

IN THE SUPREME COURT OF THE STATE OF OREGON

DAVID ROGERS and REYNA LOPEZ,

Petitioners,

v.

ELLEN F. ROSENBLUM, ATTORNEY  
GENERAL, STATE OF OREGON,

Respondent.

Supreme Court Case No.

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**PETITION TO REVIEW BALLOT TITLE  
CERTIFIED BY THE ATTORNEY GENERAL**

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Ballot Title: Elections Division No. 5  
Certified on January 7, 2019

Chief Petitioners Kevin Mannix, Michele Fletchall, and Charles Lee

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Under ORS 250.085(2), Petitioners have standing to bring this proceeding as electors dissatisfied with the certified ballot title for Elections Division 5 (“IP 5”) who timely submitted written comments on the draft ballot title. The text of IP 5 and Petitioners’ comments thereon are attached as Exhibit 1. A copy of the certified ballot title as explained by the Attorney General is attached to this Petition as Exhibit 2.

Petitioners challenge the certified ballot title based upon the Attorney General’s failure to incorporate comments made by Petitioners to the draft title. The summary does not substantially comply with the requirements of ORS 250.035(2)(d) because it fails to adequately describe a major effect of IP 5’s passage.

### **Arguments and Authorities**

The summary’s problems stem from the Attorney General’s effort to address all of the substantive changes to the reapportionment criteria that IP 5 would occasion with a single phrase: “Changes redistricting requirements; limits ‘aggregate linear distance’ of borders.” Ex. 2 at 6.

The summary does not comply with ORS 250.035(2)(d) because it does not explain that IP 5 would abandon the statutory requirement that legislative districts “not divide communities of common interest.” *See* ORS 188.010(1)(d). This longstanding reapportionment criterion is significant to Oregon voters, and the summary should make voters expressly aware of its

deletion under IP 5 and, most critically, what effect its removal will have on the redistricting process.

In their comments on the draft title, Petitioners objected to the Attorney General’s failure to mention the repeal of the “communities of common interest” criterion in both the result statements and the summary. Ex. 1 at 10–12.

In her letter addressing the comments on the draft ballot title, the Attorney General explained that “the focus on geographic compactness—having the shortest ‘aggregate linear distance’ of borders—is the most significant change to the substantive redistricting requirements and [we] have included that” in the ballot title. Ex. 2 at 5. Petitioners respectfully disagree. There is another.

1. **The summary should discuss the importance of the “communities of common interest” criterion because its removal is the most significant change to the substantive redistricting requirements.**

A ballot summary must consist of a “concise and impartial statement” of no more than 125 words “summarizing the state measure and its major effect.” ORS 250.035(2)(d). The summary must include, in sufficient detail, the most important effects of the ballot measure. *Lutz v. Rosenblum*, 362 Or 651, 659–60, 413 P3d 975 (2018) (draft summary relying on a “logical inference based on the surrounding text” failed to adequately inform voters). The summary should “help voters understand what will happen if the measure is approved,”

particularly “the breadth of its impact.” *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989). ORS 250.035(2)(d) requires that the summary convey information that is necessary and practical to voters. *Frazzini v. Myers*, 344 Or 662, 667, 188 P3d 258 (2008). When a measure has an undisputed impact on access to a statutory entitlement or privilege, such a consequence must be included in the summary for the measure to be described accurately. *Cross v. Rosenblum*, 359 Or 136, 145, 373 P3d 125 (2016).

The requirement that legislative districts preserve communities of common interest is widespread, applied in nearly half of the states. Justin Levitt, *Where are the lines drawn? ALL ABOUT REDISTRICTING*, <http://redistricting.ils.edu/where-state.php#communities> (last visited Jan. 21, 2019). Oregon courts have held that the term itself refers to existing geographic or political boundaries, urban neighborhoods, rural communities, and market areas covered by local media. See, e.g., *Ater v. Keisling*, 312 Or 207, 214, 819 P2d 296 (1991); *Hartung v. Bradbury*, 332 Or 570, 588, 33 P3d 972 (2001). Preserving communities of interest has been a feature of Oregon law for nearly four decades. *McCall v. Legislative Assembly*, 291 Or 663, 670, 634 P2d 223 (1981). In fact, preserving communities of common interest has been a central feature of the United States Supreme Court’s Voting Rights Act doctrine since the Court’s decision in *Miller v. Johnson*, 515 US 900 (1995). The concept

“is based on the premise that voters within the chosen community share similar interests and values, and that these

interests and values ought to be represented in the legislature. This approach legitimizes the system of representation by ensuring that the diversity of interests among the population is reflected in the legislature, a notion that dates back to the American Revolution.”

Stephen J. Malone, *Recognizing Communities of Interest in a Legislative Apportionment Plan*, 83 Va L Rev 461, 465 (1997).

The effect of dividing communities of common interest on voters’ representation in the legislature is what makes the criterion of enormous practical and legal significance. Preserving communities of common interest is more effective at combatting the negative effect of gerrymandering than the requirement that districts be maximally compact. Jonathan Bernstein, *All the Pretty Little Districts*, THE AMERICAN PROSPECT, <https://prospect.org/article/all-pretty-little-districts> (last visited Jan. 21, 2019). While other requirements—for example, that political boundaries be preserved or that districts be maximally compact—may be seen “as proxies for recognizing rough communities of interest[,]” the comparison is imperfect: “people with common interests don’t generally look to geometric shapes—or even strict political lines—when they consider where they want to live.” Levitt, *supra*. Thus, requiring direct consideration of communities of common interest is the only means of ensuring their preservation.

In enacting IP 5, Oregon voters would be losing one of the most potent means of protecting their representativeness in the legislature and combatting

gerrymandering. That is a major effect. It should be included in the summary. Oregon voters are entitled to legislative districts that preserve their existing communities; it is undisputed that IP 5 would change that. For the measure to be described accurately, the summary must address that change.

**2. Petitioners' objections can be addressed within the summary without requiring the removal of other important information.**

Ways to address the issues in the summary include:

Summary: Amends Constitution. Currently, legislature reapportions legislative districts after census, following at least 10 public hearings. Criteria set by statute and Constitution. If legislature defaults, Secretary of State completes redistricting. Any elector may petition Oregon Supreme Court to review compliance with law. Measure replaces current process with 11-member commission. County Commissioners appoint members (excluding recent elected officials, spouses, and some political party officials). Rural areas receive disproportionately high representation. Changes constitutional, statutory requirements; district boundaries must have shortest possible "aggregate linear distance"; districts may divide communities of common interest, including urban neighborhoods, rural communities. Five public hearings required. Legislature funds commission, otherwise uninvolvement. 15 electors required to petition Supreme Court. Court review limited to constitutional defects. Upon default, Supreme Court completes redistricting. Other provisions

Respectfully submitted this 22<sup>nd</sup> day of January, 2019.

