OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
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A. RICHARD VIAL
DEPUTY SECRETARY OF STATE

ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

INITIATIVE PETITION

The Elections Division received a certified ballot title from the Attorney General on October 21, 2019, for Initiative Petition **2020-044**, proposed for the November 3, 2020, General Election.

Caption
Provides statewide addiction/recovery services; marijuana taxes partially finance;reclassifies possession/penalties for specified drugs

Chief Petitioners
Anthony Johnson 5704 N Missouri Avenue Portland, OR 97203
Haven Wheelock 4231 SE 33rd Place Portland, OR 97202
Janie Gullickson 22092 S Dans Avenue Beavercreek, OR 97004

Appeal Period
Any registered voter, who submitted timely written comments on the draft ballot title and is dissatisfied with the certified ballot title issued by the Attorney General, may petition the Oregon Supreme Court to review the ballot title.

If a registered voter petitions the Supreme Court to review the ballot title, the voter must notify the Elections Division by completing and filing form SEL 324 Notice of Ballot Title Challenge. If this notice is not timely filed, the petition to the Supreme Court may be dismissed.

Appeal Due
November 4, 2019

How to Submit Appeal
Refer to Oregon Rules of Appellate Procedure, Rule 11.30 or contact the Oregon Supreme Court for more information at 503.986.5555.

Notice Due
1st business day after appeal filed with Supreme Court, 5 pm

How to Submit Notice
Scan and Email: irrlistnotifier.sos@oregon.gov
Fax: 503.373.7414
Mail: 255 Capitol St NE Ste 501, Salem OR 97310

More information, including the certified ballot title and the Secretary of State's determination that the proposed initiative petition is in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions, is contained in the IRR Database available at **www.oregonvotes.gov**.

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CONSTITUTIONAL REQUIREMENT RULING

Initiative Petition No.	Date Filed	Comment Deadline	Certified Ballot Title Due
2020-044	August 15, 2019	October 4, 2019	October 21, 2019

Draft Ballot Title Caption

Decriminalizes personal, non-commercial possession of most drugs; establishes fund to create addiction recovery centers

Chief Petitioners

Anthony Johnson	5704 N Missouri Avenue Portland, OR 97203
Haven Wheelock	4231 SE 33rd Place Portland, OR 97202
Janie Gullickson	22092 S Dans Avenue Beavercreek, OR 97004

Procedural Constitutional Requirement Commentor

None

Certification

I have reviewed the above-captioned initiative petition, including any comments submitted regarding constitutional requirements, and find that:

☒ It **complies** with the procedural constitutional requirements.

☐ It **does not comply** with the procedural constitutional requirements.

Bev Clarno

Bev Clarno, Secretary of State

10-8-19

Dated

ELLEN F. ROSENBLUM
Attorney General

FREDERICK M. BOSS
Deputy Attorney General

DEPARTMENT OF JUSTICE
APPELLATE DIVISION

RECEIVED
OCT 21, 2019 4:32pm
Elections Division

October 21, 2019

Stephen N. Trout
Director, Elections Division
Office of the Secretary of State
255 Capitol St. NE, Ste. 501
Salem, OR 97310

Re: Proposed Initiative Petition — Provides Statewide Addiction/Recovery Services; Marijuana Taxes Partially Finance; Reclassifies Possession/Penalties for Specified Drugs.

DOJ File #BT-44-19; Elections Division #2020-044

Dear Mr. Trout:

We have received the comments submitted in response to the draft ballot title for prospective Initiative Petition #44 (2020). Comments were submitted by Margaret Olney (on behalf of Trent Lutz), by Steven Berman (on behalf of Anthony Johnson, one of the proposed measure's chief sponsors), and by William Porter. We provide the enclosed certified ballot title.

This letter summarizes the comments we received, our responses, and the reasons we did or did not make proposed changes to each part of the ballot title. We ultimately modified each part of the draft ballot title. ORAP 11.30(6) requires this letter to be part of the record in the event that the Oregon Supreme Court reviews the ballot title.

A. The caption

The ballot title must include a caption "of not more than 15 words that reasonably identifies the subject matter of the state measure." ORS 250.035(20(a). The "subject matter" is "the 'actual major effect' of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words)." *Lavey v. Kroger*, 350 Or 559, 563, 258 P3d 1194 (2011).

