



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030-7400

July 9, 21

VIA ELECTRONIC MAIL

The Honorable Shemia Fagan
Secretary of State
Elections Division
255 Capitol Street NE, Suite 501
Salem, Oregon 97310-0722
Fax: (503) 373-7414
Email: irrlistnotifier.sos@state.or.us

Re: Initiative Petition 2022-017 – Draft Ballot Title Comments

Dear Secretary Fagan,

As an Oregon elector, I, Roger Beyer, write to comment on the Attorney General's draft ballot title for Initiative Petition 2022-017 (hereinafter, "IP17"). I also submit these written comments in my capacity as a representative of the National Rifle Association of America ("NRA") and on behalf of Oregon NRA members.

I. INTRODUCTION

IP17 would create a broad ban on the standard firearm magazines used in firearms that law-abiding Americans most commonly choose for self-defense, hunting, and target shooting. It would also create a new firearm permitting requirement, tax the exercise of a civil right, prohibit those who lawfully use marijuana under Oregon law from purchasing firearms, and potentially create indefinite delays for firearm purchases.¹

We appreciate the challenge the Attorney General faces under OR 250.035 when addressing a measure with the many inherent obscurities that IP17 contains. Nevertheless, as explained below in more detail, the draft ballot title does not satisfy the legal requirements of ORS 250.035 because the draft ballot title provides information that is too general to alert voters of the significance of the changes in the law the measure proposes.

II. THE CAPTION

ORS 250.035(2)(a) requires that a ballot title contain "[a] caption of not more than 15 words that reasonably identifies the subject matter of the state measure." The caption serves as the "headline" or "cornerstone for the other portions of the ballot title" and must identify the proposal's subject matter in terms that will not "confuse or mislead potential petition signers and

¹ By including these diverse subjects, IP17 would also potentially violate single-subject requirement of Article IV, section 1(2)(d) of the Oregon Constitution.

voters.” *Kain/Waler v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004) (quoting *Greene v. Kulongoski*, 322 Or 169, 174-75, 903 P2d 366 (1995)). In addition, the Attorney General must look past “politically charged” phrases and prepare a ballot title that is “impartial” so as to prevent argument, misleading descriptions, or emotionally laden words within the ballot title. *Carson v. Kroger*, 351 Or 508, 270 P3d 243 (2012); *Hamilton v. Myers*, 326 Or 44, 943 P2d 214 (1997).

As the Oregon Supreme Court recently emphasized, the “subject matter” is the “actual major effect” or effects of the measure. *Lavey v. Kroger*, 350 Or 559, 563, 285 P3d 1194 (2011). “To identify the ‘actual major effect’ of a measure, this court examines the text of the proposed measure to determine the changes that the proposed measure would enact in the context of existing law and then examines the caption to determine whether the caption reasonably identifies those effects.” *Rasmussen v. Kroger*, 350 Or 281, 285, 253 P3d 1031 (2011).

A caption that is underinclusive, because it does not notify readers of all the major effects of an initiative, is statutorily noncompliant. *Towers v. Myers*, 341 Or 357, 362 (2006). “When the Attorney General chooses to describe the subject matter of a proposed measure by listing some of its effects, [s]he runs the risk that the caption will be underinclusive and thus inaccurate. *Towers*, 341 Or at 361. See also *McCann v. Rosenblum*, 354 Or 701, 706 (2014) (“[w]hen the Attorney General chooses to describe a measure by listing the changes that the proposed measure would enact, some changes may be of ‘sufficient significance’ that they must be included in the description”). Each major effect of an initiative should be conveyed in the caption. “A ballot-title caption written in terms so broad that they convey only one highly generalized aspect of [an initiative’s] multiple, important effects does not substantially comply with ORS 250.035(2) and must be modified.” *McCann*, 354 Or at 707.

