



SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
& TRIBAL LIAISON

DEBORAH SCROGGIN
DIRECTOR

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

(503) 986-1518

INITIATIVE PETITION

On February 9, 2022, the Elections Division received certified ballot titles from the Attorney General for rejected Initiative Petitions **2022-043, 2022-044, and 2022-045**.

Initiative Petitions **2022-043, 2022-044, and 2022-045** were rejected by the Secretary of State because the text does not include the entirety of the statute that would result if voters adopted the proposed measure(s). In *Kerr v. Bradbury*, 193 Or App 304 (2004), the Oregon Court of Appeals decided that the full text provision requires petitioners to include all parts of the relevant statute, even parts that are not being amended or repealed.

Under OAR 165-014-0028, these petitions will not be approved to circulate, but 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.

Caption

2022-043

New campaign finance requirements: limits contributions; creates public campaign-funding system; adds disclosure/disclaimer requirements

2022-044

Creates new campaign finance requirements: limits contributions; adds disclosure and disclaimer requirements; creates enforcement system

2022-045

Creates new campaign finance requirements: limits contributions; adds disclosure and disclaimer requirements; creates enforcement system

Chief Petitioners

Jason Kafoury 411 SW 2nd Avenue #200 Portland, OR 97204

James Ofsink 411 SW 2nd Avenue #200 Portland, OR 97204

Rebecca Gladstone 1330 12th Street SE #200 Salem, OR 97302

Appeal Period

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

February 24, 2022

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
2022-043	December 6, 2021	January 25, 2022	February 9, 2022

Draft Ballot Title Caption

Creates new campaign finance requirements: limits contributions; creates public campaign funding system; adds disclosure requirements

Chief Petitioners

Jason Kafoury 411 SW 2nd Avenue #200 Portland, OR 97204
James Ofsink 411 SW 2nd Avenue #200 Portland, OR 97204
Rebecca Gladstone 1330 12th Street SE #200 Salem, OR 97302

Procedural Constitutional Requirement Commentor

Michael Selvaggio 7095 SW Sandburg Street, PO Box 23555, Tigard, OR 97281

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.

Shemia Fagan, Secretary of State

02/09/2022

Dated



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

February 9, 2022

Deborah Scroggin
Director, Elections Division
Office of the Secretary of State
255 Capitol St. NE, Ste. 501
Salem, OR 97301

Re: Proposed Initiative Petition — New Campaign Finance Requirements: Limits Contributions; Creates Public Campaign-Funding System; Adds Disclosure/Disclaimer Requirements.

DOJ File #BT-43-22; Elections Division #2022-043

Dear Ms. Scroggin:

We have received the comments submitted in response to the draft ballot title for the above-referenced measure. Comments were submitted by Jill Gibson on behalf of Laura Edmonds; Daniel Meek on behalf of Rebecca Gladstone, Jason Kafoury, and James Ofsink; Margaret Olney on behalf of Christy Mason; and Michael Selvaggio on behalf of himself and UFCW Local 555. We provide the enclosed certified ballot title, which reflects our changes to the draft ballot title.

This letter summarizes the comments we received, our responses to those comments, and the reasons why we altered or declined to alter the draft ballot title. ORAP 12.30(6) requires this letter to be included in the record if the Oregon Supreme Court is asked to review the ballot title.

Procedural constitutional requirements

Commenter Selvaggio argues that the proposed measure fails to comply with Article IV, section 1(2)(d), of the Oregon Constitution, which states that “[a]n initiative petition shall include the full text of the proposed law or amendment to the Constitution.” Whether IP 43 complies with that requirement is beyond the scope of the ballot title drafting process. *See* OAR 165-14-0028 (providing for separate review process by Secretary of State to determine whether measure complies with constitutional procedural requirements for proposed initiative measures). Accordingly, we do not address that issue here.

Additionally, commenter Gibson argues that IP 43 is unfair and unconstitutional because it prohibits certain nonprofit organizations from making campaign contributions, while allowing other types of nonprofits to do so. She also asserts that IP 43 is unconstitutional because it provides for the state taking private campaign funds after an election. The merits of those

arguments are also beyond the scope of the ballot title drafting process; therefore, we do not address them further. However, to the extent that commenter Gibson argues that such effects must be identified in the ballot title, we address those arguments below.

