



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

May 23, 2018

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 — Prohibits “Assault Weapons” (Defined), “Large Capacity Magazines” (Defined), Unless Registered With State Police. Criminal Penalties.

DOJ File #BT-43-18; Elections Division #2018-043

Dear Mr. Trout:

More than 1000 timely comments were submitted on the draft ballot title for the initiative petition referenced above. We have reviewed each and every comment. While many of the comments simply stated support or opposition to the proposed measure, many hundreds suggested specific language for use in the ballot title. Our usual practice is to individually address each comment letter we received; it is not possible to do so here. However, many of the comments presented the same themes or arguments, and we address those common concerns in this letter.

Many of the comments received suggested some confusion about the process for citizen initiative petitions. Some commenters seemed to assume that the Attorney General drafted the proposed measure. Others urged your office to support or oppose the measure, or to simply refuse to place it on the ballot.

With particular regard to the Attorney General, her role in the process of drafting the ballot title is to prepare an impartial ballot title that complies with ORS 250.035. The comments on a draft ballot title are an important part of that process, pointing out flaws or nuances that may not be readily apparent. The end result, the certified ballot title, is intended to provide fair and accurate information to voters so that informed choices can be made.

A number of comments asserted that the proposed measure violates various provisions of the United States and Oregon Constitutions. With the exception of those procedural provisions of the state constitution that might bar placement of the measure on the ballot, consideration of those constitutional claims is premature at this point. As to claims regarding Article 4, section 1 (2)(d) of the Oregon Constitution, we have previously opined that this proposed measure is consistent with the constitutional procedural requirements.

The vast majority of the comments were directed to the caption of the ballot title. However, many of the comments were also applicable to the result statements and the summary, and we used the comments to refine our thinking as to all parts of the draft ballot title. As a result, we have made changes to the caption, both result statements, and the summary.

A. 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). 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). To identify the “actual major effect” of a measure, the Attorney General must consider the “changes that the proposed measure would enact in the context of existing law.” *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011). 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.*

The draft ballot title’s caption reads:

Criminalizes Possession Or Transfer Of “Assault Weapons” (Defined) Or “Large Capacity Magazines” (Defined), With Exceptions

The vast majority of commenters objected to the use of the term “assault weapons,” even with the reference to the definition in the proposed measure, as an inflammatory, imprecise, or ambiguous term. Unfortunately, an accurate definition of that term is impossible to convey in the allotted fifteen words, particularly since it is not the only subject matter that needs to be conveyed. We have opted to place the term in quotation marks and to note that it is a defined term, and we have utilized the summary of the ballot title to describe more fully what is encompassed within that term.

Most commenters also objected to the reference to “large capacity magazines.” Under this proposed measure, even if a firearm itself does not require registration for continued ownership, magazines would have to be registered if they are capable of holding more than 10 rounds of ammunition. It is important to communicate the breadth and scope of this proposal, including its impact on magazines as part of the actual major effect, but again, fifteen words does not allow for a more full description. Here, too, we have used the summary to provide a fuller explanation.

The chief petitioners object to the draft caption’s focus on criminal penalties, pointing out that there are other options, including registration. Many other commenters also pointed out that registration is a new and major effect of the measure. Although a background check is done when a gun is purchased, there is currently no state registry of guns, and magazines can be

purchased with no restrictions and no identification. Registration is an additional actual major effect of the measure.

Although we agree that the draft ballot title overemphasized the significance of criminal penalties, the proposed measure does impose serious criminal consequences for noncompliance, and those penalties are also an actual major effect of the measure.

Considering the comments as a whole, we certify the following caption:

Prohibits “Assault Weapons” (Defined), “Large Capacity Magazines” (Defined), Unless Registered With State Police. Criminal Penalties.

B. “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 criminalizes possession/ transfer of “assault weapons” (defined)/ “large capacity magazines” (defined), with exceptions for military/ police / registered owner approved by State Police

Few of the commenters focused specifically on the result statements; however, many of their comments apply with equal force to the “yes” statement. The most significant and immediate effect of the measure is to require background checks and registration to lawfully possess assault weapons and large capacity magazines, as defined by the measure. The creation and maintenance of a registry of such items, which does not presently exist, is another significant and immediate effect. Many commenters noted these significant changes in current law.

