



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:

May 25, 2006

Contact: Carla Corbin
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on May 25, 2006, for initiative petition #19, proposing a statutory amendment, for the General Election of November 4, 2008.

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:

**PROHIBITS TEACHING PUBLIC SCHOOL STUDENT IN LANGUAGE OTHER THAN
ENGLISH FOR MORE THAN TWO YEARS**

RESULT OF "YES" VOTE: "Yes" vote prohibits teaching public school student in language other than English for more than two years (exception for teaching foreign language to English speakers).

RESULT OF "NO" VOTE: "No" vote retains requiring English courses for students unable to profit from classes taught in English, permitting multiple-language instruction to assist transition to English.

SUMMARY: Current law requires instruction in all school subjects (except foreign languages) to be primarily in English; permits instruction in more than one language so students whose native language is not English can make early transition to English; requires schools to provide English courses for children unable to profit from classes taught in English. Measure provides that no public school student shall be taught in language other than English for more than two years, with exception for classes teaching foreign language to English-speaking students. Limits "English immersion classes" (not defined) to no more than two years for students whose primary language is not English and who are not capable of being taught in English; after that, students shall be taught exclusively in English. Other provisions.

Chief Petitioner(s): Alan Grosso, 12100 SE 158th, Portland, OR 97236 and Bill Sizemore, PO Box 343, Beaver Creek, OR 97004.

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 June 9, 2006. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2008 general election ballot is determined by the total votes cast for all candidates for governor at the 2006 general election. These signatures shall be filed in this office not later than July 3, 2008.

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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

May 25, 2006

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

RECEIVED
MAY 25 11:07
SECRETARY
OF THE STATE

Re: Proposed Initiative Petition — Prohibits Teaching Public School Student In Language
Other Than English For More Than Two Years
DOJ File #BT-19-06; Elections Division #19

Dear Mr. Lindback:

We have reviewed the comments submitted in response to the draft ballot title for the above-referenced petition. In response, we have declined to modify the draft ballot title. We provide the enclosed certified ballot title.

This letter summarizes the comments we received and our responses to those comments. ORAP 11.30(7) requires this letter to be included in the record in the event that the Oregon Supreme Court reviews the ballot title.

A. The caption

Electors Larry Wolf and Chip Terhune (represented by Margaret Olney), along with chief petitioner Bill Sizemore, each describe the caption as misleading. The caption reads:

**PROHIBITS TEACHING PUBLIC SCHOOL STUDENT IN LANGUAGE
OTHER THAN ENGLISH FOR MORE THAN TWO YEARS**

The commenters assert that the caption may cause voters to mistakenly conclude that the proposed measure would prohibit English speakers from taking foreign language classes. They note that, although section 1(e) of the proposed measure generally provides that “no public school student shall be taught in a language other than English for more than two years,” it also provides that “[t]his section does not apply to classes which teach English speaking students a foreign language.”

The commenters accurately observe that the caption does not inform voters that the proposed measure’s general prohibition on teaching in a language other than English contains an exception for foreign language classes taught to English-speaking students. Nonetheless, the caption complies with ORS 250.035(2)(a), which requires the caption to “reasonably identif[y]

the subject matter” of the proposed measure. In general terms, the measure’s “subject matter” is, in fact, a prohibition on teaching public school students in a language other than English. Although the proposed prohibition is not absolute, and although the proposed measure would create certain exceptions to the prohibition, the caption — to comply with ORS 250.035 — need not describe the prohibition’s parameters or limitations. Instead, the caption, as written, fulfills its statutory purpose by informing voters that the measure’s subject matter is a prohibition on non-English instruction. ORS 250.035 does not require a more particular description of that prohibition.

In addition, commenters Wolf and Terhune maintain that the caption inaccurately suggests that the proposed measure “would allow meaningful instruction [for non-English speakers] in a language other than English for any period of time.” The proposed measure authorizes limited-duration “English immersion” courses for non-English speaking students, but it requires those students to subsequently “be taught exclusively in English.” §§ 1(a)-(c). According to Mr. Wolf and Mr. Terhune, “‘English immersion’ generally refers to a program where all instruction is in English.” As a result, they contend that the proposed measure would *never* permit non-English speaking students to be instructed in a language other than English.