The caption prepared by the Attorney General for IP17 states:

Requires permit to acquire firearms; creates permit database; prohibits ammunition magazines over ten rounds; exceptions

This proposed ballot title violates ORS 250.035(2)(a) and interpretive case law. IP17 is not limited to magazines that are capable of holding more than 10 rounds. Nearly any magazine could be affected by the language of the initiative because it extends to any magazine “that can be readily restored, changed, or converted to accept, more than 10 rounds of ammunition”

Since nearly any firearm magazine capable of holding 10 rounds could be “changed” or “converted” to accept more than 10 rounds, the initiative potentially impacts a much broader category of magazines than those indicated by the proposed ballot title. Many magazines, even without modification, can hold a greater number of cartridges of another caliber than the caliber for which they were designed.

The reality is that ammunition magazines that hold more than 10 rounds are standard for most handguns and rifles.² These “standard capacity magazines” are used in firearms commonly kept at home and carried outside the home for protection and are commonly used in defensive firearm training and sports. Once again, these items are not “dangerous and unusual weapons,” but

² For example, standard magazines designed for the ubiquitous Glock 17 pistol hold 17 rounds, while standard magazines for comparable Beretta and SIG pistols hold between 15 and 20 rounds.

rather “typically possessed by law-abiding citizens for lawful purposes.”

The draft ballot title also completely ignores the incorporation of federal prohibitions into the new permit-to-purchase. By incorporating federal law in this manner, IP17 would create a new prohibition in Oregon law on those who lawfully use marijuana under Oregon law.

Federal law prohibits marijuana users, even those who use lawfully under state law, from possessing or receiving firearms. 18 U.S.C.A. § 922(g)(3). Oregon law does not currently contain such a prohibition. *Willis v. Winters*, 350 Or. 299, 310 (2011).

By denying the issuance of the newly created permit-to-purchase to those “prohibited from purchasing or acquiring a firearm under state or federal law,” IP17 would incorporate this prohibition into Oregon law.

Oregon voters only recently adopted Ballot Measure 91 in 2014. Those same voters should be made aware that conduct they attempted to make lawful will now be used to deprive Oregonians of the constitutional right to keep and bear arms.

IP17 also substantially changes Oregon law regarding gun owner’s personally identifying information. IP17 would require the Oregon State Police to maintain a registry of the firearms owned by all permit holders.

The existing authorization for firearm dealers to transfer firearms if they do not receive a response from the background check system would also be eliminated. This “safety valve” ensures that the exercise of Oregonians’ constitutional rights cannot be indefinitely delayed.

Finally, the draft ballot title does not mention the newly created fees required to acquire firearms.

Because the Attorney General’s proposed caption for IP17 fails to employ the criteria set forth in ORS 250.035(2)(a) and applicable case law, as explained above, we recommend the following caption:

**Permit/registration/fees to acquire firearms; bans firearm magazines;
prohibits marijuana users from acquiring firearms**

III. RESULT OF “YES” VOTE

ORS 250.035(2)(b) mandates that a ballot title contain a “simple and understandable statement of not more than 25 words that describes the result if the state measure is approved.” The purpose of this section of the ballot title is to “notify petition signers and voters of the result or results of enactment that would have the greatest importance to the people of Oregon.” *Novick v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). The yes statement is to build on the caption. *Hamilton v. Myers*, 326 Or 44, 52-53 (1997). Further, when a caption is modified, the results statements should also be modified to conform to the changes made to the caption. *Phillips v. Myers*, 325 Or 221, 227, 936 P2d 964 (1997).

The proposed yes statement prepared by the Attorney General for IP17 states:

Result of “Yes” Vote: “Yes” vote requires permit, completed background check, safety training, fee to acquire firearms; creates state permit database; prohibits magazines over ten rounds; criminal penalties; exceptions.

The yes statement of the Attorney General’s proposed ballot title magnifies the errors of the caption and, consequently, violates ORS 250.035(2)(b) and applicable case law. A reasonable reader would conclude that IP17 would be creating a background check where one does not currently exist. The yes statement also fails to mention the new prohibition on marijuana users.

Because of the above, the Attorney General’s yes statement for IP17 violates ORS 250.035(2)(b) and the applicable case law. To correct these violations, we recommend the following yes statement:

Result of “Yes” Vote: “Yes” vote requires permit/registration/fee to acquire firearms; bans firearm magazines; indefinite delays; prohibits marijuana users from acquiring firearms.

