



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
July 29, 2007

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 July 27, 2007, for initiative petition #108, 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: USING, ACCEPTING MONEY TO PERFORM OR FACILITATE ABORTION, FACILITATE OR CAUSE PERSON'S DEATH IS MURDER

RESULT OF "YES" VOTE: "Yes" vote criminalizes as murder using or accepting money to facilitate or perform an abortion and using or accepting money to facilitate a person's death.

RESULT OF "NO" VOTE: "No" vote retains current law allowing some abortions, allowing post-conception contraceptives, patient-authorized assistance in dying; "murder" is unlawfully causing death of living, born person.

SUMMARY: Amends constitution. United States Constitution permits abortion before fetus becomes viable and, thereafter, if the woman's life or health is endangered; permits post-conception birth control. Criminal homicide (including murder) means causing the death of another "human being," defined as a person born and alive at the time. Murder for hire, soliciting another to commit murder for hire constitute "aggravated murder," punishable by death penalty. A person may be criminally liable for another's conduct. Assistance in dying, withdrawing or withholding life-sustaining procedures, if authorized by patient, are lawful under certain circumstances. Measure criminalizes as murder: using or accepting public or private funds to facilitate or perform abortion or terminate pregnancy (excepts ectopic pregnancies); using funds to facilitate or cause death (excepts death penalty). Other provisions.

Chief Petitioner(s): Jack Brown, 745 NE 12th ST, Grants Pass, OR 97526, Richard Hake, 4980 East Evans Creek RD, Rogue River, OR 97537 and Barbara Gonzalez, 1820 Robinson RD, Grants Pass, OR 97527.

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 August 10, 2007. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2008 general election ballot is 110,358. These signatures shall be filed in this office not later than July 3, 2008.

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RECEIVED

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

2007 JUL 27 PM 2:46

July 27, 2007

ELL BRADBURY
SECRETARY OF THE STATE

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

Re: Proposed Initiative Petition — Amends Constitution: Using, Accepting Money To Perform Or Facilitate Abortion, Facilitate Or Cause Person's Death Is Murder
DOJ File #BT-108-07; Elections Division #108

Dear Mr. Lindback:

Enclosed with this letter is the final ballot title certified on July 27, 2007. This letter explains both the changes we made to the draft ballot title in response to the three comment letters we received, and why we did not make some of the suggested changes.

We received comments from Jack Alan Brown, Jr.; Kurt Ramme; and Katherine McDowell, on behalf of Stephanie Van Zuiden and Teresa Domka.

ORAP 11.30(7) requires that this letter be included in the record in the event the Oregon Supreme Court reviews this ballot title.

The Caption

The caption for the ballot title of a state measure must reasonably identify the subject matter of the measure and contain no more than 15 words. ORS 250.035(2)(a). A caption complies substantially with the requirements of ORS 250.035(2)(a) if it identifies the subject matter of the proposed measure in terms that will not confuse or mislead potential petition signers and voters. *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 988 (2001). The caption is the “cornerstone for the other portions of the ballot title” and its “headline,” and it “provides the context for the reader’s consideration of other information in the ballot title.” *Id.*

The caption must “inform potential petition signers and voters of the sweep of the measure.” *Terhune v. Myers*, 342 Or 475, 479, 154 P3d 1284 (2007). It must identify the “principal effect” or “actual major effect” of the proposed measure, *id.*, without being inaccurate or underinclusive, *Hunnicut v. Myers*, 342 Or 491, 495, 155 P3d 870 (2007).

Commenters Van Zuiden and Domka object that the draft caption fails to comply with the statute because it is too narrowly phrased: it fails to inform voters that the measure would

prohibit physician-assisted aid-in-dying and all abortions except in the case of ectopic pregnancies.

Commenter Brown similarly objects that the caption is deficient because it fails to inform voters that the measure prohibits not only abortions, but also “so-called mercy killings,” that involve the use or payment of funds. Brown suggests that the caption include the concept that “human beings” are protected from “murder for hire” from the time of conception.

We agree with those commenters that the draft ballot title is too narrowly phrased and does not accurately inform voters about the scope and coverage of the measure. The subject matter of the measure — its principal and actual effect — is to criminalize as murder using or accepting funds of any kind to terminate pregnancy or to cause the death of a person who is born and alive. The “sweep” of the measure is broad.

For that reason, we believe that the alternative caption offered by Van Zuiden and Domka, which refers to only abortion and physician-assisted dying, is also too narrow.