We disagree. The proposed measure does not define “English immersion,” but it quite clearly contrasts “English immersion” courses with courses taught exclusively in English. Sections 1(a), 1(b), and 1(c) each provide that, for non-English speaking students, “English immersion [classes] shall be limited to not more than [one to two years, depending on a student’s grade level], after which time the student shall be taught exclusively in English.” Sections 1(a)-(c) thus demonstrate that, whatever the proposed measure means by “English immersion,” it necessarily means something other than a class taught exclusively in English. Moreover, section 1(e), in providing that “no public school student shall be taught in a language other than English for more than two years,” contemplates that non-English speaking students *may* receive instruction (albeit limited-duration instruction) in a language other than English. The caption accurately suggests that the measure would permit, to some extent and under some circumstances, instruction in a language other than English for all students.

Mr. Wolf and Mr. Terhune further assert that the caption inaccurately “suggests that all non-English speakers can receive instruction in English for two years.” They note that, under the proposed measure, “[i]f a non-English speaking student first enters the public school system at the kindergarten through the fourth grade level, English immersion classes shall be limited to not more than one year,” and that “[i]f a non-English speaking student first enters the public school system at the fifth grade through the eighth grade level, English immersion shall be limited to not more than one year and a half of a year.” §§ 1(a), 1(b). A two-year limit applies, under section 1(c), only to non-English speaking students who enter public school at the ninth through twelfth-grade levels.

Nonetheless, the caption — in noting that non-English instruction may not last “for more than two years” — is accurate. Indeed, it is indisputable that the proposed measure prohibits a non-English speaking student from taking classes in a language other than English “for more than two years.” Section 1(e) — which provides that “no public school student shall be taught in

a language other than English *for more than two years*" (emphasis added) — uses that exact phrase. Although the proposed measure identifies a shorter time limitation for certain categories of students, the phrase "for more than two years" is accurate nonetheless. No modification is required.

B. The "yes" and "no" result statements

The "yes" result statement reads:

"Yes" vote prohibits teaching public school student in language other than English for more than two years (exception for teaching foreign language to English speakers).

Commenters Wolf and Terhune assert that the "yes" result statement suffers from two of the same defects that afflict the caption: (1) it inaccurately suggests that the proposed measure "would allow meaningful instruction [for non-English speakers] in a language other than English for any period of time"; and (2) it suggests "that all non-English speakers can receive instruction in English for two years." But for the same reasons that we declined to modify the caption, we have declined to modify the "yes" result statement.

The "no" result statement reads:

"No" vote retains requiring English courses for students unable to profit from classes taught in English, permitting multiple-language instruction to assist transition to English.

Mr. Sizemore suggests that the "no" result statement should inform voters that, under current law, "other than English instruction can go on for six years." He asserts that English as a second language classes "today typically continue for six years," and that "[c]urrent law and policy provides for up to six years of ESL classes." We are unaware, however, of any current provision of law that suggests that ESL instruction typically continues for six years. Instead, the "no" result statement — by noting that current law "requir[es] English courses for students unable to profit from classes taught in English," and by noting that it "permit[s] multiple-language instruction to assist [the] transition to English" — accurately describes ORS 336.079 and ORS 336.074. ORS 336.079 provides:

Specific courses to teach speaking, reading and writing of the English language shall be provided at kindergarten and each grade level to those children who are unable to profit from classes taught in English. Such courses shall be taught to such a level in school as may be required until children are able to profit from classes conducted in English.

ORS 336.074 provides:

Instruction in all subjects in public, private and parochial schools shall be conducted primarily in English, except:

(1) Instruction in foreign languages.

(2) Instruction may be conducted in more than one language in order that pupils whose native language is other than English can develop bilingual skills to make an early and effective transition to English and benefit from increased educational opportunities.

The “no” result statement accurately describes the statutory requirements that will be retained if the proposed measure does not become law. Consequently, no modification is required.

