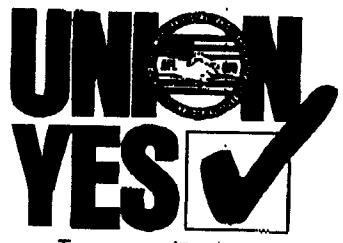




TIM NESBITT, PRESIDENT  
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January 27, 2005

By facsimile 503/373-7414

Secretary of State Bill Bradbury  
Elections Division  
State Capitol  
Salem, Oregon 97310-0722

Re: Initiative Petition No. 19- Ballot Title Comments

Dear Secretary of State Bradbury:

I am writing as a representative of the Oregon AFL-CIO and as an Oregon elector to submit the following comments on the draft ballot title prepared by the Attorney General for initiative petition #19.

What the measure does

The measure, which is statutory, would change the standards for and the methods by which the Secretary of State verifies and accepts as valid voters' signatures on petitions for initiative, referendum and recall as follows.

- The Secretary of State would be required to examine and validate each signature, which would effectively eliminate the current practice of using a random sample of signatures;
- The Secretary of State would be required to accept signatures of registered voters on petitions even if circulators of said petitions had not complied with rules of conduct for circulating petitions;
- The Secretary of State would be required to accept signatures of voters who had voted within the previous five years even if they are otherwise considered inactive voters;
- The measure would invalidate any laws or rules which conflict with its provisions at the time of passage, even rules or laws which may yet be enacted between now and the general election of 2006.

Article IV, section 1 of the Oregon Constitution creates the initiative power. It provides that an initiated measure proposing a statutory change may be placed on the ballot by a petition signed by a specified number of qualified voters (subsection 2(b)) and that one proposing a constitutional change requires a greater number of signatures (subsection

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2(c)). ORS chapter 250 includes a number of requirements that must be followed by individuals proposing an initiative and those circulating petitions.

This measure would change current standards and procedures for validating signatures on petitions. To help ensure that those who sign are registered, the statute requires that each petition circulators certify that the petition was signed in the circulator's presence and that the circulator believes the signer to be registered to vote. ORS 250.045(7). In addition, the statute requires that each petition sheet contain only the signatures of registered voters from one county. ORS 250.045(5)(A). The latter provision facilitates the process by which the county clerks check the signatures against the voter registration rolls.

To help ensure that those who sign actually support putting the proposed measure on the ballot, the statute requires that signatures be original signatures (ORS 250.105(1)); that each petition sheet "contain the caption of the ballot title" (ORS 250.045(5)(a)); and that "[the] person obtaining signatures on the petition shall carry at least one full and correct copy of the measure to be initiated or referred and shall allow any person to review a copy upon request of the person." ORS 250.045(7). In addition, the Secretary of State's rules require that the petition sheet be approved and that the petition sheets used to obtain signatures be identical to that which was approved for circulation by the Secretary of State. OAR 165-014-0030(3)(a).

Comments on the draft ballot title

The draft ballot title, as a whole, fails to substantially comply with ORS 250.035.

The caption and results of Yes and No votes fail to present the most significant changes of the measure.

We suggest the alternatives below.

Alternative Ballot Title Language

The following alternative language for the ballot title satisfies the requirements of the statute and avoids the problems discussed above:

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BILL REAGURRY

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**CHANGES PROCEDURES, STANDARDS FOR VALIDATING SIGNATURES ON INITIATIVE, REFERENDUM, RECALL PETITIONS; SUPERSEDES CONFLICTING RULES, LAWS**

**RESULT OF "YES" VOTE:** 'Yes' vote changes procedures, standards for validating signatures on initiative, referendum, recall petitions, does not all random sampling to enumerate signatures; supersedes conflicting rules, laws.

**RESULT OF "NO" VOTE:** 'No' vote keeps current procedures for verifying that petition signatures come from registered voters supporting petition; permits random sampling to determine number of valid signatures.

We suggest also that the Summary state clearly that that this measure would make moot and effectively eliminate the use of statistical sampling to enumerate signatures.

We will appreciate the Attorney General's consideration of these comments.

Sincerely,

**Patty Wentz  
Communications Director**

Copy: Tim Nesbitt

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DILL BRADBURY  
SECRETARY OF THE STATE

**Bill Sizemore**  
**24200 S. Highland Crest Drive**  
**P.O. Box 343**  
**Beavercreek, OR 97004**  
**Ph 503-803-5085**

January 21, 2005

Secretary of State  
Elections Division  
Room 141 State Capitol  
Salem, OR 97310

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ELL BROADBENT  
SECRETARY OF THE STATE

Dear Mr. Secretary:

As an Oregon elector, I am writing to offer my comments on the draft ballot title for initiative # 19, which requires the secretary of state to examine each initiative petition signature.

