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Grants Pass, Oregon 97526  
July 4, 2007

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Office of the Secretary of State  
John Lindback, Director, Elections Division  
141 State Capitol  
Salem, Oregon 97310-0722

Sir,

I am writing to comment on the draft ballot title for initiative petition #108 which begins with the caption "Amends Constitution: Using Funds To Facilitate Abortion Or Accepting Funds For Performing Abortion Is Punishable As Murder."

According to the Secretary of State's Initiative and Referendum Manual, the summary of the prospective initiative must "not exceed 125 words. The summary must be concise and impartial and summarize the measure and its major effect."

As one of the chief petitioners for this initiative, I am writing to comment on what I consider a major deficiency in the 'summary statement' that bleeds over into the 'caption', which I therefore find deficient as well. First and foremost, the initiative changes the definition of "human being" from what the summary holds forth in its history lesson! The initiative would make a human being's beginning coincide with conception, thus resulting in the same treatment of the preborn as the born. It protects human beings from being the target of a 'hit man' by criminalizing financial consideration being paid or received. While it is true that this likely would have an effect the frequency of abortions, it would also come into play with so-called mercy killings under the same financial circumstances, and would block any future state legislative or judicial actions supporting the commercialization of infanticide. To be in line with the facts of the initiative's clear wording, the caption would have to be more on the order of these 15 words (excluding 'amends constitution'):

AMENDS CONSTITUTION: HUMAN BEINGS SUCH FROM CONCEPTION, THUS BEING PROTECTED FROM MURDER FOR HIRE, BORN OR UNBORN.

The summary statement devotes too much space to a history lesson which takes away from its ability to deal with what the initiative would accomplish, beginning with the erroneous stated assumption that the United States Constitution permits abortion. It is a Supreme Court ruling that permits abortion. If less political argument in favor of part of what this initiative would impact were contained in the summary statement, there would be more room for an objective, complete summary statement.

Sincerely,

Jack Alan Brown Jr

July 05, 2007

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

Dear Mr. Lindback:

I am responding to the proposed initiative petition #BT-108. No where in the petition is the word abortion used but in the summary by the state the word abortion is used twice. Very little is said in the summary of the proposed petition.

The proposed petition is to defund for the taking of any "HUMAN LIFE" whether in the womb or outside the womb. The only exception is to that of ending of an ectopic pregnancy and the execution of human being convicted of a capital offense by a jury of his peers are not hereby prohibited.

Sincerely,

Kurt A. Ramme

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KATHERINE A. MCDOWELL  
Direct (503) 595-3924  
2007 JUL 12 PM 2: 25  
katherine@mcd-law.com

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SECRETARY OF THE STATE

July 12, 2007

VIA FACSIMILE – 503-373-7414

Elections Division  
Room 141 State Capitol  
Salem, OR 97310-0722

**Re: Public Comment on Proposed Initiative Petition Filed June 19, 2007 by Jack Brown, Richard Hake, and Barbara Gonzalez (No. 108)**

To the Elections Division:

On behalf of the ACLU Foundation of Oregon, we represent Stephanie Van Zuiden and Teresa Domka, both of whom are registered Oregon electors. This is to submit comments and proposed revisions to the draft ballot title proposed for the initiative listed above, Initiative Petition 108 (IP 108).

This measure attempts to bring before the Secretary of State the same proposals submitted in IP 83, a proposed constitutional amendment that was rejected in May 2007. IP 108 suffers from the same flaws as IP 83, and should be rejected on the same grounds.

In the alternative, we request that the ballot title for IP 108 be amended to conform to the requirements of ORS 250.035 because the current ballot title omits critical facts and fails to reflect IP 108's substantial change to Oregon law.

1. IP 108 should be rejected because it violates Article XVII, section 1.

The Secretary of State should not permit the circulation of IP 108 because the measure that the petition proposes contains more than one amendment in violation of Article XVII, section 1. See *Armatta v. Kitzhaber*, 327 Or 250 (1998), *Lehman v. Bradbury*, 333 Or 231, 245 n9 (2002). A similar initiative, IP 83, was recently rejected on the same grounds based on advice from the Attorney General. See Proposed Initiative Petition #83, available at <http://www.sos.state.or.us/elections/irr/2008/083text.pdf>; Public Comment from Gregory Chaimov on Proposed Initiative Petition #83, available at <http://www.sos.state.or.us/elections/irr/2008/083cmts.pdf>; Letter from Philip Schradle, Special Counsel to the Attorney General, regarding Proposed Initiative Petition #83, attached as Exhibit 1. Because IP 108 suffers from the same deficiencies as IP 83, it should not be presented to Oregon voters.