A. The caption

The caption of a ballot title is limited to fifteen words and must “reasonably identif[y] the subject matter of the state measure.” ORS 250.035(2)(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 ballot title contains the following caption:

Creates new campaign finance requirements: limits contributions; creates public campaign funding system; adds disclosure requirements

Commenter Gibson argues that the caption does not substantially comply with ORS 250.035(2) because it fails to notify voters that IP 43 would prohibit 501(c)(6) organizations, such as nonprofit business leagues and chambers of commerce, from contributing to candidates, because it excludes such organizations from the measure’s definition of “membership organization.” Gibson adds that failing to include this major effect causes the caption to be underinclusive and not substantially in compliance with statutory standards.

We agree that IP 43 would prohibit 501(c)(6) organizations from contributing to candidates. However, given the 15-word limit, it is not feasible to include that specific limitation in the caption. Instead, we have used the general description “limits contributions” to encompass the numerous contribution limitations set out in the measure. *McCann/Harmon v. Rosenblum*, 354 Or 701, 707, 320 P3d 548 (2014) (“[a]t times, it may be necessary to describe [measure’s] effects generally”); *Parrish v. Rosenblum*, 362 Or 96, 105, 403 P3d 786 (2017) (a “more general description” of numerous temporary assessments created by initiative accurately described initiatives changes and substantially complied with subject matter requirement of ORS 250.035(2)(a)). Furthermore, the limitation on contributions from 501(c) nonprofits is appropriately included in the modified summary.

Commenter Meek argues that the caption fails to describe a major effect or “central feature” of IP 43: the requirement that political advertisements identify the four largest original sources of funds used for the advertising campaign.

Commenter Olney asserts that the caption currently meets the statutory standards but suggest that the caption could be improved by using the word “system” instead of “requirements” to signal the reach of the proposal. Commenter Olney also suggest that a reference to the disclaimer for political advertisements in the caption would be ideal but notes that the “yes” vote result adequately includes that detail.

We agree with Commenters Meek and Olney that the measure’s disclaimer requirement that political advertisements identify the four top donors is one of the major effects of the

measure. However, given the numerous disclosure and disclaimer requirements set out in section 6 of the measure, we believe that a general description of those major effects is appropriate for the caption. Accordingly, we have modified the caption to reflect the disclaimer requirement, and the “yes” statement and summary, as modified, provide more details about that requirement.

We certify the following caption:

New campaign finance requirements: limits contributions; creates public campaign-funding system; adds disclosure/disclaimer requirements

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 “yes” vote result statement should identify “the most significant and immediate” effects of the measure. *Novick/Crew v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). The draft “yes” vote result statement provides:

Result of “Yes” Vote: “Yes” vote limits campaign contributions for candidates to public office; adds disclosure/disclaimer requirements for advertisements; establishes public funding system for candidates and new commission.

Commenter Gibson argues that the “yes” statement should identify IP 43’s disparate effect on some nonprofit organizations, namely that it does not allow 501(c)(6) organizations to make contributions to candidates. In support of that argument, commenter Gibson asserts that the effect of the measure on some nonprofit organizations but not others is not speculative and should therefore be identified in the “yes” statement.

As noted, we agree that the measure treats some nonprofit organizations under 501(c) differently. However, we believe that the modified “yes” statement generally encompasses that change by noting that the measure limits contributions. Furthermore, the summary, as modified, adequately addresses the disparate treatment of 501(c) nonprofits.

Commenter Meek raises two primary arguments in favor of adding more specific descriptions to the “yes” statement. First, he asserts that the use of the term “disclaimer” in the “yes” statement will be confusing to voters and proposes that the statement instead describe the actual effect of that requirement, which is that political advertisements must identify their largest sources of funds. Second, he argues that the “yes” statement could provide additional information regarding the public campaign-funding system by stating that public funds will match small contributions from Oregon individuals to qualifying candidates.

We note that the measure itself uses the word “disclaimer” in reference to the information that must be disclosed regarding political advertisements. Furthermore, although the requirement that political advertisements identify their top four donors is a major effect, there are other disclaimer requirements in the measure. The draft “yes” statement adequately describes the measure’s effects in general terms. However, we agree that the “yes” statement can provide

more specific information about the nature of the public-funding system, and we have made changes to include more details.

Commenter Olney argues that, to meet the statutory standards, the “yes” statement must tell voters that the disclosure and disclaimer requirements apply to political advertisements for both candidates *and* measures, and notes that such detail is more important than reference to the new commission. We agree that it should be clear that the disclosure and disclaimer requirements apply to both candidates and measures, we have made changes to indicate that in the “yes” statement and to comply with the word limit.

We certify the following “yes” result statement:

Result of “Yes” Vote: “Yes” vote limits contributions; adds disclosure and disclaimer requirements for candidate/measure advertisements; qualifying candidates may receive public funds matching small contributions; creates new commission.