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## **CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on January 22, 2019, I directed the **PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL** to be electronically filed with the Appellate Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, OR 97301-2563, by using the Court's electronic filing system.

I further certify that on January 22, 2019, I directed the **PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL** to be served upon the parties listed below as indicated.

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I further certify that, on January 22, 2019, I directed a PDF of the completed **Notice of Ballot Title Challenge (SEL 324)** to be served upon the Secretary of State via email to [irrlistnotifier.sos@state.or.us](mailto:irrlistnotifier.sos@state.or.us).

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December 19, 2018

**VIA EMAIL– irrlistnotifier.sos@state.or.us**

Elections Division  
Office of the Secretary of State  
255 Capitol St NE, Suite 501  
Salem, OR 97310

Re: Public Comment on Initiative Petition 2020-005

Dear Secretary Richardson:

On behalf of David Rogers, Executive Director of the American Civil Liberties Union of Oregon, and Reyna Lopez, Executive Director of Pineros y Campesinos Unidos del Noroeste, both registered Oregon voters, we are providing the following comments on the draft ballot title for Initiative Petition 2020-005 (“IP 5”).

The Secretary of State notified the public of the following draft ballot title on December 5, 2018:

**DRAFT BALLOT TITLE**

**Amends Constitution: Creates commission for legislative redistricting, changes redistricting requirements; commissioners represent areas with very unequal populations**

**Result of “Yes” Vote:** “Yes” vote creates commission for legislative redistricting, constitutional requirements; commission members represent geographic areas of very unequal populations; upon default, Oregon Supreme Court produces plan

**Result of “No” Vote:** “No” vote retains process of legislative redistricting by Legislative Assembly after each census based on statutory criteria; if legislature defaults, Secretary of State produces plan

**Summary:** Amends Constitution. Currently, legislature reapportions state’s legislative districts based on population every ten years, following census, using statutory criteria. If legislature

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defaults, Secretary of State completes redistricting after public hearing. Oregon Supreme Court may review plan for compliance with applicable laws. Measure replaces current process with redistricting by 11-member commission. Members appointed by County Commissioners, represent geographic areas of very unequal population (one member from each higher population county, combined smaller population counties). Establishes district requirements (modified) in constitution. Commission takes public comment, holds public hearing, must adopt plan by majority vote within time limit. Legislature must fund commission, may not revise plan. Supreme Court may review plan only for constitutional defects. If commission fails to enact plan, Supreme Court completes redistricting. Other provisions

### **COMMENTS ON DRAFT TITLE**

The major problem with the draft ballot title is that it fails to inform voters of the breadth of the change IP 5 proposes. First, the title does not emphasize the changes to the system of reapportionment that have the most significant and immediate consequences for the general public. Instead, the draft title describes the same changes more than once without addressing other changes that will have a similar or greater effect. Second, the draft title does not inform voters that IP 5 includes terms that are unclear and undefined. The draft language should be revised to alert voters to the lack of definition of these key terms.

To appreciate the sweeping effects of IP 5, we preface our comments on the measure with a discussion of the changes IP 5 would make to current law.

Under the current system, codified in Article IV, section 6 of the Oregon Constitution and in ORS 188.010, *et seq.*, the Legislative Assembly undertakes the work of reapportionment during every odd-numbered year regular session following a census. The number of legislators is fixed by law and apportioned among districts according to population; there are two representative districts in every one senate district. The ratio of legislators to population is determined by dividing the state's total population by the number of senators and by the number of representatives.

State law requires that the Legislative Assembly consider the following criteria when enacting reapportionments:

- (1) Each district, as nearly as practicable, shall:
  - (a) Be contiguous;

- (b) Be of equal population;
  - (c) Utilize existing geographic or political boundaries;
  - (d) Not divide communities of common interest; and
  - (e) Be connected by transportation links.
- (2) No district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person.
- (3) No district shall be drawn for the purpose of diluting the voting strength of any language or ethnic minority group.
- (4) Two state House of Representative districts shall be wholly included within a single state senatorial district.

ORS 188.010. Additionally, the Legislative Assembly is required by state law to hold at least 10 public hearings at locations throughout the state prior to proposing a redistricting plan and another five public hearings, one in each Congressional district, after a plan is proposed but before the plan is adopted. ORS 188.016. The public must be notified of the hearings and permitted to provide testimony.

Original jurisdiction for judicial review of reapportionments is vested in the Oregon Supreme Court. Reapportionments may be reviewed upon the petition of any one elector. The Supreme Court determines if the reapportionment complies with the state and federal laws and constitutions. If the Court determines that the reapportionment does not comport with applicable law, the Court must specify with particularity why not. The Court must then void the reapportionment and direct the Secretary of State to draft a lawful reapportionment. The Secretary must conduct a public hearing on the reapportionment and allow the public to submit evidence and argument. The Secretary must then file a corrected reapportionment with the Court, and the Court must review the corrected reapportionment and make additional revisions as necessary.

If the Legislative Assembly fails to enact a reapportionment by July 1 of the odd-numbered year regular session following a census, the Secretary must create a reapportionment in the first instance according to the process described above. The Supreme Court is vested with original jurisdiction for judicial review on the petition of one elector, the same as above.

Reapportionments generally become effective on the second Monday in January of the next odd-numbered year following the applicable deadlines outlined in the Oregon Constitution.

The Legislative Assembly retains the power to change a redistricting plan between each decennial census.

IP 5 would change each of these aspects of current law.

Under the proposed changes in IP 5, a Citizen Commission on Legislative Redistricting (“citizen commission”) undertakes the work of reapportionment in each year ending in the number one.

By January 31 of each year ending in one, the Secretary is responsible for facilitating the establishment of a citizen commission composed of 11 representatives appointed by the county commissioners of the county or counties designated to a particular seat. Citizen commission members must be registered Oregon voters and citizens of the county or counties whose commissions voted on their appointment. Citizen commission members may not (a) have served in a partisan government elective office during the preceding 10 years, (b) have served in a political party elective office other than precinct committee person during the preceding 10 years, (c) be a county commissioner or state legislator, or (d) be a spouse or domestic partner of a county commissioner or legislator.