We do not agree with commenter Brown that the caption must inform voters that the measure “changes the definition of ‘human being’” in such a way as to “make a human being’s beginning coincide with conception.” We also disagree with his comment that the measure “result[s] in the same treatment of the preborn as the born.” The measure criminalizes as murder the use of funds “to facilitate the killing of any human being from the moment of conception * * * and the acceptance of funds for performing such a procedure.” Thus, it creates a new crime of murder based on a different use of the term “human being” than the definition currently provided by statute. The measure says nothing about the treatment of “the preborn” in any other context.

We also find Brown’s suggested phrase “murder for hire” to be both biased and underinclusive, as it fails to capture the measure’s scope. Therefore, we have modified the caption as follows:

**AMENDS CONSTITUTION: USING, ACCEPTING MONEY TO
PERFORM OR FACILITATE ABORTION, FACILITATE OR CAUSE
PERSON’S DEATH IS MURDER**

The Result Statements

The two result statements are required to describe the results of approving and rejecting the measure. The statements are limited to 25 words. ORS 250.035(2)(b) and (c). A “no” result statement describes the result if the proposed measure is rejected. ORS 250.035(2)(c). ORS 250.035(3) requires the two statements to be parallel “to the degree practicable.”

A “yes” vote result statement must accurately describe in simple and understandable terms the result if the proposed measure is approved. *Mabon*, 332 Or at 639. Like the caption, the “yes” result statement must inform voters of the measure’s key concepts and primary purpose. *Stacey v. Myers*, 342 Or 455, 458-59, 154 P3d 109 (2007). It should reflect the

proposed measure's "most significant and immediate consequences." *Pelikan v. Myers*, 342 Or 383, 390, 153 P3d 117 (2007).

We agree with commenters Van Zuiden and Domka that the draft "yes" result statement is deficient because it describes only one result of approving the measure: effectively criminalizing abortion. We believe the measure, on its face, criminalizes as murder the use of funds to facilitate or cause *any* termination of pregnancy or *any* death of a person who is born and alive. The most significant and immediate consequences of approval, however, are including within the crime of murder facilitating or performing an abortion (by any means) and facilitating the death of a person, including by physician-assisted dying and withdrawal or withholding of life-sustaining procedures.

Consequently, we have modified both the "yes" and "no" result statements accordingly.

Therefore, we certify the following "yes" and "no" vote result statements:

RESULT OF "YES" VOTE: "Yes" vote criminalizes as murder using or accepting money to facilitate or perform an abortion and using or accepting money to facilitate a person's death.

RESULT OF "NO" VOTE: "No" vote retains current law allowing some abortions, allowing post-conception contraceptives, patient-authorized assistance in dying; "murder" is unlawfully causing death of living, born person.

The Summary

The summary is to be a "concise and impartial statement of not more than 125 words summarizing the state measure and its major effect." ORS 250.035(2)(d). The goal of the summary is to "help voters understand what will happen if the measure is approved" and "the breadth of its impact." *Mabon*, 332 Or at 640.

Commenters Van Zuiden and Domka object that the draft summary fails to inform voters how the measure changes current law on "abortion, criminal homicide, murder, and solicitation of murder."

Commenter Ramme objects that the draft summary uses the word "abortion" twice but says very little about the proposed measure. He comments that the effect of the measure is "to defund for the taking of any 'HUMAN LIFE' whether in the womb or outside the womb."

For the reasons discussed above, we agree with those commenters that the draft summary fails to convey to voters the breadth of the measure's impact.

Commenter Brown objects that the summary is deficient in the same way that the caption is deficient. We have addressed those comments, above. In addition, he asserts that the draft summary incorrectly states that the United States Constitution permits abortion. He also

suggests that the draft summary is biased against the measure. We disagree with both of those comments.

We certify the following summary:

SUMMARY: Amends constitution. United States Constitution permits abortion before fetus becomes viable and, thereafter, if the woman's life or health is endangered; permits post-conception birth control. Criminal homicide (including murder) means causing the death of another "human being," defined as a person born and alive at the time. Murder for hire, soliciting another to commit murder for hire constitute "aggravated murder," punishable by death penalty. A person may be criminally liable for another's conduct. Assistance in dying, withdrawing or withholding life-sustaining procedures, if authorized by patient, are lawful under certain circumstances. Measure criminalizes as murder: using or accepting public or private funds to facilitate or perform abortion or terminate pregnancy (excepts ectopic pregnancies); using funds to facilitate or cause death (excepts death penalty). Other provisions.

Accordingly, we certify the attached ballot title pursuant to ORS 250.067(2).

Sincerely,

Judy C. Lucas
Senior Assistant Attorney General

JCL:mlk/APPB0303

Enclosure

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

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Grants Pass, Oregon 97526

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BALLOT TITLE

**AMENDS CONSTITUTION: USING, ACCEPTING MONEY TO
PERFORM OR FACILITATE ABORTION, FACILITATE OR CAUSE
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