IV. RESULT OF “NO” VOTE

ORS 250.035(2)(c) requires that the ballot title contain a “simple and understandable statement of not more than 25 words that describes the result if the state measure” is rejected, that is, the *status quo*. As with the caption and the yes statement, the no statement cannot be inaccurate or misleading, and must accurately identify the subject matter of the measure. *Towers v. Myers*, 341 Or 487, 145 P3d 147 (2006); *Perry v. Myers*, 340 Or 180, 185-86, 131 P3d 721 (2006). The no statement must also “us[e] the same terms” as the yes statement “to the extent practical.” ORS 250.035(2)(c). ORS 250.035(3) reinforces the requirement by requiring that the no and yes statements “be written so that, to the extent practicable, the language of the two statements is parallel.”

The proposed no statement prepared by the Attorney General for IP17 states:

Result of “No” Vote: “No” vote retains current law: seller/ transferor to request criminal background check; permit, safety course not required; no magazine capacity restrictions.

This no statement would lead a reasonable reader to conclude that background checks are only required at the request of the seller/transferor. That is not correct. Under existing law, background checks are already mandatory for sales and transfers of firearms. ORS 166.435.

Because of the above, the Attorney General’s no statement for IP17 violates ORS 250.035(2)(b) and the applicable case law. To correct these violations, we recommend the following yes statement:

Result of “No” Vote: “No” vote retains current law: mandatory background checks on sales or transfers of firearms; no permit/registration/fees required to acquire firearms; no magazine ban

V. 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 goal of the summary is to “help voters to understand what will happen if the measure is approved” and the “breadth of its impact.” *Mabon v. Myers*, 332 Or 633, 640, 33 P3d 988 (2001), (quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989)).

The proposed summary prepared by the Attorney General for IP17 states:

Summary: Oregon law currently allows persons over age 18 to acquire firearms (federal law requires age 21 for some handgun purchases), seller/ transferor to request criminal background check. No permit or safety course required; no limits on capacity of ammunition magazines. Measure requires permit from local law enforcement to acquire firearm; person must pay fee, submit photo ID, fingerprints, complete approved safety training, pass criminal background check, not be prohibited from possessing firearms. Permit issued within 30 days, valid 5 years. May appeal permit denial. State Police creates/ maintains permit database. First violation misdemeanor; additional violation felony. Prohibits magazines that can contain more than 10 rounds of ammunition. Exceptions for law enforcement, armed forces, and magazines owned on or before measure’s effective date. Other provisions.

The summary of the Attorney General’s ballot title carries forward all the problems of the caption and the yes statement. Consequently, it violates ORS 250.035(2)(d) and applicable case law. We hereby incorporate the comments articulated in sections II, III, and IV above into this section as additional argument as to why the Attorney General’s draft summary violates ORS 250.035.

Notably, the summary fails to acknowledge the new firearm registry and the new prohibition for marijuana users.

Because of the above, the Attorney General’s summary for IP17 violates ORS 250.035(2)(d) and applicable case law. To correct these violations, we recommend the following summary:

Summary: Oregon law currently allows persons over age 18 to acquire firearms (federal law requires age 21 for some handgun purchases) subject to a mandatory criminal background check. No permit, fees, owner registration or safety course required; no limits on capacity of ammunition magazines. Measure requires permit to acquire firearm; person must pay fee, submit photo ID, fingerprints, complete approved safety training, pass criminal background check, not be prohibited from possessing firearms. Permit holder’s firearms registered with State Police. Potential indefinite delays for firearm purchases. First violation misdemeanor; additional violation felony. Prohibits magazines that can contain or be changed or converted to contain more than 10 rounds of ammunition. Prohibits marijuana users from acquiring firearms. Other provisions.

VI. CONCLUSION

Thank you for your thoughtful and thorough consideration of these comments. We acknowledge that drafting ballot titles is a difficult task. We offer these comments to assist in certifying a ballot title that is fair, accurate, impartial, and compliant with ORS 250.035 – so that the voter may make and cast a fully-informed vote in November 2022.

Sincerely,

Roger Beyer
Oregon Elector