



# OFFICE OF THE SECRETARY OF STATE

## NEWS RELEASE

**BILL BRADBURY**

**For Immediate Release:**  
February 11, 2005

**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 February 11, 2005, for initiative petition #16, proposing a statutory amendment, for the General Election of November 7, 2006.

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:

**REQUIRES NEW ELECTION BY CURRENT EMPLOYEES TO MAINTAIN  
UNION REPRESENTATION; NON-VOTERS COUNT AS "NO" VOTES**

**RESULT OF "YES" VOTE:** "Yes" vote terminates public employees' union representation in bargaining, grievance resolution, unless current employees vote for union in new election; counts non-voters as "no" votes.

**RESULT OF "NO" VOTE:** "No" vote retains existing law requiring public employers to negotiate with public employees' chosen labor organization until employees request an election to discontinue that representation.

**SUMMARY:** Currently, public employers must negotiate with employees' chosen labor organizations in collective bargaining and grievance disputes. Unless a sufficient percentage of affected employees petition the Employment Relations Board (state agency overseeing public employee collective bargaining) for election to terminate union representation and a majority vote for change, union representation continues. No election may occur within 12 months of previous election. Measure bars public employer from negotiating, resolving grievances with existing union unless public employer knows that a majority of current employees have voted for representation, counting new employees and non-voters as having voted against union. A different state agency, the Bureau of Labor and Industries, conducts elections required by measure. Provides no funding. Bars election within 24 months of election rejecting union representation. Other provisions.

Chief Petitioner(s): Bill Sizemore, PO Box 343, Beavercreek, OR 97004 and Grace I. Sizemore, PO Box 66921, Portland, OR 97290.

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 February 28, 2005. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2006 general election ballot is 75,630. These signatures must be filed in this office not later than July 7, 2006.

# # #



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

February 11, 2005

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

Re: Proposed Initiative Petition — Requires New Election By Current Employees To  
Maintain Union Representation; Non-Voters Count As “No” Votes  
DOJ File #BT-16-05; Elections Division #16

Dear Mr. Lindback:

Enclosed with this letter is the final ballot title certified on February 11, 2005. This letter explains both the changes we made to the draft ballot title in response to the three comment letters you received, and why we did not make some of the suggested changes.

Comment letters were received from Margaret S. Olney on behalf of Kris Kain and Chip Terhune; from Steven C. Berman on behalf of Art Towers; and from Steven Novick.

**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.*

Relying on *Crumpton v. Kulongoski*, 321 Or 279, 896 P2d 1211 (1995), commenters Kain, Terhune, and Towers first object that the caption impermissibly fails to identify for voters the significant change in the process for union elections that the proposed measure effects. Second, they assert that the caption must inform voters that the proposed measure “requires [a] new election whenever [the] public employer questions current union support[.]” In addition, they assert, the caption must tell voters that “non-voters count as ‘no’ vote” in the new union election. Third, they propose deleting the term “recognizing” from the caption, because the word is a term of art in labor law that is not commonly understood by the public.

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Commenter Novick points out that the proposed measure alters current law, under which union representation continues until employees vote to decertify the union. He also objects that the draft caption does not adequately reflect that the proposed measure replaces the current system for electing and continuing union representation with a dramatically different system. He asserts that the proposed measure “imposes exactly the same condition on votes by public employee union representation” as the electoral change proposed by the initiative measure in *Crumpton*. Novick asserts that the proposed measure requires a new election at any time, unless it can be shown that a majority of current employees voted to select a union.

We agree with those commenters that the proposed measure effectively requires a new election, in order to maintain union representation, whenever the employer questions whether a majority of current employees have affirmatively voted in favor of union representation. Currently, the employer is required by law to bargain in good faith with an existing union. ORS 243.672(1). Yet the proposed measure prohibits the employer from doing so absent a showing that a majority of current employees have voted for union representation. But individual votes in a previous election cannot be confirmed, in order to make such a showing, because elections on questions of representation are by secret ballot. ORS 243.682(3). And, those employees who were hired after union representation was elected are to be counted as “no” votes, rather than as non-voters. Therefore, whenever the employer questions whether a majority of current employees have voted for the union, a new election is effectively mandatory under the proposed measure.

We also agree with the commenters that counting non-voters as “no” votes in the required election is a significant change from the general rule that a majority of those voting determines whether employees will be represented by a union. We agree that the proposed measure establishes a new way of counting votes in an election that is part of the proposed measure’s subject matter and should be included in the caption. And, we concur with the commenters’ suggestion not to use the word “recognizing,” because it is a term of art.

Accordingly, we certify the following caption:

**REQUIRES NEW ELECTION BY CURRENT EMPLOYEES TO MAINTAIN  
UNION REPRESENTATION; NON-VOTERS COUNT AS “NO” VOTES.**

**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 “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. A “no” result statement describes the result if the proposed measure is rejected. ORS 250.035(2)(c).

Kain, Terhune, and Towers comment that draft “yes” result statement, like the caption, “fails to accurately and simply tell voters what will happen,” *i.e.*, “what triggers the election,

what happens when there is a question of current support, and how the elections work.” They also suggest substituting “grievance resolution” for “grievance disputes.”

Commenter Novick raises essentially the same concerns. He again points out that under current law, union representation continues until employees vote to decertify the union, whereas, under the proposed measure, union representation ends absent a new election. He would also include in the “yes” result statement the information that new employees are counted as votes against the union. We agree. As already discussed, the proposed measure effectively requires a new election whenever the employer refuses to “recognize” the employees’ existing labor organization, because a new election is, in practice, the only way to show with certainty that a majority of current employees have voted for the union.

Accordingly, we certify the following “yes” result statement:

**RESULT OF “YES” VOTE:** “Yes” vote terminates public employees’ union representation in bargaining, grievance resolution, unless current employees vote for union in new election; counts non-voters as “no” votes.

### **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 Kain, Terhune, and Towers assert that the summary must more clearly explain that a non-vote is treated as a vote against the union; that it must avoid using the term “recognize”; and that it should alert voters that the proposed measure “creates a new public employee election bureaucracy within the Bureau of Labor and Industries.”

We concur with those comments. In addition, we agree with their suggested use of the verb “reject” in place of “discontinue” in the next to last sentence of the summary. We have modified the summary to address those comments.

Accordingly, we certify the following summary:

**SUMMARY:** Currently, public employers must negotiate with employees’ chosen labor organizations in collective bargaining and grievance disputes. Unless a sufficient percentage of affected employees petition the Employment Relations Board (state agency overseeing public employee collective bargaining) for election to terminate union representation and a majority vote for change, union representation continues. No election may occur within 12 months of previous election. Measure bars public employer from negotiating, resolving grievances with existing union unless public employer knows that a majority of current employees have voted for representation, counting new employees and

non-voters as having voted against union. A different state agency, the Bureau of Labor and Industries, conducts elections required by measure. Provides no funding. Bars election within 24 months of election rejecting union representation. Other provisions.

Sincerely,

Judy C. Lucas  
Assistant Attorney General

JCL:mlk/APP76633

Enclosure

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**BALLOT TITLE**

**REQUIRES NEW ELECTION BY CURRENT EMPLOYEES TO  
MAINTAIN UNION REPRESENTATION; NON-VOTERS COUNT AS  
“NO” VOTES**

**RESULT OF “YES” VOTE:** “Yes” vote terminates public employees’ union representation in bargaining, grievance resolution, unless current employees vote for union in new election; counts non-voters as “no” votes.

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