C. The “No” result statement

A ballot title also 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 “no” vote result statement “should ‘address the substance of current law *on the subject matter of the proposed measure*’ and ‘summarize the current law accurately.’” *McCann v. Rosenblum*, 354 Or 701, 707, 320 P3d 548 (2014) (quoting *Novick/Crew*, 337 Or at 577) (emphasis added in *Novick/Crew*; alterations omitted). The draft “no” vote result statement provides:

Result of “No” Vote: “No” vote retains current law, which does not limit contributions or provide for publicly-funded candidate campaigns; maintains existing reporting and disclosure requirements.

Commenter Meek asserts that the “no” statement is merely a negative of the yes statement and provides no additional information. He also states that there is no reference to the disclaimer requirement that political advertisements identify their largest funders. We disagree that the current “no” statement does not provide additional information; instead, it indicates that there are some existing reporting and disclosure requirements and that the major effects of the measure would not take effect. However, we agree that the statement should be rephrased to state the effects of a “no” vote more affirmatively. We have modified the ballot title in ways that may address Commenter Meek’s concerns.

Commenter Olney asserts that, although the “no” statement is accurate, it does not signal to voters what is new and different about IP 43. She suggests that we modify the statement to more directly reflect current law, which she claims requires campaign finance reporting and disclosure but does not limit contributions to candidates or provide for public funding. We believe that the “no” statement, as amended, addresses the points raised by Commenter Olney.

We certify the following “no” result statement:

Result of “No” Vote: “No” vote maintains existing reporting and disclosure requirements; contributions are not limited; no publicly-funded candidate campaigns; and no additional requirements for candidate/measure advertisements.

D. The summary

ORS 250.035(2)(d) requires a “concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” “The purpose of a ballot title’s summary is to give voters enough information to understand what will happen if the initiative is adopted.” *McCann v. Rosenblum*, 354 Or 701, 709, 320 P3d 548 (2014). The draft summary provides:

Summary: Current law requires reporting certain contributions to candidates, but does not limit contributions. Measure limits: dollar amount of contributions depending on source and type of public office; loan amount candidates can make to their campaign committee; and amount of unexpended campaign committee funds that carry forward after election. Establishes Grassroots Donor Election Program and corresponding fund, where candidates satisfying certain criteria receive a match for grassroots donor contributions using public funds, up to certain maximum amounts. Establishes Oregon Elections Commission to oversee the program; civil and criminal liability for violations. Establishes enforcement system for contribution limits and new Office of Candidate and Community Services for compliance. Requires disclaimers prominently disclosing person(s) paying for political advertisements and disclaimers naming advertisements’ top four funding sources. Other provisions.

Commenter Gibson asserts that the summary is deficient because it fails to notify voters that IP 43 prohibits certain nonprofits from contributing. Additionally, commenter Gibson states that the measure is deficient because it also fails to notify voters that the measure would require candidates to give unexpended campaign funds to the Secretary of State; require complaints of alleged campaign finance violations to be resolved through contested case hearings; allows attorney fees for prevailing party of contested case hearings; allows judicial review of contested case determinations; allows judicial review of complaints not resolved by contested case hearings within 45 days of filing complaint; will have an administrative cost of at least \$10 million per biennium; and will use .25% of the General Fund to fund campaigns.

As noted, we agree that a significant aspect of the measure is that it treats certain 501(c) nonprofits organizations differently for contribution purposes, and we have modified the summary to indicate such treatment. We have also modified the summary to indicate that unexpended funds in excess of the limits set by IP 43 are paid to the Secretary of State and to identify the cost and source of funds associated with the measure. However, given the word-limit constraints, we believe that the enforcement-related features of the measure are adequately addressed by the summary’s general reference to the creation of an enforcement system.

Commenter Meek asserts that the summary offers a generic view that does not include many details and offers an alternative summary. Commenter Meek asserts that the summary

incorrectly states that the measure limits the loan amount candidates can make to their campaign committee and that it would be more accurate to say that the measure limits the amounts of loans that a candidate committee can repay to the candidate. We disagree that the summary incorrectly states that the measure limits the loan amount candidates can make to their campaign committee. The measure effectively limits the amount a candidate can loan to his or her campaign because it limits the loan amount that can ultimately be repaid to the candidate, rendering any loan amount over the limit a gift. However, we have made changes to better track the language of the measure.