Citizen commission members will be elected by the county commissioners of the following counties:

Position 1	Multnomah County;
Position 2	Washington County;
Position 3	Clackamas and Hood River counties;
Position 4	Clatsop, Columbia, Tillamook, Yamhill, and Lincoln counties;
Position 5	Polk, Benton, and Marion counties;
Position 6	Linn and Lane counties;
Position 7	Coos and Douglas counties;
Position 8	Curry, Josephine, and Jackson counties;
Position 9	Klamath, Lake, Harney, Malheur, Deschutes, and Crook counties;
Position 10	Wasco, Sherman, Gilliam, Morrow, Jefferson, and Wheeler counties; and
Position 11	Umatilla, Union, Wallowa, Grant, and Baker counties.

County commissioners are required to make appointments within the 60 days before the January 31 deadline to convene the citizen commission. Voting may occur in person or electronically, but county commissioners appointing for positions spanning multiple counties must meet as one consolidated body, with each commissioner receiving one vote regardless of the number of commissioners in each county. Vacancies must be filled within 30 days by vote of the appropriate county commissioners, but the presence of a vacancy will not delay proceedings of the citizen commission.

The citizen commission will be required to consider the following criteria when enacting reapportionments:

(a) Each district shall be based on census tracts. Each district shall be as compact in area as possible and the aggregate linear distance of all district boundaries shall be as short as possible. Each district shall:

(A) Be contiguous;

(B) Be of equal population within a range of two percent plus or minus variation; and

(C) Utilize existing geographic or political boundaries to the extent practicable in the context of other requirements.

(b) No district shall be drawn for the purpose of favoring any political party, incumbent legislator or other person.

(c) No district shall be drawn for the purpose of affecting the voting strength of any language or ethnicity group.

(d) Two state House of Representatives districts shall be wholly included within a single state Senate district.

Any preliminary or final redistricting plan must be approved by a majority of citizen commission members. The citizen commission must adopt a preliminary redistricting plan by June 1 and thereafter conduct one public hearing in each Congressional district to receive public testimony on the preliminary redistricting plan. The citizen commission must adopt a final redistricting plan by September 1.

Original jurisdiction for judicial review of reapportionment is vested in the Oregon Supreme Court. Reapportionments may be reviewed only upon the petition of any 15 electors. The Court must determine if the final redistricting plan complies solely with the United States and Oregon constitutions. No other error by the citizen commission provides grounds for modification. If the Court finds that the final redistricting plan does not comply with the federal or Oregon constitutions, the Court itself may either modify the plan or “take such other actions as it deems necessary” as long as its final decision on any challenge to the final redistricting plan is rendered before December 31.

If the citizen commission does not adopt a final redistricting plan by September 1, it is disbanded and the Oregon Supreme Court must prepare a final redistricting plan by December 31.

A final redistricting plan that has either been approved or prepared by the Oregon Supreme Court or to which no challenge is timely filed may never be revised by the Legislative Assembly.

In summary, IP 5 changes the current system of reapportionment conducted by the Legislative Assembly (subject to gubernatorial approval) to a system of reapportionment conducted by a citizen commission. IP 5 most changes the current system of reapportionment by:

1. Changing the individuals who make the reapportionment decisions;
2. Changing the individuals who select the individuals who make the reapportionment decisions;
3. Changing the criteria for consideration during reapportionment;
4. Reducing the number of public hearings on the proposed reapportionment plan from 15 to five; and
5. Increasing standing requirements and reducing substantive grounds for challenging a reapportionment plan in court.

Major effects of these changes include:

- (i) Having the individuals who make the reapportionment decisions represent constituencies of different sizes (*i.e.*, not one-person, one-vote);
- (ii) Making it easier to divide communities of common interest and harder to correct historic discrimination through redistricting; and
- (iii) Insulating the reapportionment process from public input and legal challenge.

It is on these changes and purposes that the ballot title must focus.

### **CAPTION**

The draft caption provides:

**Amends Constitution: Creates commission for legislative redistricting, changes redistricting requirements; commissioners represent areas with very unequal populations**

ORS 250.035(2)(a) provides that the ballot title caption must contain “not more than 15 words that reasonably identify the subject matter of the state measure.” The caption is the

“cornerstone for the other portions of the ballot title.” *Greene v. Kulongoski*, 322 Or 169, 175, 903 P2d 366 (1995). As the “headline” for the ballot title, the caption “provides the context for the reader’s consideration of the other information in the ballot title.” *Greene*, 322 Or at 175. A caption complies substantially with the requirements of ORS 250.035(2)(a) if the caption identifies the subject matter of the proposed measure in terms that will not confuse or mislead potential petition signers and voters. 322 Or at 174–75.

The “subject matter” of a measure, as that term is used in ORS 250.035(2)(a), must be determined with reference to the “significant changes” that would be brought about by the measure. *Phillips v. Myers*, 325 Or 221, 226, 936 P2d 964 (1997). The “subject matter” of a proposed measure is “the ‘actual major effect’ of the measure, or, if the measure has more than one major effect, all such effects (to the limit of the available words).” *Rasmussen v. Kroger*, 351 Or 358, 361, 266 P3d 87 (2011) (citing *Whitsett v. Kroger*, 348 Or 243, 247, 230 P3d 545 (2010)). A caption that fails to identify a “fundamental shift” in the state’s statutory scheme is inadequate. *Rasmussen*, 351 Or at 364.

The draft ballot title identifies three changes that IP 5 would bring about: (1) creation of a commission for legislative redistricting; (2) changes to requirements for new legislative districts; and (3) the “very unequal” populations in areas represented by each commissioner. Although these descriptions begin to capture the “significant changes” included in IP 5, they fail to adequately describe one of IP 5’s major characteristics: the insulation of the redistricting process from public comment and judicial review. Additionally, the draft ballot title fails to capture the extent to which the redistricting scheme in IP 5 is unrepresentative of the state’s population.

As explained above, IP 5 would increase standing requirements for challenges to a proposed reapportionment plan while decreasing the grounds upon which such plans might be overturned. IP 5 also contains provisions that ensure that if no challenge is timely made to a reapportionment, the reapportionment becomes unreviewable. Finally, if the Supreme Court must propose a reapportionment plan in the first instance, IP 5 creates no review mechanism, so the body originating the plan and the body responsible for reviewing it are one and the same. The net effect of those changes is to limit judicial review. Yet nothing concerning restrictions on judicial review currently exists in the caption. Such a major effect warrants inclusion.

The draft caption also states that “commissioners represent areas with very unequal populations.” Although that statement is true, it fails to capture the breadth of the changes IP 5 proposes.

