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I N I T I A T I V E P E T I T I O N

The Elections Division received a certified ballot title from the Attorney General on November 16, 2018, for Initiative Petition **2020-012**, proposed for the November 3, 2020, General Election.

Caption

Reduces psilocybin criminal penalties; allows licensed psilocybin administration, manufacture, possession, delivery; creates regulatory program, fund

Chief Petitioners

Thomas Eckert 7605 SW Gearhart Drive Beaverton, OR 97007

Sheri Eckert 7605 SW Gearhart Drive Beaverton, OR 97007

Appeal Period

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.

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

December 3, 2018

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@state.or.us

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
November 2, 2018	September 4, 2018	November 1, 2018	November 19, 2018

Draft Ballot Title Caption

Allows psilocybin (defined) manufacture, possession, delivery, administration; creates licensing/enforcement program, fund; reduces criminal penalties

Chief Petitioners

Thomas Eckert	7605 SW Gearhart Drive Beaverton, OR 97007
Sheri Eckert	7605 SW Gearhart Drive Beaverton, OR 97007

Procedural Constitutional Requirement Commentor

None

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.

Dennis Richardson, Secretary of State

11/8/18
Dated



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

November 16, 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 — Reduces Psilocybin Criminal Penalties; Allows Licensed Psilocybin Administration, Manufacture, Possession, Delivery; Creates Regulatory Program, Fund.

DOJ File #BT-12-18; Elections Division #2020-012

Dear Mr. Trout:

We have received comments on the Attorney General's draft ballot title for prospective Initiative Petition #12 (2020) from Secretary of State Dennis Richardson and Chief Petitioners Mr. Thomas Eckert and Ms. Sheri Eckert. Secretary Richardson objects to the caption, the "yes" vote result statement, and the summary. The chief petitioners object only to the caption.

This letter summarizes the comments we received regarding the draft ballot title, our responses to those comments, and the reasons we did or did not make changes to the ballot title in light of the submitted comments. ORAP 11.30(6) requires this letter to be included in the record in the event that the Oregon Supreme Court reviews the ballot title.

We also enclose a copy of the certified ballot title.

A. The Caption

The ballot title must include "[a] caption of not more than 15 words that reasonably identifies 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). 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). The draft caption provides:

Allows psilocybin (defined) manufacture, possession, delivery, administration; creates licensing/enforcement program, fund; reduces criminal penalties

Both Secretary Richardson and the chief petitioners object to the caption.

1. Comments from Secretary Richardson

Secretary Richardson suggests that the “main impact” of the initiative would be to reduce criminal penalties for unlawful psilocybin manufacture, delivery, and possession, and that the initiative’s creation of a program to license and regulate the manufacture, possession, and delivery of psilocybin and the administration of “psilocybin services” would be a “secondary impact.” Accordingly, the Secretary suggests that we modify the draft caption so that the reduction of criminal penalties is emphasized over the regulatory program. Specifically, the Secretary suggests that the caption should first indicate that the initiative would reduce existing criminal penalties for the unlawful manufacture, possession, and delivery of psilocybin, and then reference the “licensing/enforcement program” and fund that the initiative would establish.

2. Comments from chief petitioners

The chief petitioners comment that the caption is problematic because it incorrectly “signals to voters straight away that psilocybin will be sold or otherwise made available for unsupervised personal possession and consumption.” The chief petitioners acknowledge that the caption includes reference to the creation of a “licensing/enforcement program,” but they maintain that the overall impression of the caption is that the initiative “aims to legalize and regulate psilocybin in the same or similar manner as cannabis.” The chief petitioners explain that the initiative creates a framework for qualified adults to access “psilocybin service” under controlled conditions at licensed facilities “under the supervision and care of licensed facilitators.” The chief petitioners suggest that possible confusion could be mitigated by moving the words “licensed” and “administered” to the beginning of the caption.

Based on the comments from Secretary Richardson and the chief petitioners, we have modified the caption. We note, however, that the initiative has two distinct “major effects.” Because current state law prohibits all psilocybin manufacture, delivery, and possession, one “major effect” of the initiative is that it would establish a program allowing licensed psilocybin administration, manufacture, delivery, and possession. The initiative’s other “major effect” is that it would reduce most existing criminal penalties for the unlawful manufacture, delivery, and possession of psilocybin from misdemeanors and felonies to violations and misdemeanors. Accordingly, the caption must “reasonably identify those effects.” *Rasmussen*, 350 Or at 285.

We agree, however, that reordering the caption's clauses and inserting "psilocybin" into the phrase "reduces criminal penalties" would improve the caption's clarity. We also agree with the chief petitioners that moving the words "licensed" and "administered" to the front of the clause identifying the establishment of a psilocybin licensing program would provide additional clarity. To accomplish those changes within the word limitations of ORS 250.035(2)(a), we delete the term "(defined)" because, even though "(defined)" is used to clarify for voters that a measure specially defines a phrase and uses it in that specially defined sense, "psilocybin" is defined in the initiative in a manner that is consistent with the general understanding of the term and is consistent with how the term is used in the statutes criminalizing and punishing the unlawful manufacture, delivery, and possession of psilocybin.

The Attorney General certifies the following caption:

Reduces psilocybin criminal penalties; allows licensed psilocybin administration, manufacture, possession, delivery; creates regulatory program, fund

B. The "Yes" and "No" Vote Result Statements

We next consider the draft "yes" and "no" vote result statements.