Commenter Meek also asserts that the summary omits a key detail of the public campaign-funding program, which is that participating candidates must agree to limits on private contributions that are much lower than otherwise applicable limits. He asserts that it also omits the requirement that qualifying grassroots contributions come from “in-state individuals.” Commenter Meek also reiterates that the use of the term disclaimer in the summary can be confusing. Although we agree that the grassroots funding program includes the details identified by Commenter Meek, we disagree that those particular details must be included the summary. And the summary, as modified, omits use of the word disclaimer to describe the requirements for political advertisements.

Commenter Olney asserts that the draft summary does not meet statutory standards because it implies that only candidate campaign spending is impacted by the initiative. We agree and make changes to better describe current law and to indicate that the disclaimer requirements apply to political advertisements for candidates and measures.

Commenter Olney also states that it is important to address the limit on the amounts that candidates can carry forward and to mention that IP 43 limits what campaign funds can be spent on. We note that the draft summary generally states that the measure limits the amounts that can be carried forward after an election, and we have amended the summary to indicate that the use of unexpended funds carrying over is also limited.

Commenter Olney adds that the description of the public funding system is generally fine but can be improved by telling voters that one of the primary criteria for participation is an agreement to forgo large contributions, so long as the summary still notifies voters that there is a maximum that qualified candidates can receive. Lastly, Commenter Olney notes that the draft summary appropriately alerts voters that there will be public accountability through the Oregon Elections Commission and additional compliance resources.

Although we agree one of the primary criteria for a candidate to receive public funds is that they forgo large contributions, we are unable to include that detail in the summary without omitting other important details, including that there is a maximum amount candidates may receive under the program. We also agree that the summary should alert voters of the accountability features included in the measure, therefore, that section remains in the modified summary.

In sum, we made changes responsive to the comments received and other minor changes to stay within the word limit.

We certify the following summary:

Summary: Current law requires certain reporting/disclosures but does not limit contributions. Measure limits: dollar amount of contributions depending on source/type of public office; loan amounts candidate committee can repay candidate; amount of unexpended campaign committee funds carrying forward after election and their uses (excess funds paid to Secretary of State). Restricts contributions from certain 501(c) nonprofits. Establishes Grassroots Donor Election Program, allocates .25% of General Fund; candidates satisfying criteria receive matching contributions using these funds, up to maximum amounts. Requires prominently disclosing person(s) paying for political advertisements for candidates/measures, naming advertisements' top four donors. Establishes Oregon Elections Commission; civil/criminal liability for violations. Establishes enforcement system and Office of Candidate and Community Services for compliance. Cost at least \$10 million/biennium. Other provisions.

E. Conclusion

We certify the attached ballot title.

Sincerely,

/s/ Benjamin Gutman

Benjamin Gutman
Solicitor General
benjamin.gutman@doj.state.or.us

Enclosure

Michael Selvaggio
PO Box 23555
Tigard, OR 97281

Jill Gibson
15350 SW Sequoia Pkwy.
Suite 250
Portland, OR 97224

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

Jason Kafoury
411 SW 2nd Ave.
#200
Portland, OR 97204

James Ofsink
411 SW 2nd Ave.
#200
Portland, OR 97204

Rebecca Gladstone
1330 12th St. SE
#200
Salem, OR 97302

Sent via email
Daniel Meek



Certified by Attorney General on February 9, 2022.

/s/ Benjamin Gutman
Solicitor General

BALLOT TITLE

New campaign finance requirements: limits contributions; creates public campaign-funding system; adds disclosure/disclaimer requirements

Result of “Yes” Vote: “Yes” vote limits contributions; adds disclosure and disclaimer requirements for candidate/measure advertisements; qualifying candidates may receive public funds matching small contributions; creates new commission.

Result of “No” Vote: “No” vote maintains existing reporting and disclosure requirements; contributions are not limited; no publicly-funded candidate campaigns; and no additional requirements for candidate/measure advertisements.

Summary: Current law requires certain reporting/disclosures but does not limit contributions. Measure limits: dollar amount of contributions depending on source/type of public office; loan amounts candidate committee can repay candidate; amount of unexpended campaign committee funds carrying forward after election and their uses (excess funds paid to Secretary of State). Restricts contributions from certain 501(c) nonprofits. Establishes Grassroots Donor Election Program, allocates .25% of General Fund; candidates satisfying criteria receive matching contributions using these funds, up to maximum amounts. Requires prominently disclosing person(s) paying for political advertisements for candidates/measures, naming advertisements’ top four donors. Establishes Oregon Elections Commission; civil/criminal liability for violations. Establishes enforcement system and Office of Candidate and Community Services for compliance. Cost at least \$10 million/biennium. Other provisions.