As an example of how, under IP 5, commissioners represent areas with very unequal populations, the proposed measure gives one commission seat, Position 1, to Multnomah County, population 807,555. *See* Exhibit 1, Oregon Population by County (“Ex. 1”). It gives another commission seat, Position 11, to Umatilla, Union, Wallowa, Grant, and Baker Counties; their combined population is 133,502. Ex. 1. The Position 1 commissioner has the same single vote

as the Position 11 commissioner. Therefore, the commissioners represent areas of very unequal populations.

However, the redistricting scheme in IP 5 is unrepresentative of population in other ways, too. For example, the counties that share commission seats are also selected without regard to population. Clackamas County, population 412,672, shares Position 3 with Hood River County, population 23,377. Ex. 1. Both counties have five commissioners. Because the county commissioners vote on appointments to the citizen commission—and not the voters—the voters of Clackamas County are given equal representation as the voters of Hood River County, a county with roughly six percent of Clackamas County’s population. A Clackamas County commissioner represents on average about 57,962 registered voters; a Hood River County commissioner represents about 2,927 voters. Ex. 1. Yet the two are given equal control over the reapportionment process. The draft caption does not fully capture this shift from majority to minority rule. That seated commissioners represent areas with very unequal populations does not also communicate that *the very selection of* commissioners is also unrelated to population.

IP 5 effects a shift away from a redistricting process that is representative of the state’s population to a redistricting process that is unrepresentative of the population. That is a fundamental shift in how voters think about the work of reapportionment. As one example of this shift, one-half of the state’s population is contained in four counties: Multnomah, Washington, Clackamas, and Lane Counties. See Ex. 1 (those four counties contain over 2.18m of Oregon’s roughly 4.14m citizens). Under the current system, because those counties contain roughly half of the state’s voters, they control roughly half of the reapportionment process in the Legislative Assembly. Under IP 5, those counties control, at most, three total positions out of the 11 on the citizen commission. That is a fundamental shift of control over the redistricting process from one that is representative of population to one that is wholly unrepresentative of population. That shift is not accounted for in the draft caption.

Thus, the entire reapportionment process that IP 5 would impose is unrepresentative of population in numerous and different ways. Rather than explain how deeply and thoroughly IP 5 rejects population as a factor in reapportionment, the draft caption only explains one small aspect of that rejection. That limited explanation in turn limits the draft caption’s explanation of the “significant changes” the proposed measure would occasion in violation of ORS 250.235(2)(a).

A caption to address some, if not all, of these concerns could read:

**Amends Constitution: Creates commission for legislative redistricting; changes redistricting criteria; restricts review, oversight; commission unrepresentative of population**



### **RESULT OF “YES” VOTE**

“ORS 250.035(2)(b) and (c) require ‘simple understandable’ statements of not more than 25 words that describe the result if voters approve the proposed measure and if they reject it.” *Wyant/Nichols v. Myers*, 336 Or 128, 138, 81 P3d 692 (2003). 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). “[T]he result of a proposed measure’s enactment that belongs in the ‘yes’ vote result statement is that outcome that is the most significant and immediate, or that carries the greatest consequence, for the general public.” *Novick*, 337 Or at 574.

The draft yes statement reads as follows:

**Result of “Yes” Vote:** “Yes” vote creates commission for legislative redistricting, constitutional requirements; commission members represent geographic areas of very unequal populations; upon default, Oregon Supreme Court produces plan

The draft yes statement does not comply with ORS 250.035(2)(b) because the yes statement carries over the problems of the caption. The yes statement fails to put voters on notice of the changes in IP 5 that could most effect their participation in and relationship to the reapportionment process. In addition to the limits on judicial review and the abandonment of population as a factor in reapportionment, the change that next most affects the general public is the curtailment of public participation. IP 5 changes the public participation required for redistricting in various ways. IP 5 eliminates entirely the requirement for public hearings *before* a reapportionment is proposed, changing the timing of public input so that the public has no involvement before the citizen commission begins its work. Additionally, IP 5 eliminates 10 out of the 15 public hearings currently required under state law, reducing the amount of public input by two-thirds. Although the Supreme Court’s increased role in reapportionment is a significant change, for many voters, who creates the plan in the first instance does not carry as great a consequence as whether they may comment on and contribute to a redistricting plan.

Moreover, as explained above, when the Supreme Court is required to create a redistricting plan due to the citizen commission’s default, there is no public hearing requirement whatsoever. The public would have no mechanism to review or comment on a proposed redistricting plan in that instance. That the body conducting reapportionment will effectively be allowed to do so in secret is a much more significant and immediate outcome for voters than whether that body is the Court or the Secretary of State.

While IP 5’s proposed changes to the public hearing requirements are many, a few simple changes to the draft language can broaden the reach of the yes statement to adequately put voters

on notice that IP 5 will effect a substantial reduction of public input across multiple stages of the reapportionment process.

IP 5 also makes significant changes to the criteria that must be considered when conducting the work of reapportionment, making it easier for the citizen commission to create voting districts that are not representative of existing communities. The term “gerrymandering” refers to the dividing of existing communities for political advantage, which IP 5 enables by removing the current requirement that newly drawn legislative districts not “divide communities of common interest.” ORS 188.010(1)(d). There should be some indication in the yes statement that IP 5 abandons this longstanding requirement.

A yes result statement to address some, if not all, of these concerns could read:

**Result of “Yes” Vote:** “Yes” vote creates commission for legislative redistricting; changes criteria, enables gerrymandering; gives more commission seats to less-populous, rural regions; reduces public hearings; limits oversight, review

#### **RESULT OF “NO” VOTE**

The Attorney General issued the following draft no statement:

**Result of “No” Vote:** “No” vote retains process of legislative redistricting by Legislative Assembly after each census based on statutory criteria; if legislature defaults, Secretary of State produces plan

“The purpose of the ‘no’ vote result statement is to accurately describe the ‘state of affairs’ that will exist if the measure is rejected. *Schoenheit v. Rosenblum*, 356 Or 783, 787, 345 P3d 436 (2015). As much as is practicable, the no statement should contain parallel language to the yes statement. ORS 250.035(3).

The draft no statement fails to meet the requirements of ORS 250.035(2)(c) for the same reasons that the draft yes statement fails the standard of subsection (2)(b): the proposed language simply fails to capture the sweeping changes included in IP 5 and thus capture what exactly voters stand to lose by approving the measure. Additionally, as the yes statement is revised to adequately capture the possible changes wrought by IP 5, the no statement will need revision to discuss those same subjects and remain parallel, as required by statute.

