



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
August 1, 2006

Contact: Summer Davis
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on July 31, 2006, for initiative petition #25, proposing a statutory 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:

PENALIZES PERSON, ENTITY FOR USING FUNDS COLLECTED WITH "PUBLIC RESOURCE" (DEFINED) FOR "POLITICAL PURPOSE" (DEFINED)

RESULT OF "YES" VOTE: "Yes" vote prohibits persons, entities from using money for "political purpose" (defined) if collected with "public resource" (defined), commingled with such money; mandates penalties.

RESULT OF "NO" VOTE: "No" vote retains current law, which does not restrict person's, entity's use of money collected with public resources or commingling such money with "political" funds.

SUMMARY: Current law allows individuals, organizations to use money for "political purposes," including money collected with public resources. Measure prohibits individuals, organizations, other entities from using money for "political purposes" if "public resources" were used in collecting it. "Money" includes in-kind contributions, independent expenditures, pass-through contributions. "Public resources" include money, public employee work time, buildings, equipment, supplies, unless used for conducting elections, issuing official voters' pamphlet. "Used for a political purpose" means: contributed to candidate, political committee, political party, initiative/referendum committee; spent supporting, opposing candidate, ballot measure, gathering signatures for proposed measure, petition; excludes lobbying an elected official. Mandates civil penalty, bars government from collecting money for entity that uses such money for "political purpose" or commingles it with "political" money. Other provisions.

Chief Petitioner(s): Bill Sizemore, PO Box 343, Beavercreek, OR 97004.

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 14, 2006. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2008 general election ballot is determined by the total votes cast for all candidates for governor at the 2006 general election. These signatures shall be filed in this office not later than July 3, 2008.

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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

July 31, 2006

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

RECEIVED
2006 JUL 31 PM 4:24
OFFICE OF THE SECRETARY OF STATE

Re: Proposed Initiative Petition — Penalizes Person, Entity For Using Funds Collected With
“Public Resource” (Defined) For “Political Purpose” (Defined)
DOJ File #BT-25-06; Elections Division #25

Dear Mr. Lindback:

Enclosed with this letter is the final ballot title certified on July 31, 2006. This letter explains both the changes we made to the draft ballot title in response to the two comment letters we received, and why we did not make some of the suggested changes.

We received comments from Bill Sizemore and from Margaret Olney, on behalf of Larry Wolf and Chip Terhune.

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

Commenter Sizemore objects that the draft caption inaccurately states the measure “requires segregating political funds,” whereas the measure in fact prohibits commingling political funds with other funds. Commenters Wolf and Terhune object to the same phrase. We agree with the commenters’ objection.

Commenters Wolf and Terhune have three additional objections to the draft caption. They comment that the draft caption fails to inform voters “*who* is prohibited from using money collected with public resources for political purposes.” They rely on *Akin v. Myers*, 335 Or 228, 64 P3d 1129 (2003), and *Nesbitt v. Myers*, 335 Or 219, 64 P3d 1133 (2003). The commenters suggest that the caption specify that the measure affects “individuals, organizations” that use and manage payroll-deducted money.

In both *Akin* and *Nesbitt*, the court required modification of a caption that inaccurately suggested the measure was directed at employers who collected or deducted the money from employees' paychecks, where the measures were actually directed at the entities that received and used the deducted money.

The draft caption for this ballot measure does not suffer from the defect identified in *Akin* and *Nesbitt*. Nevertheless, we agree with the commenters that the caption should state that the measure is directed at those persons and entities who receive and use the money collected with public resources. We use the words "person" and "entity" rather than "individual" and "organization" for two reasons. First, the measure refers to "person or entity." Second, "organization" may be underinclusive.

Wolf and Terhune's next objection is that the draft caption should place the phrase "public resources" in quotation marks because it has a unique meaning in this measure. We agree, and adopt that suggestion, changing "resources" to "resource" and adding the parenthetical "(defined)." For the same reason, we have placed "political purpose" in quotation marks followed by "(defined)."

In addition, Wolf and Terhune comment that "mandates penalty" in the caption should be changed to "mandates penalties." We agree, but our modification of the caption makes that proposed change unnecessary.

We therefore certify the following caption:

**PENALIZES PERSON, ENTITY FOR USING FUNDS COLLECTED
WITH "PUBLIC RESOURCE" (DEFINED) FOR "POLITICAL
PURPOSE" (DEFINED)**

The "Yes" Result Statement

All commenters renew their argument that the measure does not "require segregating" political funds. We agree, and modify the "yes" result statement accordingly.

Wolf and Terhune renew their suggestion to replace "persons, entities" with "individuals, organizations." For the two reasons stated above, we do not adopt that suggestion.