We certify the following “yes” result statement:

Result of “Yes” Vote: “Yes” vote prohibits “assault weapons” (defined), “large capacity magazines” (defined), unless registered with State Police after background check. Criminal penalties. State Police must maintain registry.

C. “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 “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*). The draft “no” vote result statement provides:

Result of “No” Vote: “No” vote retains current laws, which bar possession of firearms by certain individuals, including convicted felons, some civilly committed persons, domestic abusers, other disqualified persons

As drafted, the “no” statement focuses on who may currently purchase firearms. Few commenters focused on this statement; however, those who did, including the chief petitioners, noted that it failed to focus on current law on the subject matter of the measure, including background checks for gun purchases and the lack of a registry for firearms or ammunition magazines. The revised “no” statement corrects these omissions:

Result of “No” Vote: “No” vote retains current law requiring background check for firearm purchases, barring purchases by certain individuals, and not requiring registration of firearms or ammunition magazines.

As revised, we certify the “no” result statement.

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 purpose of a ballot title’s summary is to give voters enough information to understand what will happen if the initiative is adopted.” *McCann*, 354 Or at 708. The draft summary provides:

Summary: Measure criminalizes possession or transfer of “assault weapons” (defined)/ “large capacity magazines” (defined) except for military/ law enforcement purposes, or persons authorized by State Police after criminal background check. Otherwise possession or transfer is a Class B felony. Within 120 days, persons lawfully owning such weapons or magazines must remove from Oregon, lawfully sell, surrender to law enforcement, render inoperable, or register items with State Police. Applies to inherited items. Bars moving covered items into Oregon. Assault weapons include certain semiautomatic rifles or pistols with a detachable magazine; pistol or rifles with a fixed magazine holding more than 10 rounds of ammunition; certain semiautomatic shotguns. Large capacity magazine is ammunition feeding device with capacity of more than ten rounds. Effective January 1, 2019. Other provisions.

Because there is, as many commenters remarked, no common agreement as to what the terms “assault weapon” and “large capacity magazine” mean, we believe that the summary should set out specifically what items are covered by the measure, and what is required if the initiative is adopted. Thus, the revised summary first states what will occur if the measure passes: prohibition of ownership of the covered items unless they are registered to a qualified owner. The covered items are then listed in as much detail as space allows, noting that some handguns and shotguns are included, and that the measure refers to semiautomatic weapons. The summary then states how the covered items can be disposed of if the owner chooses not to register them, and further states that covered items may not be brought into the state after the

effective date of the measure. Finally, the measure specifies locations where registered firearms may be taken or held, which may limit the lawful uses of these firearms.

Accordingly, we certify the following summary:

Summary: Measure prohibits “assault weapons” (defined), “large capacity magazines” (defined), unless registered with State Police after background check. Criminal penalties. “Assault weapons” definition includes:

- Semiautomatic rifles with detachable magazine and certain additional features;
- “Semiautomatic, centerfire or rimfire rifles,” or semiautomatic pistol, capable of holding more than ten bullets with fixed magazine;
- Semiautomatic centerfire rifles under thirty inches;
- Semiautomatic handguns with certain additional features;
- Semiautomatic shotguns with certain additional features;
- Shotguns with revolving cylinders.

“Large capacity magazines” defined as capable of holding over 10 rounds, excluding tubular magazines in .22 caliber or lever-action firearms.

Covered items not registered must be sold/ surrendered/ destroyed. State Police must maintain registry. Acquisition mostly prohibited after effective date, January 1, 2019. Measure may limit uses of covered items. Other provisions

E. Conclusion

For the reasons set forth above, we have modified the draft ballot title and certify the ballot title attached to this letter.

Sincerely,

/s/ Denise G. Fjordbeck

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Enclosure

cc: attached certificate of service