A no result statement that would address some, if not all, of these concerns could read:

**Result of “No” Vote:** “No” vote retains process of legislative redistricting by Legislative Assembly according to statutory criteria; redistricting process reflects population; requires 15 public hearings; comprehensive oversight, review

### **SUMMARY**

The Attorney General issued the following draft summary:

**Summary:** Amends Constitution. Currently, legislature reapportions state’s legislative districts based on population every ten years, following census, using statutory criteria. If legislature defaults, Secretary of State completes redistricting after public hearing. Oregon Supreme Court may review plan for compliance with applicable laws. Measure replaces current process with redistricting by 11-member commission. Members appointed by County Commissioners, represent geographic areas of very unequal population (one member from each higher population county, combined smaller population counties). Establishes district requirements (modified) in constitution. Commission takes public comment, holds public hearing, must adopt plan by majority vote within time limit. Legislature must fund commission, may not revise plan. Supreme Court may review plan only for constitutional defects. If commission fails to enact plan, Supreme Court completes redistricting. Other provisions

The summary must contain “a concise and impartial statement” not exceeding 125 words that “summariz[es] the \* \* \* measure and its major effect.” ORS 250.035(2)(d). The summary should “help voters understand what will happen if the measure is approved” and “the breadth of its impact.” *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989).

For the following reasons, the draft summary does not, as required by ORS 250.035(2)(d), accurately or completely summarize the measure or the measure’s major effects. It does not help voters understand the breadth of IP 5’s impact.

The draft summary carries over the problems of the previous parts of the ballot title: there is insufficient explanation of those changes most impacting voters. The changes that IP 5 makes to the redistricting criteria are substantial. Permitting the body charged with redistricting to “divide communities of common interest” opens the reapportionment process up to a substantial risk of gerrymandering. ORS 188.010(1)(d). The ballot title summary ought to inform voters what it really means to divide communities of common interest. “Communities of common interest” has

been held to refer to existing geographic or political boundaries, urban neighborhoods, rural communities, and market areas covered by local media. *See, e.g., Ater v. Keisling*, 312 Or 207, 214 (1991); *Hartung v. Bradbury*, 332 Or 570, 588 (2001). IP 5 also relaxes the requirement that reapportionment utilize existing political and geographic boundaries, qualifying that it only need apply “to the extent practicable in the context of other requirements.” These combined changes to the criteria pose a substantial risk of gerrymandering in future reapportionment plans and should be addressed in the summary.

As discussed above, the new reapportionment scheme advanced by IP 5 largely eliminates relative population as a basis for redistricting. The summary is the first opportunity to explain the “fundamental shift” in control over the process of reapportionment from one representative of population to one that favors voters in less-populous counties. Under the current system, the entireties of Baker, Grant, Harney, Jefferson, Malheur, and Wheeler counties have one senate district, for an effective voting strength of 1/30, or three percent.<sup>1</sup> Under IP 5, those six counties are spread across citizen commission Positions 9, 10, and 11, sharing each position with three or four other counties. Baker, Grant, Harney, Jefferson, Malheur, and Wheeler counties, therefore, have one-third control over each of three seats out of the 11 total responsible for reapportionment. This increases the counties’ voting strength to roughly 1/11, or nine percent. IP 5, therefore, gives those same six counties a threefold increase in voting strength affecting reapportionment.

Similarly, urban counties’ voting strength is reduced under the proposed methodology in IP 5. For example, under the current system, in just the Portland Metro Area, Multnomah, Clackamas, and Washington counties have 13 senate districts, for an effective voting strength of 13/30, or 43 percent control of the body making reapportionment decisions. Under IP 5, the maximum voting strength those three counties could muster would be 2.5/11, or 23 percent control of the citizen commission. IP 5 thus reduces the three most populous counties’ influence over redistricting and reapportionment by nearly half.

Some expression of this significant change ought to be included in the summary.

Additional problems exist in IP 5’s appointment process that are not captured elsewhere in the draft ballot title and should be addressed in the summary. IP 5 contains several provisions related to appointments that are unclear or misleading. IP 5 requires that any member of the citizen commission be approved by a majority of the county commissioners voting on the

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<sup>1</sup> Even though reapportionment must pass through both chambers (potentially affecting the voting strength accordingly), because each senate district must, by law, contain two representative districts, there is no need to calculate separate voting strengths in each chamber because they will be mathematically equivalent. Calculating voting strength based off of one chamber effectively just reduces the fraction in advance, simplifying the display of information.

position; it does not explain what happens in the event of a plurality or a tie. Generally, the Oregon Constitution permits victory by plurality. *See generally* Or Const Art II, § 16. Because IP 5 amends the Oregon Constitution, it is unclear which provision would prevail. Although the Multnomah and Washington County Commissions could likely apply their bodies' own existing procedural rules to appointments (although this is also unclear under IP 5), there is no direction in the proposed measure on how the "super commissions," composed of multiple county commissions, would resolve this dilemma.

IP 5 replaces parts of the former statutory criteria with a new standard: that all districts "be as compact in area as possible and the aggregate linear distance of all district boundaries \* \* \* be as short as possible." This purely mathematical formulation is a significant change to the reapportionment process, and it is a critical part of IP 5's reapportionment scheme. It is also undefined. The term "aggregate linear distance" does not exist in current state law, nor does it appear to be used in common parlance. The ballot title should therefore set the term off in quotation marks or note it as undefined.

IP 5 contains an additional undefined term: it permits the Supreme Court to employ "senior judges" to do the work of the Supreme Court on reapportionment without making clear which "senior judges" the Court may employ. "Senior judge" generally refers to any judge "who retires from the circuit court, Oregon Tax Court, Court of Appeals, or Supreme Court[.]" ORS 1.300(1). The Supreme Court may assign senior judges from any court to any lower court, but may assign only former *Supreme Court* justices to the Supreme Court. ORS 1.300(2). It is not clear whether, under IP 5, the Supreme Court may assign only senior Supreme Court justices or may assign any senior judge. That ambiguity suggests that the ballot title should alert voters that the term "senior judge" is undefined.