Those commenters next object that the use of the term "finance" in the draft "yes" result statement is "unnecessary, biased and misleading." We agree, and have modified the "yes" result statement accordingly.

We also agree with Wolf and Terhune that inclusion of the phrase "with exceptions" is unnecessary.

As indicated above, we adopt the commenters' suggestion to place "public resource" in quotation marks and that "penalty" should be changed to "penalties."

We certify the following “yes” result statement:

RESULT OF “YES” VOTE: “Yes” vote prohibits persons, entities from using money for “political purpose” (defined) if collected with “public resource” (defined), commingled with such money; mandates penalties.

The “No” Result Statement

Wolf and Terhune object that the draft “no” result statement does not adequately explain to voters the *status quo*. We do not adopt their proposed alternative language, as they anticipate, because it borders on impermissible partiality. Their “underlying criticism,” however, is well taken.

We certify the following “no” result statement:

RESULT OF “NO” VOTE: “No” vote retains current law, which does not restrict person’s, entity’s use of money collected with public resources or commingling such money with “political” funds.

The Summary

Commenters Wolf and Terhune assert that the draft summary is deficient in five respects. We address their objections in order.

Objection # 1: The draft summary states: “Current law does not prohibit using money collected with public resources for political purposes or commingling such money with political funds.” The commenters object that the draft summary fails to tell voters that current law does not restrict individuals and organizations in the use and commingling of money collected with public resources and that it should state what individuals and organizations are permitted to do. We agree that the affected entities should be mentioned and that it is preferable in this instance to state what current law allows rather than what it “does not prohibit.”

Objection # 2: The draft summary states: “Prohibits commingling such money [money collected, wholly or partially, with use of public resources] with money used for political purpose.” The commenters correctly point out that the proposed measure does not “prohibit” commingling, but rather imposes a penalty for doing so.

Objection # 3: The draft summary states: “Measure prohibits using money collected, wholly or partially, with use of public resources * * * for political purposes, except elections, official voters’ pamphlet, most lobbying. Prohibits commingling such money with money used for political purpose. * * * Prohibitions apply to individuals, corporations, firms, companies, unions, organizations, associations, committees, other groups.” The commenters object that the summary does not adequately identify *whose* conduct is being targeted, in that identification of

the affected entities comes too late. For that reason, we have identified the affected entities at the beginning of the summary.

Objection # 4: The draft summary states: "Measure prohibits using money collected, wholly or partially, with use of public resources (including money, public employee work time, buildings, equipment, supplies) for political purposes, except elections, official voters' pamphlet, most lobbying." The commenters object that it is misleading to state that "political purpose" excludes "elections" and "most lobbying." To make the summary more clear, we have modified the references to the measure's exceptions for elections, the official voters' pamphlet, and lobbying an elected official.

Objection # 5: The draft summary provides: "'Political purpose' includes: candidate, political committee, political party, initiative or referendum committee, supporting or opposing candidate or ballot measure, including signature gathering for proposed measure or petition." The commenters object that the definition of "political purpose" is "extremely confusing," because "candidates" are not a prohibited "political purpose." To avoid such confusion, we have modified the summary to be more clear.

We certify the following summary:

SUMMARY: Current law allows individuals, organizations to use money for "political purposes," including money collected with public resources. Measure prohibits individuals, organizations, other entities from using money for "political purposes" if "public resources" were used in collecting it. "Money" includes in-kind contributions, independent expenditures, pass-through contributions. "Public resources" include money, public employee work time, buildings, equipment, supplies, unless used for conducting elections, issuing official voters' pamphlet. "Used for a political purpose" means: contributed to candidate, political committee, political party, initiative/referendum committee; spent supporting, opposing candidate, ballot measure, gathering signatures for proposed measure, petition; excludes lobbying an elected official. Mandates civil penalty, bars government from collecting money for entity that uses such money for "political purpose" or commingles it with "political" money. Other provisions.

Accordingly, we certify the attached ballot title.

Sincerely,

Judy C. Lucas
Assistant Attorney General

John Lindback
July 31, 2006
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Enclosure

c: Peter Shepherd, Deputy Attorney General
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Beavercreek, Oregon 97004

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BALLOT TITLE

PENALIZES PERSON, ENTITY FOR USING FUNDS COLLECTED WITH "PUBLIC RESOURCE" (DEFINED) FOR "POLITICAL PURPOSE" (DEFINED)

RESULT OF "YES" VOTE: "Yes" vote prohibits persons, entities from using money for "political purpose" (defined) if collected with "public resource" (defined), commingled with such money; mandates penalties.

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