IP 83, the "Human Life Amendment," proposed an amendment to the Constitution of Oregon stating that "all human life is protected from conception to natural death." The amendment had three subsections stating that the amendment (1) prohibited abortion, (2) prohibited euthanasia, and (3) established life as beginning at conception. *See Proposed Initiative Petition #83.*

On May 8, 2007, the Secretary of State rejected IP 83 based on advice from the Attorney General. *See Initiative 83 Notes*, available at [http://egov.sos.state.or.us/elec/web\\_irr\\_search.record\\_detail?p\\_reference=20080083.LS\\_CYYY](http://egov.sos.state.or.us/elec/web_irr_search.record_detail?p_reference=20080083.LS_CYYY); Letter from Carla Corbin, Compliance Specialist, attached as Exhibit 2. The Office of the Attorney General took the position that IP 83 "embraces multiple amendments that must be made separately," and that "by adding provisions protecting all human life from conception to natural death and expressly prohibiting abortion and euthanasia," the "provisions of the proposed measure would restrict the legislative power of the Legislative Assembly and the people to enact laws affecting matters at the beginning and end of human life." *See Exhibit 1 at p.1.*

Faced with the Secretary of the State's rejection of IP 83, the authors of IP 108 have attempted to circumvent that rejection by proposing an amendment that uses different words to achieve precisely the same result.

First, IP 108 proposes to criminalize as murder "the use of public or private funds to facilitate the killing of any human being from the moment of conception." Abortion and aid-in-dying are medical procedures with some attendant financial costs. By banning the receipt or use of any funds to perform abortions or physician assisted dying, including funding from fees for clinic service, public health funding and funding from private grants and donors, the measure effectively bans all abortions and aid-in-dying. Put another way, because there are costs associated with abortion and aid-in-dying, a ban on all abortion-related and aid-in-dying-related funding is an indirect but completely effective way to criminalize both services. Because no clinic can ever show that abortion-services or physician assisted deaths are free of any costs, a clinic could not provide abortions or physician assisted deaths under this measure, even free abortions and aid-in-dying provided by unpaid health care professionals.

Second, IP 108 changes the definition of murder. Currently, murder is defined as causing the death of another "human being," defined as a person who was born and was alive at the time of the criminal act. *See Oregon Revised Statutes 163.005.* As the law currently stands, the abortion of an unborn fetus is not murder. IP 108 makes the acceptance of funds for performing abortions a crime punishable as murder. The only way this purported crime could be punishable as murder is if the definition of "human being" under Oregon law was expanded to include not just a person who was born, but an unborn fetus.

Taking these points together, the net effect of IP 108 is identical to IP 83: the measure (1) prohibits abortion, (2) prohibits Death with Dignity, and (3) establishes life as

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Elections Division

July 12, 2007

Page 3

beginning at conception. The authors of IP 108 should not be permitted to play linguistic games in order to get around the Secretary of State's previous decision on these issues.

In addition to attempting to criminalize abortion and aid-in-dying, thus restricting the state's existing constitutional authority to permit both procedures,<sup>1</sup> by defining life as beginning at conception IP 108 also proposes to add a provision that would restrict a person's access to contraception. By expanding the scope of criminal homicide under ORS 163.005, IP 108 may also add to the conduct that can be punished under Measure 11 and cannot be changed without supermajority votes under Article IV, section 33.

These numerous attempted changes to the Oregon Constitution violate Article XVII, section 1 and unacceptably restrict the power of the Legislature and the people of Oregon.

2. IP 108 should be rejected because it violates Article IV, section 1(2)(d).

Per Article IV, section 1(2)(d), a "proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith." IP 108 attempts to make several serious changes to Oregon law, in violation of Article IV Sec. 1(2)(d).

First, IP 108 changes the ability of medical providers to receive and use funds. Currently, medical providers may accept and use funds to facilitate abortion; IP 108 introduces penalties for the receipt and use of funds for performing abortions.

Second, IP 108 changes the definition of murder by making the acceptance of funds for performing abortions a crime punishable as murder. Since murder is currently defined as causing the death of a person who was born, ORS 163.005, IP's proposed change could only be enacted if the definition of "human being" were expanded to include an unborn fetus.

Third, as discussed above, IP 108 criminalizes both abortion and aid-in-dying.

These changes to Oregon law have potentially far-reaching consequences and should not be combined into one proposal for political expediency.

