuse to certify a ballot title for Initiative 111.

MATTERS PROPERLY CONTAINED THEREWITH

Although sections 1 and 20 of Article IV of the Oregon Constitution are often read only for their requirements on single subjects, both provisions also contain an important and identical constitutional requirement that proposals “. . . embrace . . . matters properly connected therewith.” The two clauses are punctuated differently in the two provisions.

Initiative 111 fails to meet these requirements because it contains an introduction that is extraneous to the proposal, argumentative and opinionated. This introduction reads, “In recognition that our current health care system is financially unsustainable, and is not sufficiently providing for the health care needs of our population . . .” The statement is not part of the proposal and is not proper for expression in a proposed measure. It represents matter not properly connected either with the proposed initiative’s subject or with its title. Instead, it is a declaration of the proponents’ political views, intended to influence voters’ attitudes about the measure without constituting a part of the proposal’s substantive provisions.

For this reason, the Secretary of State should refuse to certify a ballot title for Initiative 111.

NO SUBJECT OTHER THAN APPROPRIATION

Article IX, section 7, of the Oregon Constitution requires that appropriation measures contain no subjects other than appropriations. Initiative 111 directs the legislature to “determine the most effective use of all Federal, State, County, and local health funding.” Section 2. While some of these expenditures—at least federal and local health funding—are beyond the legislature’s reach, state and some county health funding may be subject to legislative appropriation, and the measure directs that legislative action make “the most effective use” of these funds. If this requirement of the proposal constitutes an appropriation, the measure fails to meet the constitutional standards imposed by Article IX, section 7. The Secretary of State should determine whether the proposal makes an appropriation, and if it does, refuse to certify a ballot title for Initiative 111.

CONCLUSION

Proposed Initiative 111:

- addresses multiple subjects,

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- contains no title,
- contains matter not properly connected to its subjects,
- makes an appropriation and addresses another subject (or subjects).

Accordingly, Initiative 111 should not be approved for circulation as a proposed measure, and no ballot title should be certified for it, on the grounds that it violates Article IV, sections 1(2)(d) and 20, and Article IX, section 7. Petitioner Doty respectfully requests that you so notify the chief petitioners of their proposal's constitutional infirmities.

Thank you for your consideration of these comments on the procedural constitutional deficiencies of Proposed Initiative 111.

Sincerely,

HARRANG LONG GARY RUDNICK P.C.

Bruce A. Bishop /

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