A summary to address some, if not all, of these concerns could read:

**Summary:** Amends Constitution. Currently, legislature reapportions legislative districts every ten years, following census, using statutory criteria. Secretary of State completes redistricting if legislature defaults. Oregon Supreme Court may review plan for compliance with applicable laws. Measure replaces current process with redistricting by 11-member citizen commission. Members appointed by partisan and non-partisan county commissioners; appointments, positions unrepresentative of population. Increases rural voters' authority over redistricting. Relaxes redistricting criteria; enables gerrymandering, dividing communities of common interest; boundaries must have shortest possible "aggregate linear distance" (undefined). Reduces required public hearings. Legislature may not revise plan. Supreme Court

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December 19, 2018  
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may only review plan for constitutional defects; raises barriers to oversight, review. If commission fails to enact plan, Supreme Court completes redistricting without public participation, may use "senior judges" (undefined). Other provisions

Thank you for your consideration.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read "E. Christopher", written in a cursive style.

Evan Christopher  
On behalf of ACLU Foundation of Oregon

EC/ab/jan

Enc: Exhibit 1, Oregon Counties by Population

## Exhibit 1 – Oregon Population by County

Counties	Populations	Commissioners	Registered Voters	Registered Voters per Commissioner
Baker	16,054	3	11,797	3,932
Benton	90,951	3	58,442	19,481
Clackamas	412,672	5	289,811	57,962
Clatsop	39,182	5	28,039	5,608
Columbia	51,782	3	37,999	12,666
Coos	63,888	3	44,547	14,849
Crook	23,123	3*	17,275	5,758
Curry	22,669	3	17,232	5,744
Deschutes	186,875	3	135,815	45,272
Douglas	109,405	3	77,931	25,977
Gilliam	1,855	3*	1,337	446
Grant	7,190	3*	5,252	1,751
Harney	7,289	3*	5,098	1,699
Hood River	23,377	5	14,637	2,927
Jackson	217,479	3	152,227	50,742
Jefferson	23,758	3	14,659	4,886
Josephine	86,352	3	64,114	21,371
Klamath	66,935	3	44,956	14,985
Lake	7,863	3	5,091	1,697
Lane	374,748	5	258,346	51,669
Lincoln	48,920	3	35,491	11,830
Linn	125,047	3	87,916	29,305
Malheur	30,480	3*	15,313	5,104
Marion	341,286	3	201,949	67,316
Morrow	11,166	3	6,175	2,058
Multnomah	807,555	5	533,602	106,720
Polk	83,696	3	56,222	18,741
Sherman	1,758	3*	1,368	456
Tillamook	26,690	3	19,206	6,402
Umatilla	76,985	3	43,533	14,511
Union	26,222	3	17,946	5,982
Wallowa	7,051	3	5,599	1,866
Wasco	26,437	3	17,237	5,746
Washington	588,957	5	356,052	71,210
Wheeler	1,357	3*	1,012	337
Yamhill	105,722	3	68,286	22,762

\*Denotes county is governed by a County Court composed of one County Judge and two commissioners.

UNITED STATES CENSUS BUREAU, AMERICAN FACTFINDER. *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2017*, <http://factfinder2.census.gov> (last visited Dec. 17, 2018).



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

January 7, 2019

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 — Amends Constitution: Creates Commission for Legislative Redistricting, Changes Redistricting Requirements; Commissioners Represent Areas With Very Unequal Populations.

DOJ File #BT-05-18; Elections Division #2020-005

Dear Mr. Trout:

We received comments on the Attorney General's draft ballot title for Initiative Petition 5 (2020) (BT-05-18) from Secretary of State Dennis Richardson, chief petitioners Kevin Mannix, Michele Fletchall, and Charles Lee (through counsel, Mannix), Joe Baessler (through counsel, Aruna A. Masih), David Rogers and Reyna Lopez (through counsel, Evan Christopher), League of Women Voters of Oregon and League of Women Voters of the United States (collectively LWV) (through counsel, Norman Turrill and Rebecca Gladstone), Becca Uherbelau (through counsel, Steven Berman), and Elizabeth Trojan and David Delk (through counsel, Daniel Meek).<sup>1</sup>

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.

<sup>1</sup> One other comment, from Lincoln County Republicans (through Lynn Owen and Mike Mesarch) was received by the Secretary of State after the statutory deadline for filing comments. This letter addresses the timely comments. However, we note that Lincoln County Republican's comments were similar to comments made by the Secretary of State and chief petitioners.



## **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:

**Amends Constitution: Creates commission for legislative redistricting, changes redistricting requirements; commissioners represent areas with very unequal populations**

Each of the commenters asserts that the draft caption is flawed.

### **1. Comments from Secretary Richardson**

Secretary Richardson commented that the statement that “commissioners represent areas with very unequal populations,” may be perceived as politically charged. He suggests stating that “county commissioners appoint members from varying areas.”

### **2. Comments from chief petitioners**

The chief petitioners (Mannix/Fletchall/Lee) contend that the caption is insufficient in four primary ways. First, chief petitioners assert that the caption fails to mention that the commission is composed of “citizens who are nonpartisan” and to use the term “citizen commission.” Second, they assert that the caption fails to clearly convey that the legislature will no longer carry out redistricting (because it could be read as the commission making a recommendation to the legislature). Third, they assert that the caption is misleading because it focuses on population base and “presents the judgmental political commentary that the commissioners ‘represent’ areas ‘with very unequal populations,’ as though these are proper concerns,” noting that commission members do not “represent” areas where they reside and instead, like other boards, are appointed with geographic consideration to ensure geographic diversity. Fourth, they assert that the caption fails to highlight the requirement for maximally compact districts.

### **3. Comments from others**

The other commenters raise similar and overlapping issues regarding the caption.

Baessler and Uherbelau assert that the caption fails to convey that it is *repealing* the current process. Baessler, Rogers/Lopez, Uherbelau, LWV, and Trojan/Delk assert that the caption fails adequately to address that the prospective measure moves the redistricting process from the legislature to commissioners representing geographical areas of highly unequal population numbers. Rogers/Lopez, LWV, Uherbelau, and Trojan/Delk note that the commission will provide more representation for rural counties than more populous counties. Rogers/Lopez and LWV further assert that because each county commissioner gets to vote to fill

the position, regardless of how many commissioners each county has, the commission will further favor rural counties with larger county commissions. And LWV asserts that the caption fails to acknowledge that some county commissions are comprised of partisan positions, which will further skew the commission toward conservative, less-populated areas of the state.<sup>2</sup>

Baessler, Rogers/Lopez, and LWV also assert that the caption stating that the prospective measure “changes redistricting criteria,” fails to convey that it would significantly alter the redistricting criteria and limit consideration of important issues such as not dividing “communities of common interest,” making it harder to correct historic discrimination through redistricting, and “protecting against gerrymandering” by “packing” more progressive voters into fewer districts.