<sup>1</sup> By banning all monetary consideration to facilitate the taking of human life, IP 108 proposes to add a provision that would have the effect of restricting the state's existing constitutional authority to permit physician aid in dying. The lawmaking authority of the Oregon legislature is plenary, subject only to limitations in the state constitution or from federal law. *Kellas v. Dept. of Corrections*, 341 Or 471, 478 (2006). There is currently no limit on the state's authority to make policy choices about physician aid in dying, *Washington v. Glucksberg*, 521 U.S. 702 (1997), and the Death with Dignity Act, ORS 127.800-995, permits aid in dying. Similarly, by effectively banning abortion, IP 108 changes the constitutional status quo under which the state cannot criminalize abortion. See *State v. Pine* 181 Or App 105, 124 n1 (2002) (Armstrong, J. dissenting), *rev'd on other grounds*, 336 Or 194 (2003).

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July 12, 2007  
Page 4

3. In the alternative, the ballot title for IP 108 should be amended to comply with the requirements of ORS 250.035.

The proposed ballot title for IP 108 fails to comply with the requirements of ORS 250.035 because it does not sufficiently and fairly describe the proposal and its major effects. As explained above, both abortion and physician assisted aid-in-dying are medical procedures with financial costs. By banning the receipt or use of any public or private funds to perform either procedure, the measure effectively bans both abortion and aid-in-dying.

The ballot title also fails to highlight the effect of the proposed initiative on the legality of some forms of contraception; the lack of any health-of-the-woman exception to the abortion ban except for ectopic pregnancies; and the lack of any exception for medical emergencies, rape, or incest.

In order to correct these problems, we request that the following caption, results and summary be used instead of those in the current draft:

A. Caption

AMENDS CONSTITUTION: PUNISHES AS MURDER USING OR ACCEPTING FUNDS TO FACILITATE OR PERFORM ABORTION OR PHYSICIAN-ASSISTED DYING

B. Results

RESULT OF "YES" VOTE: "Yes" vote punishes as murder using or accepting funds to facilitate or perform abortion, physician-assisted dying, and sale or use of some forms of contraceptives.

RESULT OF "NO" VOTE: "No" vote retains current law allowing abortion, sale and use of contraceptives, and physician-assisted dying under certain circumstances, and retains current definition of "criminal homicide."

C. Summary

United States Constitution permits abortion before fetus becomes viable and, thereafter, if the woman's life or health is endangered. Current law defines "criminal homicide" as causing death of person who was born and alive. Measure amends Oregon Constitution to punish as murder, or accessory to murder, use of public, private funds to facilitate abortion, physician-assisted dying and the sale or use of some forms of contraceptives. Also treats acceptance of funds to perform such procedures as murder. No exception for rape, incest or health of woman, except ectopic pregnancy. Retains death penalty, expands definition of

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July 12, 2007

Page 5

"murder for hire" and "solicitation to commit murder for hire" to include those who employ doctors and nurses who perform, assist in performing abortions or aid-in-dying. Other provisions.

Arguments and Authorities

A. Caption

The caption must "reasonably identif[y] the subject matter of the state measure." ORS 250.035(2)(a). In order for a caption to satisfy the statutory standard, it must inform the voters how a measures changes existing law. *Crumpton v. Kulongoski*, 321 Or 279, 282, 896 P2d 1211 (1995). A caption should capture the "chief thing" the measure will do in a way the public can understand, and should not be "so narrowly phrased as to cause the voter, for whose use the caption is intended, to be inaccurately informed about the scope and coverage of the measure." *Baker v. Keisling*, 312 Or 385 (1991). The caption should not "confuse or mislead potential petition signers and voters." *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 988 (2001).

The Attorney General's proposed Caption fails to capture the "chief thing" IP 108 is designed to do in a meaningful way that voters will understand. As held in *Crumpton*, the Caption must identify changes in existing law. The most dramatic change this measure makes to existing law is the prohibition of aid-in-dying and of all abortions except for ectopic pregnancies. Unless the caption states specifically that the measure prohibits aid-in-dying and all abortions except in the case of ectopic pregnancies, voters will be misled as to the measure's scope and effect.

B. Yes and No Votes

ORS 250.035(2)(b) and (c) require a "simple and understandable statement... that describes the result if the state measure is approved" and a "simple and understandable statement... that describes the result if the state measure is rejected."

The "Yes vote" language in the proposed ballot title fails to communicate the result if IP 108 is approved. Once all funding for aid-in-dying and abortion and the acceptance of any funds for the performance of aid-in-dying or abortion are criminalized, the only possible result is that no doctor in the state of Oregon will be able to perform either procedure. Thus, the main result of the ballot title is a ban on aid-in-dying and on all abortion. In addition, by defining life as beginning at conception and criminalizing "the killing of any human being from the moment of conception," IP 108 proposes a provision that will prohibit the sale or use of all contraceptives intended for use after conception.