The draft caption read:

> Decriminalizes personal, non-commercial possession of most drugs; establishes fund to create addiction recovery centers

Commenter Olney suggested that the caption should inform voters that the proposed measure would mandate a certain level of services and funding from multiple sources—including all moneys in the Oregon Marijuana Account above a specified amount—and thereby reduces

funds available to transfer to the school fund and other programs. We agree that the funding mandate is a major effect of the measure, and, accordingly, have modified the caption to inform voters of that effect.

We agree that the proposed measure's impact on the availability of moneys from the marijuana account will necessarily affect the availability of General Fund financing for other government services. *See Novick v. Myers*, 333 Or 12, 16-17, 35 P3d 1017 (2001) (proposed measure would dedicate 10% of income tax revenues to finance highway construction and maintenance, necessarily reducing revenues in the General Fund and thereby decreasing funds available for services paid from the General Fund; therefore, the "yes" vote result statement had to describe that result). However, we do not agree that it is a "major effect" of the measure that must be included in the caption. Instead, we include it in the "yes" vote result statement because it is a significant effect. *See Markley v. Rosenblum*, 362 Or 531, 539, 413 P3d 966 (2018) (provision that laws regulating campaign expenditures and contributions must be passed by initiative or by an elected legislative body by a three-fourths vote was not a major effect, but was a significant one.)

We disagree that the caption must state that the measure's dedication of money from the general fund or from any savings as a result of the measure will reduce funds for other services, because such a statement would be speculative. *See Unger v. Rosenblum*, 358 Or 672, 369 P3d 1129 (2016) (proposed measure required legislature to place $800 per high school student into career readiness fund, but it was speculative to assume any impact on sources of revenue for other services).

Commenter Berman suggested that the caption fails to describe the "stated policy goal" of the measure, which is to "provide access to addiction treatment and recovery services for Oregonians who seek it." He also suggested that the caption should describe what services the addiction recovery centers would provide. He wrote that the creation of the addiction recovery centers should be emphasized first.

Commenter Berman also noted that the phrase "decriminalizes personal, non-commercial possession of most drugs" is inaccurate and insufficiently descriptive, because under Oregon law, "crime" encompasses misdemeanors and the measure continues to classify personal possession of certain threshold amounts of certain substances as misdemeanors. Finally, he objected that the word "most" in the phrase "most drugs" is potentially misleading, because the measure expressly identifies each drug for which personal possession is reclassified as a violation.

We disagree that the caption should refer to the policy goals of the measure. *See Beyer v. Rosenblum*, 363 Or 157, 165 n6, 363 Or 157 (2018) (while chief petitioner's objective was to create a regulatory system for firearms, actual major effect of measure was to criminalize possession of firearms in certain circumstances). To communicate a measure's "subject matter," a caption should address "the changes, if any, the measure would enact in the context of existing law." *Phillips v. Myers*, 325 Or 221, 225-26, 936 P2d 964 (1997). The caption must identify the measure's subject matter in terms that will not "confuse or mislead potential petition signers and voters," and it cannot overstate or understate the scope of the legal changes that the measure

would enact. *Buehler v. Rosenblum*, 354 Or 318, 323, 311 P3d 882, 885 (2013) (quoting *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 988 (2001), *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004). However, we agree that the caption should be modified to describe the provision of addiction and recovery services first, and to note that the measure reclassifies and reduces penalties for possession of specific drugs.

We certify the following caption:

Provides statewide addiction/recovery services; marijuana taxes partially finance; reclassifies possession/penalties for specified drugs

B. The "yes" result statement

A ballot title must include a "simple and understandable statement of not more than 25 words that describes the result if the state measure is approved." ORS 250.035(2)(b). The statement should identify the measure's "most significant and immediate effect." *Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004).

The draft "yes" result statement read:

> **Result of "Yes" Vote:** "Yes" vote decriminalizes personal, non-commercial drug possession; establishes fund creating addiction recovery centers; creates advisory council to distribute funds/oversee centers; Secretary of State audits.