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 allows regulated psilocybin (hallucinogenic compound from fungus) manufacture, possession, administration by/to qualifying adults. Reduces most criminal penalties for unlawful manufacture, delivery, possession.

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 prohibits manufacture, delivery, and possession of psilocybin and imposes misdemeanor or felony criminal penalties.

Secretary Richardson raises the same issue with the “yes” vote result statement that he raised about the caption. Accordingly, he suggests that we modify the “yes” vote result statement so that it first references the reduction in criminal penalties and then references the creation of a licensing/regulatory scheme. Neither Secretary Richardson nor the chief petitioners take issue with the “no” vote result statement.

For the reasons identified in our discussion of the caption, and to make the “yes” vote result statement consistent with the certified caption, we modify the order of the clauses in the “yes” vote result statement. To accomplish those changes within the word limitations of ORS 250.035(2)(b), we change the phrase “(hallucinogenic compound from fungus)” to “(hallucinogen from fungus)” because it conveys the same meaning in one less word. In addition, consistently with the chief petitioners’ comments, we replace “regulated” with “licensed” because it is more accurate in terms of the “most significant and immediate effects” of the initiative.

The Attorney General certifies the following “yes” and “no” vote result statements:

Result of “Yes” Vote: “Yes” vote reduces most criminal penalties for unlawful psilocybin (hallucinogen from fungus) manufacture, delivery, possession; allows licensed psilocybin manufacture, possession, administration by/to qualifying adults.

Result of “No” Vote: “No” vote retains current law, which prohibits manufacture, delivery, and possession of psilocybin and imposes misdemeanor or felony criminal penalties.

C. The Summary

We next consider the draft 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: Currently, federal/state law prohibits the manufacture, delivery, and possession of psilocybin (hallucinogenic compound from fungus). Initiative amends state law and requires Oregon Health Authority (OHA) to establish Oregon Psilocybin Services Program to license/regulate production, processing,

delivery, possession of psilocybin, and administration of “psilocybin service” (defined) by licensed “facilitator” (defined) to “qualified client” (defined). Grants OHA authority to implement, administer, and enforce program. Establishes fund for program administration and OHA appointed advisory board to advise OHA director. Preempts local laws inconsistent with program except “reasonable regulations” (defined). Prohibits unlicensed psilocybin manufacture, delivery, possession. Reduces most criminal penalties for unlicensed psilocybin manufacture, delivery, possession to violations or misdemeanors; retains felonies for large weight of psilocybin and/or some convicted felons. Other provisions.

Secretary Richardson does not specifically comment on the summary, other than to suggest that the summary be changed in a manner consistent with his comments on the caption and “yes” vote result statement.

We make minor modifications to the summary so that it is consistent with the certified caption and the certified “yes” vote result statement.

The Attorney General certifies the following summary:

Summary: Currently, federal/state law prohibits the manufacture, delivery, and possession of psilocybin (hallucinogen from fungus). Initiative amends state law to reduce most criminal penalties for unlawful/unlicensed psilocybin manufacture, delivery, possession to violations or misdemeanors; retains felonies for large weight of psilocybin and/or some convicted felons. Initiative amends state law to require Oregon Health Authority (OHA) to establish Oregon Psilocybin Services Program to allow licensed/regulated production, processing, delivery, possession of psilocybin, and administration of “psilocybin service” (defined) by licensed “facilitator” (defined) to “qualified client” (defined). Grants OHA authority to implement, administer, and enforce program. Establishes fund for program administration and OHA appointed advisory board to advise OHA director. Preempts local laws inconsistent with program except “reasonable regulations” (defined). Other provisions.

Page 6

As revised, we certify the attached ballot title.

Sincerely,

/s/ Colm Moore

Colm Moore
Senior Assistant Attorney General
colm.moore@doj.state.or.us

Enclosure

Thomas & Sheri Eckert
7605 SW Gearhart Drive
Beaverton, OR 97007

Dennis Richardson
900 Court Street NE, #136
Salem, OR 97310

Certified by Attorney General on November 16, 2018.

/s/ Colm Moore

Senior Assistant Attorney General

BALLOT TITLE

Reduces psilocybin criminal penalties; allows licensed psilocybin administration, manufacture, possession, delivery; creates regulatory program, fund

Result of “Yes” Vote: “Yes” vote reduces most criminal penalties for unlawful psilocybin (hallucinogen from fungus) manufacture, delivery, possession; allows licensed psilocybin manufacture, possession, administration by/to qualifying adults.

Result of “No” Vote: “No” vote retains current law, which prohibits manufacture, delivery, and possession of psilocybin and imposes misdemeanor or felony criminal penalties.

Summary: Currently, federal/state law prohibits the manufacture, delivery, and possession of psilocybin (hallucinogen from fungus). Initiative amends state law to reduce most criminal penalties for unlawful/unlicensed psilocybin manufacture, delivery, possession to violations or misdemeanors; retains felonies for large weight of psilocybin and/or some convicted felons. Initiative amends state law to require Oregon Health Authority (OHA) to establish Oregon Psilocybin Services Program to allow licensed/regulated production, processing, delivery, possession of psilocybin, and administration of “psilocybin service” (defined) by licensed “facilitator” (defined) to “qualified client” (defined). Grants OHA authority to implement, administer, and enforce program. Establishes fund for program administration and OHA appointed advisory board to advise OHA director. Preempts local laws inconsistent with program except “reasonable regulations” (defined). Other provisions.

DRAFT