I believe the draft ballot title fails to comply with ORS 250.035.

The draft ballot title fails to identify clearly the primary subject of the initiative. The primary thing this measure would do is replace the current system whereby petition signatures are examined only on a statistical sample basis and replaces that system with one that requires the Secretary to examine each signature.

In addition to that, the measure would insure that valid signatures are counted by eliminating some of the grounds the secretary of state currently uses to disqualify signatures for merely technical reasons.

My primary objection to the draft ballot title is that it does not identify the primary subject matter up front. It hides it later in the caption, later in the result statements, and later in the summary.

I also object to the yes and no result statements not contrasting the current system with the proposed system.

I suggest the following ballot title:

**REQUIRES EXAMINATION OF EVERY INITIATIVE, REFERENDUM, AND  
RECALL PETITION SIGNATURE; LIMITS GROUNDS FOR REJECTING  
SIGNATURES**

**Result of a Yes vote: Yes vote requires Secretary of State to examine each initiative, referendum, recall petition signature to determine validity; limits grounds for invalidating signatures of registered voters.**

**(I do not believe the measure requires contacting a voter before rejecting his or her signature. It is only when the signature itself is in question that contact must be reasonably attempted. If the voter is not registered to vote or was not at the time he or she signed, then their signature is not what is questioned, but their registration. An interpretation such as is implied by the draft ballot title statement, "prohibits invalidating signature without contacting voter" requires a deeper interpretation of the measure than is warranted in a ballot title procedure. If such an interpretation is going to be made at this time, it should be qualified by the language stating that the means required are reasonable means.)**

**Result of a No vote: No vote rejects requiring examination of each petition signature, retains current system where only a statistical sample is examined; retains current grounds for invalidating signatures.**

**I also object to the statement in the summary that currently the secretary of state may use a statistical sampling method, when in fact the secretary has been using this method only for decades. The summary should say that currently the secretary does not examine every signature, but only examines a sample.**

**Sincerely,**

**Bill Sizemore**

SECRETARY OF THE STATE  
BILL BRADBURY

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**S M I T H  
D I A M O N D  
& O L N E Y**  
ATTORNEYS AT LAW

Barbara J. Diamond  
Margaret S. Olney\*  
Monica A. Smith

\* Member Oregon and Washington Bars

January 27, 2005

**VIA FACSIMILE (503) 373-7414  
AND REGULAR MAIL**

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

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BIL BRADBURY  
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Re: Full Text Challenges for Initiative Petitions 16, 19, 21 (2006)  
Our File No. 328

Dear Mr. Lindback:

This firm represents Kris Kain, an Oregon elector and President of the Oregon Education Association, and Chip Terhune, an Oregon elector and Assistant Executive Director for Public Affairs for the Oregon Education Association. We write in response to your News Release dated January 13, 2005 which invites comments on whether the initiatives filed by Bill Sizemore on January 4, 2005 meet the procedural requirements contained in the Oregon Constitution.

As set forth in this letter, we do not believe that IP 16, 19 or 21 comply with the "full text" requirements contained in Article IV, section 1(2)(d). Accordingly, the proposed initiative cannot appear on the ballot and certified ballot titles should not be issued for them. Please note that we understand that others will be submitting comments on the procedural constitutionality of other initiatives, and that our lack of comments should in no way be interpreted as meaning that we believe those initiatives are constitutionally presented.

Because the legal arguments are similar about why each of the above initiatives fails to comply with the full text requirement, we are submitting comments on the



Mr. John Lindback  
Constitutional Comments - IP 16, 19 and 21(2006)  
January 27, 2005  
Page 2

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initiatives jointly. To the extent necessary, please consider this letter as a separate comment on IP 16, 19 and 21 and place a separate copy in each file.

1. Full Text Requirement

Article IV, section 1(2)(d) of the Oregon constitution provides: "An initiative petition shall include the full text of the proposed law or amendment to the Constitution." In *Kerr v. Bradbury*, 193 Or App 304, 325, 89 P3d 1227 (2004), the Court of Appeals held that Article IV, section 1(2)(d) requires that, in any proposed initiative petition, the initiative include the "full text of the statute as it would appear if amended." In other words, the proposed amendment must set out not only its own text, but also the text of any statutory provision that it amends. 193 Or App at 325-26. The purpose for this requirement is to be sure that voters (and legislators, in the case of bills) are not being asked to vote on a proposal "in the dark," that is, without knowing the effect of the proposed enactment on existing statutes."