Without explicitly stating these inevitable results, the ballot title is misleading and risks confusing voters by implying that the only issue at stake is a financial one. The ballot title should tell voters explicitly that they are being asked to implement a new law that would prohibit aid-in-dying, prohibit all abortions except ectopic abortions, and prohibit

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July 12, 2007

Page 6

the sale or use of some contraceptives. Without such statements, voters will greatly underestimate its impact.

### C. Summary

The Summary must summarize the measure and its major effect. ORS 250.035(2)(d). The purpose of the summary "is to help voters understand what will happen if the measure is approved," and it should "be worded so that voters will understand the breadth of its impact". See *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989).

The current summary provides generalized statements of the current status of the law which fail to inform voters of the impact of changing that status. The first four sentences of the summary review the current law on abortion, criminal homicide, murder, and solicitation of murder. Without explaining how those laws will be changed by IP 108, the summary fails to comply with ORS 250.035.

### 4. Conclusion

Abortion, Death with Dignity and contraception are legal in the state of Oregon. IP 108 proposes a dramatic change in the ability of women in Oregon to obtain abortions, the ability of doctors to perform them, the ability of terminally ill Oregon citizens to obtain their physicians' aid in ending their life, and the availability of some forms of contraception. Voters should be presented with clear and direct language about IP 108's effect on the availability of abortion, aid-in-dying, and contraception.

For all the foregoing reasons, we request a determination that IP 108 illegally addresses multiple subjects and amends multiple parts of the Oregon Constitution. In the alternative, we request that the Attorney General revise the proposed ballot title for IP 108 so that Oregon voters understand the meaning and effect of the proposed changes to Oregon law.

Thank you for your consideration.

Very truly yours,

Katherine A. McDowell

Enclosures

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EXHIBIT 1

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HARDY MYERS  
Attorney General

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PETER D. SHEPHERD  
Deputy Attorney General

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DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

May 4, 2007

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

Re: Proposed Initiative Petition #83 (2008) – The Human Life Amendment  
DOJ File No. 165200/GG0509-07

Dear Mr. Lindback:

After review of this proposed measure, we have concluded that it may not be lawfully adopted through the initiative process. In our view, the proposed measure embraces multiple amendments that must be made separately pursuant to Article XVII, section 1, of the Oregon Constitution, as interpreted by the Oregon Supreme Court.

Our analysis focuses on the several changes, both explicit and implicit, that the proposed measure would make to the Oregon Constitution. Among other things, the proposed measure would amend the Oregon Constitution by adding provisions protecting all human life from conception to natural death and expressly prohibiting abortion and euthanasia.

The provisions of the proposed measure would be added to the Oregon Constitution in a new Article I, Section 46. The provisions of the proposed measure would restrict the legislative power of the Legislative Assembly and the people to enact laws affecting matters at the beginning and end of human life. In addition, the proposed measure also would effectively repeal the provisions of Article I, Section 40 which currently authorizes imposition of the death penalty in certain circumstances. We do not understand the changes made by this proposed measure to be "closely related" as that requirement has been analyzed by the Oregon Supreme Court in its separate-amendment decisions. Consequently, we conclude that the multiple changes contained in this proposed measure cannot be presented by way of a single proposed initiative measure.

We do not intend to suggest that this brief summary exhausts our analysis of this proposed measure under Article XVII, section 1, or that, aside from the defect specifically noted, there are no other potential constitutional difficulties that would preclude the proposed measure from proceeding. We state only that the constitutional violation identified above, standing alone, compels us to conclude that the proposed measure may not go forward.

John Lindback  
May 4, 2007  
Page 2

Accordingly, we advise you to withdraw your request that we certify a ballot title for the proposed measure. We also advise you not to allow circulation of the petition for signatures.

Sincerely,

~~Philip~~ Schradle  
Special Counsel to the Attorney General

- C: Jean Straight, Deputy Secretary of State
- Peter Shepherd, Deputy Attorney General
- Brendan Dunn, Appellate Division
- Steve Bushong, Trial Division
- Steve Wolf, General Counsel Division
- Misty Kintz, Appellate Division

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EXHIBIT 2

OFFICE OF THE SECRETARY OF STATE

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ELECTIONS DIVISION

**JOHN LINDBACK**  
DIRECTOR

141 STATE CAPITOL  
SALEM, OREGON 97310-0722  
ELECTIONS—(503) 986-1518

January 21, 1999

To All Interested Parties:

RE: Proposed Initiative Petition #83 for the November 4, 2008, General Election, on the subject of Human Life Amendment

The Secretary of State has rejected proposed initiative petition #83, based on written advice from the Attorney General's office. The Attorney General's opinion is that the proposed initiative petition violates Article XVII, section 1 of the Oregon Constitution.

**BILL BRADBURY**  
Secretary of State

BY:

Carla Corbin  
Compliance Specialist

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