



## OFFICE OF THE SECRETARY OF STATE

### NEWS RELEASE

**BILL BRADBURY**

**For Immediate Release:**

June 23, 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 June 23, 2006, for initiative petition #22, proposing a constitutional 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:

**AMENDS CONSTITUTION: MAKES OREGON CONSTITUTIONAL GUARANTEE OF  
FREE EXPRESSION OF OPINION INAPPLICABLE TO CONDUCT OR PERSONAL  
BEHAVIOR**

**RESULT OF "YES" VOTE:** "Yes" vote restricts constitutional guarantee of free expression of opinion to apply to beliefs, thoughts, and personal judgment but not to conduct or personal behavior.

**RESULT OF "NO" VOTE:** "No" vote retains constitutional guarantee of free expression of opinion as covering certain conduct and personal behavior as well as beliefs, thoughts, and personal judgment.

**SUMMARY:** Amends constitution. Currently, the Oregon Constitution provides, in part: "No law shall be passed restraining the free expression of opinion or restricting the right to speak, write, or print freely on any subject whatever." Oregon courts have interpreted this constitutional provision to guarantee rights more broadly than free speech rights guaranteed under the First Amendment to the United States Constitution and to prohibit certain restrictions not only regarding spoken or written material, but also regarding some expressive conduct or personal behavior that is considered to be constitutionally protected free expression of opinion. Measure limits constitutionally protected expression by defining "free expression of opinion" as applicable to "beliefs, thoughts, and personal judgment regarding a matter" and directing that it "shall not include conduct or personal behavior."

Chief Petitioner(s): Lon Mabon, PO Box 13109, Salem, OR 97309 and Robert Ekstrom, 51163 Bankston RD, Scappoose, OR 97056.

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 July 10, 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.

# # #



**DEPARTMENT OF JUSTICE**  
APPELLATE DIVISION

June 23, 2006

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

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2006 JUN 23 PM 1:52  
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OF STATE

Re: Proposed Initiative Petition — Amends Constitution: Makes Oregon Constitutional Guarantee Of Free Expression Of Opinion Inapplicable To Conduct Or Personal Behavior  
DOJ File #BT-22-06; Elections Division #22

Dear Mr. Lindback:

We have reviewed the comments submitted in response to the draft ballot title for the above-referenced prospective initiative petition. We provide the enclosed certified ballot title. We have changed the “no” result statement and the summary in response to the comments.

This letter summarizes the comments we received, our response to those comments, and the reasons why we declined to make some of the changes to the ballot title proposed by the commenters. Under ORAP 11.30(7), this letter must be included in the record in the event the Oregon Supreme Court is asked to review this ballot title.

Lon T. Mabon (chief petitioner of this measure) and Charles F. Hinkle (on behalf of Candace Morgan and David Fidanque) submitted comments concerning this ballot title. Specifically, commenter Mabon suggested that each portion of the ballot title indicate that it “reestablishes” the original intent of the constitutional guarantee of free expression of opinion. Commenters Morgan and Fidanque made no substantive objections to the caption or to the “yes” result statement, but they objected to the “no” result statement and to the summary as inaccurately stating existing law.

**Commenter Mabon**

Commenter Mabon’s suggestion that each portion of the ballot title should indicate that it “reestablishes the original constitutional guarantee to free expression of opinion which excluded conduct and behavior” is not well taken. Determining the original intent of the constitution’s drafters is made difficult by the absence of contemporaneous declarations of that intent by the drafters. Nevertheless, the Oregon Supreme Court repeatedly has stated that its purpose when interpreting the Oregon Constitution is to ascertain and give effect to the intent of the framers of that constitution and of the people who adopted it. Although the commenters’ disagreement with

that interpretation is a legitimate issue for political debate, it would not be proper to include it in an unbiased and impartial ballot title. For that reason, we decline to make this proposed change to the ballot title.