2. IP 16 Violates the Full Text Requirement

IP 16 (2006) is a statutory proposal concerning public employee representation. Commenters refer your office to our ballot title comments for a more complete description of what the proposal does. Suffice it to say that IP 16 would radically change existing law concerning public employee collective bargaining. It would prohibit public employers from negotiating or resolving grievances with an existing union, unless it can be certain that a majority of current employees has voted for the union. It gives the Bureau of Labor and Industry (BOLI) jurisdiction over certain types of union elections, and changes the elector process to make non-voters count as "no" votes.

While IP 16 does not expressly amend current law, it by necessity makes numerous changes to it. The Public Employee Collective Bargaining Act ("PECBA") is set forth in ORS 243.650 through ORS 243.782. The laws more specifically relating to representation elections are found in ORS 243.682 and ORS 243.686. IP 16 proposes to make numerous changes to these. For example, under the proposal, BOLI would conduct certain elections, not ERB, thus revising ORS 243.686. Similarly, IP 16 requires that a double-majority of the eligible voters (a majority of all voters, not just those who vote) vote in favor of union representation

Mr. John Lindback  
Constitutional Comments - IP 16, 19 and 21(2006)  
January 27, 2005  
Page 3

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in order for the public employer to be authorized to bargain with the union. Section 1. This would amend ORS 243.686(4), which refers to "the majority of the votes cast in an election shall be certified." ORS 243.682 requires a sufficient "showing of interest" before ERB holds a decertification election. IP 16 would delete this requirement. ORS 243.692 bans new elections for 12 months; IP 16 would do so for 24 months, where a union is rejected.

The list of changes could continue. The point is that the proposal necessarily amends existing law. Under *Kerr*, this means that the full texts of those laws and the changes must be presented to the voters. This is true, even when the initiative is presented as a "stand-alone" piece of legislation. Chief Petitioner cannot "end run" the full text requirements by simply enacting a stand-alone statute that makes those changes. The Attorney General should reject IP 21.

3. IP 19 Violates the Full Text Requirement

IP 19 (2006) seeks to change the laws on how signatures petition signatures are counted by the Secretary of State. Like IP 16 discussed above, this proposal purports to "stand-alone." It does not expressly amend any existing statutes, but it necessarily does so. For example, ORS 250.095 authorizes the use of statistical samples for purposes of verifying initiative signatures. IP 19 bars that practice. ORS 247.013(6) defines when an voter's registration is active, and therefore valid for purposes of petition signatures. IP 19 would amend those provisions. Because the full text of the statutes that are necessarily changed by IP 19 are not set forth in the initiative, it violates the full text requirement and must be rejected.

4. IP 21 Violates the Full Text Requirement

IP 21 (2006) is a statutory proposal that seeks to change current law set out in ORS 342.984 regarding teacher layoffs. It too is presented as a "stand-alone" initiative, with no specific references to current law. However, it plainly amends current law. Indeed, it is possible to see those changes by simply referring to IP 22. That initiative accomplishes the identical goal. However, IP 22 correctly makes the changes in the text of the teacher layoff statute, so that voters can know exactly what the changes are. The failure of IP 21 do so renders it constitutionally deficient and no certified ballot title should be issued.

Mr. John Lindback  
Constitutional Comments - IP 16, 19 and 21(2006)  
January 27, 2005  
Page 4

5. Conclusion

In *Kerr v. Bradbury, supra*, the Court of Appeals reaffirmed the importance of the full-text constitutional requirement set forth in Article IV, section 1(2)(d) of the Oregon Constitution. During a time when voters are increasingly being asked to pass legislation on complex matters, it is critically important that they have all of the information in front of them. They need to see how the proposed changes interact with existing law in order to cast an informed vote. Here, IP 16, 19 and 21 fail to pass the test and should be rejected. The fact that they are "stand-alone" pieces of legislation does not mean that voters should be left "in the dark" about how the legislation amends other directly relevant law. If that is the case, then chief petitioners could easily evade the full text requirement, and create even more confusion for voters and, subsequently, for the public in interpreting any law passed by initiative.

Thank you for your consideration of these comments.

Sincerely,

SMITH, DIAMOND & OLNEY

Margaret S. Olney

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MSO/lck  
cc: Chip Terhune  
Mark Toledo

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