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Case #18CV16151

#265.00
#

**Petition for review of ballot title for Initiative Petition #9-2018-1,
"Second Amendment Protection Ordinance"**

FILED
2018 APR 25 PM 2:10
DESCHUTES COUNTY
OREGON

Submitted Wednesday, April 25, 2018, in Deschutes County Circuit Court, 1100 NW Bond St. Bend, OR

Respondent: John Hummel District Attorney, Deschutes County Circuit Court

I respectfully submit protest to this Initiative Petition for the following reasons:

1. The Ballot Title states: "Approval of this measure would mandate that in Deschutes County, the Oregon and United States Constitutional definitions of firearms be interpreted as including ammunition and firearms accessories"

This statement is unclear as the interpretation of the constitution's definitions of both firearms and firearm accessories varies. In the Heller amendment, for example, the Supreme court, in its opinion stated that the right to bear arms in no way precludes the ability of the government to regulate. Whose interpretation of the constitution would be used if enacted? The Supreme Court has determined that government has the right to regulate firearms.

2. This ballot title is unconcise and vague in that it does not delineate details of what specific laws the Deschutes County Sherriff will enforce and which he or she will not enforce. Simply stating "any law that restricts the right of people to possess firearms, firearm accessories, and/or ammunition" is too vague and seems to leave this to the subjective whim of whoever is sheriff at the time.

Respectfully submitted,



Zandra Brant , Registered voter/elector
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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF DESCHUTES

6
7 ZANDRA BRANT,

Petitioner,

Case No. 18CV16151

8 vs.

RESPONSE TO BALLOT CHALLENGE

9 JOHN HUMMEL,

Respondent.

**ORAL ARGUMENT REQUESTED
(30 minutes estimated)**

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11
12 **INTRODUCTION**

13 Pursuant to the county ballot title review statute, ORS 250.195, Petitioner seeks review of
14 the ballot title Respondent prepared and certified to the county clerk. This court is required to
15 review the ballot title prepared by Respondent to determine if it is insufficient, not concise,
16 and/or unfair. ORS 250.195(1). After conducting this review, the court shall certify to the
17 county clerk a title for the measure¹. ORS 250.195(1).
18

19 **PROCEDURAL FACTS**

20 Four local electors, pursuant to ORS 250.165, filed with Deschutes County Clerk Nancy
21 Blankenship (hereinafter "clerk") a prospective initiative petition (Exhibit 1). As required by
22 ORS 250.168 the clerk reviewed the prospective petition to determine if it complied with the
23

24 ¹ Implicit in the statute is that if this court finds the title prepared by Respondent insufficient, not concise, or unfair
25 the court will draft its own title and certify the court's title to the county clerk. Such a scenario raises important and
26 interesting separation of powers issues as articulated in the dissenting opinions of Justices Unis and Durham in
Sizemore v. Kulongoski, 322 Or 229 (1995).

1 Oregon Constitution, section 1(2)(d), Article IV (single subject requirement), and section 10,
2 Article VI (home rule provisions).

3 The clerk determined the prospective initiative petition to be in compliance with these
4 provisions and, as required by ORS 250.175(2), sent a copy to the district attorney (Exhibit 2).

5 The district attorney (the Respondent in the case-at-bar) then, as required by ORS
6 250.175(3)(a), prepared a ballot title (in the form required by ORS 250.035) and certified it to
7 the clerk (Exhibit 3).

8 Petitioner filed her challenge within the required seven days of Respondent certifying the
9 ballot title to the clerk (ORS 250.195(1)) thus, if she is an “elector” as required by ORS 250.195
10 and defined by ORS 250.005(2), her case is properly before this court².

11 **LEGAL ARGUMENT**

12 This court is charged with determining whether the ballot title prepared by Respondent is
13 insufficient, not concise, and/or unfair. ORS 250.195(1). Unfortunately, the legislature did not
14 provide definitions for these words, only one appellate case cites to the county ballot review
15 statute (State ex rel Bunn v. Roberts, 302 Or 72 (1986)), and the reference in the case is
16 insignificant and not helpful for our purposes. Fortunately, the relevant words are commonly
17 used and understood.

18 Petitioner makes two arguments. To summarize:

- 19
- 20 1. The ballot title is unclear because it does not state whether, if the ballot initiative were
21 approved by voters, the United States Supreme Court’s interpretation of constitutional
22 firearms law would apply or whether the constitutional interpretation called for in the
23 ballot measure would apply.
 - 24 2. The ballot title is unconcise and vague because it does not list the specific laws the
25 Deschutes County Sheriff would refuse to enforce if the ballot imitative is approved by
26 voters.

² Respondent does not suggest Petitioner is not an elector; rather, Respondent has no information about it and leaves it to the court to determine if she meets this standing requirement.