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2006 MAY 10 PM 2:27  
SECRETARY OF THE STATE

May 9, 2006

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

Dear Mr. Secretary:

I am writing as an Oregon elector to comment on the draft ballot title for initiative #20, which was filed for the 2008 general election. The draft ballot title fails to comply with the statutory requirements set forth in ORS 250.035.

My primary objection to the draft caption is the use of the word retention. It is highly unlikely that a voter will know what that word means, especially when there is no context for it in the caption. The previous portion of the caption deals with pay raises and does not lead a voter to make the transition to whom is kept when lay-offs occur.

This problem could be remedied simply by eliminating the word "past" from performance and inserting the word "job" before retention. It is not likely that anyone will conclude that current job retention will be based on future performance, because such a determination would be impossible at the time a decision regarding lay-offs would occur. The word "past" can be included in the Yes vote statement to insure that voters know what performance will be evaluated, when lay-off decisions are made.

I suggest that the word "specific" is not the best choice to describe the subjects upon which job retention would partly be based. The proposal does not require any specific subjects. It seems more accurate to say "relevant" subjects, because the subjects will be those the teacher will actually teach, if retained.

The new caption as proposed would read:

**CLASSROOM PERFORMANCE DETERMINES TEACHER PAY RAISES;  
PERFORMANCE, ACADEMIC TRAINING IN RELEVANT SUBJECTS DETERMINES JOB  
RETENTION**

The problem I see with the draft result of a "yes" vote statement is that it does not inform voters that the job retention provision kicks in only when lay-offs occur or teaching staff is reduced. Absent that qualification, a voter could easily conclude that all teachers would be evaluated now and their jobs be placed at immediate risk, based on these criteria. Of course, that is not the case under Initiative Petition #20.

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Sizemore comments on Initiative #20 ballot title  
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I have commented on hundreds of ballot titles over the years and have never had one of my suggested alternatives accepted, in spite of my best efforts at accuracy and fairness. I believe this one may be the first. I believe the following alternative covers all the bases.

**Result of a "Yes" vote: "Yes" vote ties public school teacher pay raises to classroom performance, not seniority; past teaching performance, relevant academic credentials determine job retention when lay-offs occur.**

The word "training" could be substituted in this alternative caption in the place of "credentials".

I have no alternative No vote statement to propose. The only comment I offer is that current practices in the real world are a far cry from the description set forth as current law in the No vote statement. In reality, teacher job retention and pay raises are based exclusively on seniority 99 percent of the time, because the law allows local school districts to make contracts that use seniority to determine these matters and the teachers unions always insist that everything be based upon seniority with a small incentive for advanced educational credentials, which do not have to be based up on the subjects the teacher actually teaches.

One of the weaknesses of the ballot title process is that it allows description of current law, even though that description is all but irrelevant to reality. The only way this misrepresentation could be avoided is to not describe current law in the No vote statement, but to say that a No vote rejects what is offered in the Yes vote statement. That would more accurately represent to voters the choice they will make under this proposal.

Regarding the draft summary, I cannot imagine the teachers union not having major objections, because it is accurate, concise and absent any bias. I could not have described the measure better myself, which leads me to believe the measure was clearly understood by the person drafting its ballot title.

Thank you for considering my comments.

Sincerely,

Bill Sizemore

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May 10, 2006

VIA FACSIMILE (503) 373-7414  
 AND REGULAR MAIL

RECEIVED  
 MAY 10 PM 4:41  
 CLERK OF THE STATE

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

Re: Initiative Petition 20 (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 April 26, 2006, which invites comments to the draft ballot title for Initiative Petition 20 (2008).

Initiative Petition 20 (2008) seeks to eliminate the current ability of local school districts to base teacher pay and pay raises on a number of factors, including years of service, educational levels, merit and any other factor it decides, usually in collective bargaining. Instead, it can only base pay raises on “classroom performance.” That term is undefined, but the proposal states that it cannot be “related to” or “connected” to years of service, i.e., seniority. In other words, seniority cannot be considered when determining “classroom performance” and pay raises.

Regarding job security, the proposal significantly changes current law, in which the order of layoff within a particular school district is governed by both the statute and the applicable collective bargaining agreement. Under the statute, the district must first determine the licensure and seniority of potentially affected employees.

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Seniority refers to a teacher's length of service as a teacher within the district. The statute then gives the district discretion to layoff a more experienced teacher if it determines that a less experienced teacher has more "merit and competence." The statute further prohibits school districts from bargaining away the right to consider competence in making layoff and recall decisions. ORS 342.934(8). "Competence" is defined to be recent teaching experience and/or educational training in the subject matter or grade level where the teacher would be assigned. ORS 342.934(9).

Initiative Petition 20 (2008) would severely limit a school district's discretion. It would prohibit local school districts from giving *any* consideration to a teacher's length of service and experience within the district when making layoff decisions. Instead, it requires the district to retain the teachers who are "the most qualified to teach the specific subjects." "Qualified" is then defined in a manner that is effectively identical to "competence and merit" under current law.

As discussed below, the draft ballot title fails to accurately identify the subject of the measure, because it fails to tell voters that the proposal *prohibits* any consideration of years of service.