Commenter Olney reiterated her suggestion that the "yes" result statement should inform voters regarding the funding sources for the measure and that marijuana tax revenues available for education and other programs will be reduced. As noted above, we agree that the reduction in marijuana tax revenues for other services should be included in the "yes" result statement.

Commenter Berman reiterated his arguments as to the caption and, for reasons discussed already, we accept the suggestions to refer to the provision of addiction and recovery services first, and to note that the measure reclassifies and reduces penalties for personal possession of specific, currently illegal drugs. Commenter Berman also suggested that the "yes" result statement should more specifically describe the treatment and services that would become available under the measure. We have modified the statement to include information that addiction and recovery services are provided under the measure, and have modified the summary to include more specific information regarding those services.

Commenter Berman also suggested that "yes" result statement should include the funding sources for the measure, and contended that marijuana tax revenues will fully fund IP 44 and therefore "no additional taxes" will be necessary. We have already modified the "yes" result statement to note that marijuana taxes provide partial funding for the measure. We disagree that the "yes" result statement must state that the measure will require "no additional taxes," because nothing in the measure appears to offset the requirement that the legislature appropriate $114 million every two years—and increase that amount according to inflation each year thereafter—even if the funds transferred from the marijuana account provide enough to fully fund the

measure. Because nothing in the measure itself necessarily would preclude future taxes in order to finance the measure, any reference to that potential effect would be inappropriate. *Unger*, 358 Or at 677.

Commenter Berman also suggested that the reference to audits and administrative matters should be deleted. We disagree that the audit requirement should not be included, because that is a new obligation imposed on a state official, and therefore is a significant and immediate effect. *See, e.g.*, *Lutz v. Rosenblum*, 362 Or 651, 656, 413 P3d 975 (2018) (creation of new "oversight scheme" for Secretary of State to audit reports provided by unions and obligation to make reports available in new searchable online database constituted a major effect); *Unger v. Rosenblum*, 361 Or 814, 817, 401 P3d 789 (2017) (provision making Secretary of State responsible for creating and administering a website to collect initiative and referendum signature constituted major effect). However, due to other changes, we have removed the specific reference to the Secretary.

We certify the following "yes" result statement:

> **Result of "Yes" Vote:** "Yes" vote provides addiction recovery centers/services; marijuana taxes partially finance (reduces revenues for other purposes); reclassifies possession of specified drugs, reduces penalties; requires audits.

C. The "no" result statement

A ballot title must include a "simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected." ORS 250.035(2)(c). The statement "should 'address[] the substance of current law on the subject matter of the proposed measure.'" *McCann v. Rosenblum*, 354 Or 701, 707, 320 P3d 548 (2014), quoting *Novick/Crew*, 337 Or at 577 (emphasis omitted).

The draft "no" result statement read:

> **Result of "No" Vote:** "No" vote retains laws classifying personal possession of drugs listed in Controlled Substances Act Schedules I through IV as a Class A or C misdemeanor.

Commenter Olney wrote that the draft "no" result statement fails to adequately inform voters regarding current law. That is, she wrote that voters should understand that currently, personal drug possession is a crime and that there are no laws establishing, requiring, or publicly funding addiction recovery centers, and that currently, "40% of marijuana tax revenues are dedicated to education." Commenter Berman similarly suggested that the "no" result statement should state that current law does not require or provide access to triage, assessment, case management, or drug treatment to all Oregon residents who seek it. We agree that the "no" result statement should communicate additional information regarding current uses of marijuana tax revenues and have also clarified that current law makes drug possession a crime. Currently, drug treatment services are provided through ORS 475B.759 and transfers from marijuana tax

revenues, but we have modified the "no" result statement to state that addiction recovery centers are not required under current law.

Commenter Porter noted that the draft "no" result statement incorrectly states that personal possession of drugs listed in Controlled Substances Act Schedules I through IV is a Class A or C misdemeanor, because such possession may constitute a B or C felony depending on the person's criminal history. *See* ORS 475.752(7) and (8). We agree and have modified the "no" result statement, as well as the summary, accordingly.

We certify the following "no" result statement:

Result of "No" Vote: "No" vote rejects requiring addiction recovery centers/ services; retains current marijuana tax revenue uses; maintains current classifications/ penalties for possession of drugs.