Rogers/Lopez and Uherbelau also assert that it is important to convey more about the proposed process and, in particular, that it will reduce the opportunity for public input through public hearings. Rogers/Lopez, LWV, and Uherbelau also assert that the caption should convey that the prospective measure will reduce judicial oversight by increasing the standing requirement and by limiting the grounds on which the court may review the plan.

#### **4. Our response to the comments**

We agree with chief petitioners, Baessler, Rogers/Lopez, Uherbelau, LWV, and Trojan/Delk, that the caption should convey that the redistricting process would be taken away from the legislature and moved to the commission. We disagree with chief petitioners that the caption should state that the commission is a “citizen commission” or composed of “citizens who are nonpartisan.” While the phrase “citizen commission” is used throughout the proposed measure, the word “citizen” does not seem necessary. Further, some of the county commissioners who appoint the commissioners are in partisan positions. To the extent “citizen” or “nonpartisan” is used to convey that the commission is not part of the legislature, the change to indicate that the redistricting process was transferred to a commission captures that idea. We have changed the first clause of the caption accordingly.

We disagree with chief petitioners that it is “misleading” to note that the proposed measure would result in a commission that provides disproportionate representation. Even if the *purpose* of the commission positions being assigned to geographic regions is to provide geographic diversity, it is a major effect that the positions are unequally distributed by population. For example, as other commenters point out, position 1, composed of Multnomah County, has one commissioner for approximately 800,000 residents.<sup>3</sup> Position 10, composed of Wasco, Sherman, Gilliam, Morrow, Jefferson, and Wheeler counties, has one commissioner for

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<sup>2</sup> It is unclear whether LWV believes this information should be in the caption, or if having it elsewhere in the Ballot Title would be sufficient.

<sup>3</sup> The Oregon Blue Book lists the 2016 population of Multnomah County as 790,670. The United States Census Bureau lists the 2017 population of Multnomah County as 807,555.

approximately 66,400 residents.<sup>4</sup> That difference is a significant effect of the structure of the commission that should be reflected in the caption.

We disagree with Secretary Richardson that “unequal populations” may be perceived as politically charged. But we agree with the other commenters that it may not adequately convey the actual effect of the proposed measure. Therefore, we are removing “unequal populations” and instead note that the commission over-represents rural areas, which is accurate and more specific.

We disagree with chief petitioners, Baessler, Rogers/Lopez, and LWV that stating that the proposed measure “changes redistricting requirements” is insufficient because it fails to convey the breadth of those changes. The clause alerts voters that there are changes, and other parts of the ballot title provide more detail about the nature of those changes. We agree that more specific information would be helpful to voters, but with our 15 word limit, the statement in the caption about changes to the requirements is sufficient.

We agree with Rogers/Lopez, LWV, and Uherbelau that it is significant that the proposed measure would reduce the opportunity for and scope of judicial review, and have added that to the caption. We think it less significant that the proposed measure limits public hearings. We discuss the reduction in hearings in other parts of the ballot title, but have not added it to the title.

After considering the comments concerning the draft caption, we change the caption and certify the following:

**Amends Constitution: Transfers legislative redistricting to commission; commission over-represents rural areas; changes redistricting requirements; limits judicial review**

**B. The “yes” vote result statement**

We next consider the draft “yes” vote 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 creates commission for legislative redistricting, constitutional requirements; commission members represent geographic areas of very unequal populations; upon default, Oregon Supreme Court produces plan.

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<sup>4</sup> The Oregon Blue Book lists the 2016 population of the position 10 counties as follows: Wasco (26,700), Sherman (1,795), Gilliam (1,980), Morrow (11,745), Jefferson (22,790), and Wheeler (1,465). The total population of those counties based on the Blue Book is 66,475. The United States Census Bureau lists that the 2017 population of the counties as follows: Wasco (26,437), Sherman (1,758), Gilliam (1,855), Morrow (11,166), Jefferson (23,758), and Wheeler (1,357). The total population based on the United States Census is 66,331.

All of the commenters take issue with the “yes” result statement. Most of the comments are similar to those made about the caption and we have made similar changes to those we made to the caption.

Baessler and Uherbelau assert that the “yes” vote result statement fails to alert voters to the limited judicial review by the Oregon Supreme Court. Uherbelau further emphasizes that the proposed measure would eliminate any role for the legislature or Secretary of State, and that the commission is “self-regulating” with its own staff funded by taxpayers. Rogers/Lopez stress that the “yes” vote result statement fails to address that there is no public hearing at the beginning of the process, no hearing at all if the Oregon Supreme Court adopts a plan, and no review of any Supreme Court plan. We agree, that the limits on judicial review and reduction in required public meetings are significant and immediate effects and revise the statement accordingly.

Uherbelau also asserts that the “yes” vote result statement is flawed because the phrase “creates . . . constitutional requirements” conveys inaccurately that there are no current existing requirements. We agree and have revised the result statement accordingly.

Rogers/Lopez, Uherbelau, and Trojan/Delk also assert that the “yes” vote result statement is insufficient because it fails to convey that the proposed measure will remove current requirements including those that protect against gerrymandering (that districts not be drawn to “divide communities of common interest”). Uherbelau asserts that the result statement should convey that new requirements are in the state constitution. Trojan/Delk point out that the proposed measure elevates geographic compactness to be the primary consideration. We think that the focus on geographic compactness—having the shortest “aggregate linear distance” of borders—is the most significant change to the substantive redistricting requirements and have included that in the “yes” vote result statement.

Uherbelau also asserts that the “yes” result statement fails to convey that the proposed measure may be misleading in that it allows the Oregon Supreme Court to delegate its redistricting authority to “senior judges” but does not define that term. Uherbelau points out that the term “senior judges,” is ambiguous because it could be limited to former Oregon Supreme Court justices, or not. Because the Oregon Supreme Court ultimately has control, even though it may delegate its authority, we do not believe it is necessary to highlight the term “senior judges” in the ballot title.

In light of the necessary additions, we removed the description of the court’s role upon default, which we determine is a less-significant effect and adequately addressed in the summary.

After considering the comments concerning the “yes” result statement, we change the “yes” vote result statement and certify the following:

**Result of “Yes” Vote:** “Yes” vote transfers legislative redistricting to commission; commission over-represents rural areas. Changes redistricting requirements; limits “aggregate linear distance” of borders. Fewer hearings. Limits judicial review.

**C. The “no” vote 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)(b). 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 redistricting by legislature, including public hearings, statutory, constitutional criteria; upon default, Secretary of State adopts plan; if plan deficient, Supreme Court revises.