## 1. CAPTION

The Attorney General proposed the following draft caption:

CLASSROOM PERFORMANCE DETERMINES  
TEACHER PAY RAISES; PAST PERFORMANCE,  
ACADEMIC TRAINING IN SPECIFIC SUBJECT  
DETERMINES RETENTION

There are two main problems. First, the draft omits the central subject of the proposal – to remove years of service as a factor that can be considered when determining pay raises and job security. It is essential that it do so to accurately capture the true subject of the proposal.

The Attorney General may believe that the proposal does not actually *prohibit* consideration of years of service, since experience in the classroom may correlate with classroom performance. That misses the point. Under the proposal, teachers cannot get a pay raise based upon working another year, i.e., years of service. Instead, the only factor a school district can consider is "classroom performance." The same is true with job retention. That is a fundamental shift that must be identified in the caption.

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The other problem is the draft caption's failure to put the term "classroom performance" in quotations, with notice to voters that the term is undefined. Without that signal, voters will assume that there is agreement on what constitutes positive "classroom performance." Is it test scores? Is it attendance? Is it lack of parent complaints? Who knows. Voters need to know that the measure mandates consideration of this one factor, but does not define what it means.<sup>1</sup>

To correct these problems, we propose the following:

**"CLASSROOM PERFORMANCE" (UNDEFINED)  
DETERMINES PAY RAISES; MOST "QUALIFIED"  
(DEFINED) TEACHER RETAINED; PROHIBITS  
CONSIDERATION OF SENIORITY.**

This alternative accurately alerts voters to the subject of the measure in terms that are not misleading. Voters will understand the essential subject of the proposal – the elimination of seniority as a factor in pay and layoff decisions. The only detail this alternative omits from the draft caption is the more complete description of how a school district determines who is the most "qualified" teacher. However, the reference to "qualified" accurately captures the fact that the proposal uses a subjective standard. Additional details can be found in the result statement and summary. We urge that it be adopted.

## 2. RESULT OF "YES" VOTE

The draft "yes" vote result statement suffers from the same deficiencies as the draft caption. It fails to make clear that the proposal bars consideration of seniority when determining pay raises and order of retention. This is true, even though the initiative does not expressly mention "seniority" when talking about layoff. The affirmative requirement that the district retain the "most qualified" teacher (based on relevant successful classroom experience and academic training), means that seniority cannot be considered. In other words, seniority cannot determine who is retained, even where two candidates are equal in terms of relevant academic training, experience and

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<sup>1</sup> In fact, the Attorney General did just this in the summary. When describing the measure's operative provisions, the Attorney General states that "classroom performance" is undefined. It makes no sense to do this in the summary, but not the caption and result statements.

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performance in that subject matter. Under those circumstances, the district would have to make a subjective determination on factors other than seniority.

We propose the following:

**RESULT OF “YES” VOTE:** “Yes” vote allows pay raises based only on teacher’s “classroom performance” (undefined); retention dependent on training, teaching performance in specific subject; prohibits consideration of seniority.

This alternative includes all concepts in the draft caption, plus the vitally important notice to voters that seniority is not a factor that school districts can consider when setting pay raises or determining order of layoff. We also have put “teacher” in front of “classroom performance” to make clear that the proposal is requiring an individualized determination.

### 3. RESULT OF “NO” VOTE

The draft “no” vote result statement is excellent. It appropriately and accurately highlights the fact that under current law, the local school district gets to make these decisions based upon a number of factors. It should not be modified.

### 4. SUMMARY

The draft summary can be improved in a number of areas. First, the description of current law, while accurate, uses a lot of words to only generally describe the status quo. It should more closely track the “no” vote result statement and explain to voters that school districts can establish teacher pay and retention based upon a number of factors, including years of service, educational attainments, merit and competence<sup>2</sup> and licensure.

Second, the description of current law fails to adequately tell voters that seniority cannot be considered in making layoff decisions. In addition, the placement of the sentence dealing with existing contracts is misleading, because it suggests that the retention provisions are not subject to the same limitation.

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<sup>2</sup> Note that we propose using “merit and competence” because that is the term currently used in the ORS 342.934 and it will not be confused with this measure’s requirement that only the most “qualified” teacher be retained.

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In light of these comments, we propose the following alternative:

**SUMMARY:** Current law allows local public school district boards to establish pay, layoff and other employment terms, subject to state law and collective bargaining. School districts pay and retain teachers based upon number of factors, including merit and competence, teaching experience, educational attainments, licensure, and years of service in the District (seniority). Authorizes school districts to give teacher pay raise based only on his or her “classroom performance” (undefined); teacher’s seniority cannot be considered. During layoffs, school district must identify and retain “most qualified” teacher, based only on teacher’s “past classroom experience successfully teaching the specific subject” and academic training in that subject. Teacher’s seniority cannot be considered. Applies only to teacher contract extensions and new contracts made after the effective date of measure. Other provisions.

This alternative shortens some aspects of the description of current law and provides other additional detail. We also make clear that for each type of action – pay raises and retention – the proposal prohibits consideration of seniority. We also make clear that the measure requires an individualized determination of teacher performance. We urge that it be adopted.

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

Sincerely,

SMITH, DIAMOND & OLNEY

Margaret S. Olney

MSO/lck  
cc: Clients