D. The summary

A ballot title must include 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 summary's purpose is to "help voters understand what will happen if the measure is approved." *Fred Meyer Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989).

The draft summary read:

> Currently, personal, non-commercial possession of drugs listed in Schedule I, II, III, or IV of federal Controlled Substances Act is Class A or C misdemeanor. Measure deletes criminal penalties, classifies possession as Class E violation subject to $100 fine or completed health assessment by an "addiction recovery center" (center). Measure creates "Drug Treatment and Recovery Services Fund" financed by legislative appropriations, Oregon Marijuana Account allocations, and any savings resulting from reductions in arrests, incarceration, supervision. Creates advisory council to oversee and approve grants to existing agencies or organizations to create centers within each existing coordinated care organization service area by October 1, 2021. Oregon Health Authority establishes council to distribute grants from Fund and oversee implementation of centers. Secretary of State audits biennially. Other provisions.

The commenters reiterated their suggestions as to the caption and result statements, and as noted above, we agree that the funding sources and reduction in marijuana tax revenues for other services should be included in the summary. We also agree that the summary should include more information regarding the establishment of the centers and the services that they will provide. We further agree that the summary should be modified to clarify the current criminal penalties for personal possession of drugs as well as the changes to those penalties effected by the measure.

Commenter Berman suggested that the fourth and fifth sentences are redundant and could imply to voters that the measure creates two counsels to oversee the centers, and that the

summary should include a reference to the requirement that the Secretary of State perform biannual audits. We agree with both suggestions and have modified the summary accordingly.

We certify the following summary:

Summary: Measure mandates establishment/ funding of "addiction recovery centers" (centers) within each existing coordinated care organization service area by October 1, 2021; centers provide drug users with triage, health assessments, treatment, recovery services. To fund centers, measure dedicates all marijuana tax revenue above $11,250,000 quarterly, legislative appropriations, and any savings from reductions in arrests, incarceration, supervision resulting from the measure. Reduces marijuana tax revenue for other uses. Measure reclassifies personal non-commercial possession of certain drugs under specified amount from misdemeanor or felony (depending on person's criminal history) to Class E violation subject to either $100 fine or a completed health assessment by center. Oregon Health Authority establishes council to distribute funds/ oversee implementation of centers. Secretary of State audits biennially. Other provisions.

E. Conclusion

We certify the attached ballot title.

Sincerely,

/s/ Shannon T. Reel

Shannon T. Reel
Senior Assistant Attorney General
shannon.t.reel@doj.state.or.us

Enclosure

Margaret Olney
210 SW Morrison St. Ste. 500
Portland, OR 97204

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William B. Porter
Via email

Anthony Johnson
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Beavercreek, OR 97004

vote!
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Elections Division

Certified by Attorney General on October 21, 2019.
/s/ Shannon Reel
Senior Assistant Attorney General

BALLOT TITLE

Provides statewide addiction/recovery services; marijuana taxes partially finance; reclassifies possession/penalties for specified drugs

Result of "Yes" Vote: "Yes" vote provides addiction recovery centers/services; marijuana taxes partially finance (reduces revenues for other purposes); reclassifies possession of specified drugs, reduces penalties; requires audits.

Result of "No" Vote: "No" vote rejects requiring addiction recovery centers/ services; retains current marijuana tax revenue uses; maintains current classifications/ penalties for possession of drugs.

Summary: Measure mandates establishment/ funding of "addiction recovery centers" (centers) within each existing coordinated care organization service area by October 1, 2021; centers provide drug users with triage, health assessments, treatment, recovery services. To fund centers, measure dedicates all marijuana tax revenue above $11,250,000 quarterly, legislative appropriations, and any savings from reductions in arrests, incarceration, supervision resulting from the measure. Reduces marijuana tax revenue for other uses. Measure reclassifies personal non-commercial possession of certain drugs under specified amount from misdemeanor or felony (depending on person's criminal history) to Class E violation subject to either $100 fine or a completed health assessment by center. Oregon Health Authority establishes council to distribute funds/ oversee implementation of centers. Secretary of State audits biennially. Other provisions.

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