Many of the commenters object to the “no” vote result statement on the same grounds as they objected to the caption and the “yes” vote result statement.

In addition, Rogers/Lopez comment that the “no” vote statement should include that 15 public hearings are currently required. We agree that the availability of public hearings is important. Because only 10 hearings are required with five more “to the extent practicable,” and with limited words available to explain that, we are adding the minimum number of public hearings to the “no” vote statement.

Trojan/Delk assert that the “no” vote statement should provide information about the specific current statutory and constitutional requirements. We think that identifying that there are statutory *and* constitutional criteria is sufficient, particularly with the way the “yes” vote statement was amended to highlight the new requirement for shortest “aggregate linear distance.”

Uherbelau points out that the “no” vote result statement fails to explain that under current law the Oregon Supreme Court may review and produce a plan if the legislature and Secretary of State fail to meet their constitutional obligations. We understand Uherbelau’s point to be that under the current law, if on judicial review the Oregon Supreme Court determines that the plan fails to comply with applicable statutes or constitutional provisions, then the court may itself revise the plan. ORS 188.125(11). While that is an important feature of the current process, we think the fact that judicial review is available is more important than who implements the court’s decision on review. We also address the court’s role more fully in the summary.

After considering the comments concerning the “no” result statement, we change the “no” vote result statement and certify the following:

**Result of “No” Vote:** “No” vote retains redistricting by legislature. Statutory, constitutional criteria. Minimum ten public hearings. Upon default, Secretary of State adopts plan. Elector can seek court review.

#### **D. 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:** Amends Constitution. Currently, legislature reapportions legislative districts following census, using statutory, constitutional criteria, public hearings. Upon default, Secretary of State holds public hearings, completes redistricting. Any elector may petition Oregon Supreme Court to review plan’s compliance with applicable laws; if deficient, court may create plan. Measure replaces current process with redistricting by 11-member commission. County Commissioners appoint members (excluding recent elected officials, partners); rural areas receive disproportionately high representation. Changes constitutional, statutory requirements, each district must be maximally compact, district boundaries must have shortest possible “aggregate linear distance” (undefined). Fewer public hearings required, plan adopted by majority commission vote. Legislature funds commission, otherwise uninvolved. 15 electors required to petition Supreme Court, review limited to constitutional defects. Upon default, Supreme Court completes redistricting. Other provisions.

Again the commenters all raised issues with the summary. And again, many of the issues are the same as were raised with respect to other parts of the proposed ballot title. As discussed above, there were some issues that should be reflected in the summary, even though not included in other portions. Such issues include further detail on the reduction in public hearings and limitations on judicial review.

Rogers/Lopez, Uherbelau, and Trojan/Delk emphasize that the summary fails to adequately convey that the proposed measure “largely eliminates relative population as the basis for redistricting” and shifts the process to “one that favors voters in less-populous counties” and reduces the “urban counties’ voting strength.” We think the draft summary addressed that issue, but have revised it to be consistent with changes made to other portions of the ballot title.

Rogers/Lopez also point out that the proposed measure “contains several provisions related to apportionments that are unclear or misleading.” In particular, the proposed measure requires that a majority of voting county commissioners approve any member of the commission, but fails to explain what happens in the event of a plurality or tie. That is a correct assessment of the measure, but we decline to add it to the summary because it is not required to understand what will happen if the proposed measure passes.

Uherbelau asserts that the summary fails to “set forth the qualifications and restrictions for redistricting commissioners.” Chief petitioners emphasize this issue with respect to earlier parts of the ballot title. We agree that is an important feature of the proposed measure that should be included in the summary.

Rogers/Lopez also suggest—for similar reasons Uherbelau raised earlier—that the term “senior judge” should be identified as an undefined term. Again, because the Oregon Supreme Court retains the ultimate control (and is not required to delegate its authority to senior judges), in light of the word limitations, we do not think it necessary to include that in the summary.

Rogers/Lopez also assert that “aggregate linear distance” should be included in quotations and/or flagged as an undefined term. We agree that term should be included in the summary because, as explained above, under the proposed measure, compactness of the districts appears to be the primary consideration for drawing a redistricting plan. We also agree it should be in quotations because it is not in the current law or described in the proposed measure.

After considering the comments concerning the draft summary, we change the summary and certify the following:

**Summary:** Amends Constitution. Currently, legislature reapportions legislative districts after census, following at least 10 public hearings. Criteria set by statute and Constitution. If legislature defaults, Secretary of State completes redistricting. Any elector may petition Oregon Supreme Court to review compliance with law; if deficient, court may create plan. Measure replaces current process with 11-member commission. County Commissioners appoint members (excluding recent elected officials, spouses, and some political party officials). Rural areas receive disproportionately high representation. Changes constitutional, statutory requirements; district boundaries must have shortest possible “aggregate linear distance.” Five public hearings required. Plan adopted by majority commission vote. Legislature funds commission, otherwise uninvolved. 15 electors required to petition Supreme Court. Court review limited to constitutional defects. Upon default, Supreme Court completes redistricting. Other provisions.

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**E. Conclusion**

We certify the attached ballot title.

Sincerely,

/s/ Jona J. Maukonen

Jona J. Maukonen  
Assistant Attorney-In-Charge  
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## BALLOT TITLE

**Amends Constitution: Transfers legislative redistricting to commission; commission over-represents rural areas; changes redistricting requirements; limits judicial review**

**Result of “Yes” Vote:** “Yes” vote transfers legislative redistricting to commission; commission over-represents rural areas. Changes redistricting requirements; limits “aggregate linear distance” of borders. Fewer hearings. Limits judicial review.

**Result of “No” Vote:** “No” vote retains redistricting by legislature. Statutory, constitutional criteria. Minimum ten public hearings. Upon default, Secretary of State adopts plan. Elector can seek court review.

**Summary:** Amends Constitution. Currently, legislature reapportions legislative districts after census, following at least 10 public hearings. Criteria set by statute and Constitution. If legislature defaults, Secretary of State completes redistricting. Any elector may petition Oregon Supreme Court to review compliance with law; if deficient, court may create plan. Measure replaces current process with 11-member commission. County Commissioners appoint members (excluding recent elected officials, spouses, and some political party officials). Rural areas receive disproportionately high representation. Changes constitutional, statutory requirements; district boundaries must have shortest possible “aggregate linear distance.” Five public hearings required. Plan adopted by majority commission vote. Legislature funds commission, otherwise uninvolved. 15 electors required to petition Supreme Court. Court review limited to constitutional defects. Upon default, Supreme Court completes redistricting. Other provisions.