C. The summary

The summary provides:

Current law requires instruction in all school subjects (except foreign languages) to be primarily in English; permits instruction in more than one language so students whose native language is not English can make early transition to English; requires schools to provide English courses for children unable to profit from classes taught in English. Measure provides that no public school student shall be taught in language other than English for more than two years, with exception for classes teaching foreign language to English-speaking students. Limits “English immersion classes” (not defined) to no more than two years for students whose primary language is not English and who are not capable of being taught in English; after that, students shall be taught exclusively in English. Other provisions.

Mr. Sizemore asserts that “[t]he language of the draft summary is biased against the measure,” that it uses “lofty language describing current law,” and that the phrase ““so students whose native language is not English can make early transition to English’ distorts reality.” In fact, the summary’s description of current law, rather than reflecting any bias on the Attorney General’s part, employs the precise phrases that appear in existing Oregon statutes. The summary’s reference to multiple-language instruction so that non-English speakers “can make [an] early transition to English” is drawn directly from the wording of ORS 336.074. *See* ORS 336.074(2) (“[i]nstruction may be conducted in more than one language in order that pupils whose native language is other than English can develop bilingual skills to *make an early * * * transition to English*”; emphasis added). Similarly, the summary’s reference to current law requiring English courses for “children unable to profit from classes taught in English” is drawn directly from the wording of ORS 336.079. *See* ORS 336.079 (“courses to teach speaking, reading and writing of the English language shall be provided at kindergarten and each grade level to those children *who are unable to profit from classes taught in English*”; emphasis added). The description appropriately reflects existing statutory requirements, and the wording

adopted by the Oregon Legislature. As a result, the summary's description of current law does not require modification.

Mr. Sizemore also suggests that the summary should inform voters "that the measure would limit ['English immersion'] instruction to one year for first through fourth graders, a year-and-a-half for fifth through eighth graders, and two years for high school students." Commenters Wolf and Terhune make a similar suggestion. Yet the summary already provides accurate information by informing voters that the proposed measure "provides that no public school student shall be taught in [a] language other than English for more than two years, with [an] exception for classes teaching foreign language to English-speaking students." As discussed already, the phrase "for more than two years" appears in the proposed measure itself. Moreover, providing more particular information about the shorter time limitations that apply to particular categories of non-English speaking students would require the omission of other information. Most likely, Mr. Sizemore's proposed addition would require the elimination of information about current law. But without the existing information about current law, voters' ability to understand the proposed measure's "major effect" would be compromised. *See* ORS 250.035(2)(d) (requiring ballot title summary to "sumariz[e] the state measure and its major effect"). We thus have declined to adopt the proposed additions.

Mr. Wolf and Mr. Terhune assert that the summary inaccurately suggests that "students will ever receive instruction in [a] language other than English." But for the same reasons discussed previously in this letter, we disagree. Instead, the summary accurately describes the proposed measure.

Finally, Mr. Wolf and Mr. Terhune assert that "although the foreign language for English speakers exception is mentioned in the draft 'yes' vote result statement, it is omitted from the summary." In fact, the summary does identify that exception, and it does so in the following sentence:

Measure provides that no public school student shall be taught in language other than English for more than two years, *with exception for classes teaching foreign language to English-speaking students.*

(Emphasis added.)

John Lindback
May 25, 2006
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D. Conclusion

Upon further review of the proposed measure, and after considering the comments that we received, we have declined to modify the ballot title at issue. We certify the attached ballot title under ORS 250.067(2).

Sincerely,

Rolf C. Moan
Assistant Attorney General

RCM:mlk/APP94169

Enclosure

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

Bill Sizemore
P.O. Box 343
Beavercreek, Oregon 97004

Alan Grosso
12100 SE 158th Avenue
Portland, Oregon 97236

Margaret S. Olney
Smith, Diamond & Olney
1500 NE Irving Street, Suite 370
Portland, OR 97232

BALLOT TITLE

**PROHIBITS TEACHING PUBLIC SCHOOL STUDENT IN LANGUAGE
OTHER THAN ENGLISH FOR MORE THAN TWO YEARS**

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