### **Commenters Morgan and Fidanque**

Commenters Morgan and Fidanque offer no substantive objection to the caption or to the “yes” result statement, but contend that the words “conduct,” “personal behavior,” “beliefs,” “thoughts,” and “personal judgment” should be placed in quotation marks because “their meaning may be subject to interpretation and dispute,” and because it purportedly would alert the voters that these words were taken from the proposed measure. We believe this use of quotation marks would not clarify the meaning of the ballot title but, instead, more likely would confuse voters by suggesting that the words had a meaning other than their plain meaning. Consequently, we decline to make these proposed changes.

Commenters Morgan and Fidanque contend that the “no” result statement improperly implies that all conduct and behavior is protected by Article I, section 8, of the Oregon Constitution. On the slim chance that voters might draw that inference, we have added the word “certain” to modify the terms “conduct and personal behavior” to explain existing law. These commenters also object to inclusion of the phrase “personal judgment” because it has “never appeared in any appellate court decision in Oregon with reference to the applicability of Article I, Section 8.” That reason is not the proper standard; ORS 250.035(2)(b) requires the “yes” and “no” result statements to contain parallel language “to the extent practical.” These commenters did not object to the phrase “personal judgment” in the “yes” result statement, and it is appropriate to include it in the “no” result statement. We decline to make this proposed change. We certify the following “no” result statement:

“No” vote retains constitutional guarantee of free expression of opinion as covering certain conduct and personal behavior as well as beliefs, thoughts, and personal judgment.

These commenters raise several objections to the summary. First, they argue that the full text of Article I, section 8 should be included (that is, the final phrase indicating “but every person shall be responsible for the abuse of this right.”) Word limitations dictated exclusion of this phrase; because the proposed amendment would not alter that provision — all persons still will be responsible for abuse of this right, however the right is defined — its omission is proper. To address that concern, however, we have modified the summary to indicate that the constitutional quotation only is “in part.”

Second, the commenters object to reference to the First Amendment and to the description of federal interpretation of free speech rights. The commenters’ dismissive suggestion that the United States Constitution is merely “the law of some other jurisdiction” is not only disingenuous but borders on the offensive. As the supreme law of the land, it is entirely appropriate to be considered in deciding the extent of state constitutional protections of such

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speech. Had the summary relied on the municipal code of Cucamonga, California or on the civil code of Afghanistan, their point might be well taken.

The commenters' objection to the draft summary's description of First Amendment case law, however, has some merit. To avoid misimpression, we have eliminated the reference to "time, place, and manner" restrictions and modified it to indicate that "some expressive" conduct or personal behavior currently is protected. We certify the following summary:

**SUMMARY:** Amends constitution. Currently, the Oregon Constitution provides, in part: "No law shall be passed restraining the free expression of opinion or restricting the right to speak, write, or print freely on any subject whatever." Oregon courts have interpreted this constitutional provision to guarantee rights more broadly than free speech rights guaranteed under the First Amendment to the United States Constitution and to prohibit certain restrictions not only regarding spoken or written material, but also regarding some expressive conduct or personal behavior that is considered to be constitutionally protected free expression of opinion. Measure limits constitutionally protected expression by defining "free expression of opinion" as applicable to "beliefs, thoughts, and personal judgment regarding a matter" and directing that it "shall not include conduct or personal behavior."

For the reasons stated above, we have modified the "no" result statement and the summary in response to the comments and as a result of our further review of the proposed measure. We certify the attached ballot title pursuant to ORS 250.067(2).

Sincerely,

Douglas F. Zier  
Assistant Attorney General

DFZ:mlk/APP95283

Enclosure

c: Peter Shepherd, Deputy Attorney General  
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**BALLOT TITLE**

**AMENDS CONSTITUTION: MAKES OREGON CONSTITUTIONAL  
GUARANTEE OF FREE EXPRESSION OF OPINION INAPPLICABLE  
TO CONDUCT OR PERSONAL BEHAVIOR**

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