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2006 MAR 24 PM 1:23

BOB FARRADURY  
SECRETARY OF THE STATE

March 23, 2006

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

Dear Mr. Secretary:

I am writing to comment on initiative #3, which was filed for the 2008 general election.

I believe the draft ballot title fails to comply with the statutory requirement for ballot titles, because it contains a biased statement saying that the measure reduces revenue available for state expenditures. The measure would also put money in the pockets of taxpayers and create jobs and spur economic growth, but the ballot title does not say that. It is one sided.

I acknowledge that the statement about reducing revenue would be upheld by the State Supreme Court on appeal, but wish to register my complaint that they court has no statutory authority for including such a one sided, biased statement in a ballot title and should be reminded that in earlier years it recognized that fact and stated so.

The court used to say that is was not their job to campaign for or against measures by including one sided political statements in ballot titles, but have abandoned that principled stand.

Other than that one complaint, I believe the draft ballot title reasonably complies with the statutory requirements. It would be improved if it tracked the language of the measure more closely and said something to the effect of "Makes federal incomes taxes fully deductible on personal state tax returns", which closely resembles language that was approved by the court in a 2000 version of a very similar measure.

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\*  
Monica A. Smith

\* Member Oregon and Washington Bars

March 24, 2006

VIA FACSIMILE 503-373-7414  
AND REGULAR MAIL

The Honorable Bill Bradbury  
Secretary of State  
Elections Division  
141 State Capitol  
Salem, Oregon 97310-0722

RECEIVED  
2006 MAR 24 PM 2:16  
BILLY BRADBURY  
SECRETARY OF THE STATE

Re: Initiative Petition 3 (2008) - Draft Ballot Title Comments  
Our File No. 328

Dear Secretary Bradbury:

This firm represents Larry Wolf, 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 March 10, 2006 which invites comments to the draft ballot title for Initiative Petition 3 (2008).

1. INTRODUCTION

Initiative Petition 3 (2008) 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, 2000 (Measure 88), and submitted in subsequent election cycles. Most recently, Chief Petitioner Bill Sizemore submitted the identical proposal for the 2006 cycle. *See e.g.* IP 29 (2006); *see also*, IP 11 (2004). The draft ballot title submitted for IP 3 is similar, but not identical, to that certified for IP 29 (2006), and is generally acceptable. However, we urge that the following revisions be adopted. Commenters note that we made the same arguments on IP 29, to no avail. We still believe that they are well taken and urge the Attorney General to reconsider its position.

1500 NE Irving, Suite 370 • Portland, Oregon 97232-4207  
Phone: 503-229-0400 • Fax: 503-229-0614

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BILL BRADBURY  
SECRETARY OF THE STATE

## 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 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

The summary is generally adequate with one exception. While it correctly notes that the measure would result in a loss of revenue available for "state expenditures," it does not identify what those expenditures are. Yet that 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 taxable income (limit is generally \$5500, subject to cost-of-living adjustment starting in 2008). This measure creates unlimited deduction for federal income taxes on individual taxpayers' Oregon returns**

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beginning in 2010; 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: Clients

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BILL BRADBURY  
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