

Case #18CV16151

#265.00
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**Petition for review of ballot title for Initiative Petition #9-2018-1,
"Second Amendment Protection Ordinance"**

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
2344 NW Todds Crest Dr. 97703
503 914 9691
zandrabrant@gmail.com

FILED
2018 APR 25 PM 2:10
CLERK OF DISTRICT COURT
DESCHUTES COUNTY
OREGON

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF DESCHUTES

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7 ZANDRA BRANT,

Petitioner,

8 vs.

9 JOHN HUMMEL,

Respondent.

Case No. 18CV16151

RESPONSE TO BALLOT CHALLENGE

**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).

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

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

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

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

LEGAL ARGUMENT

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

Petitioner makes two arguments. To summarize:

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

Both arguments should fail. Petitioner's arguments are more properly expressed during the election campaign for this initiative rather than during the ballot review process.

I. Petitioner's First Argument

Petitioner's first argument focuses on the first paragraph of the summary section of the ballot title:

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.

Petitioner argues this section of the ballot title is unclear because it does not state whether the Supreme Court's interpretation of firearms constitutional law would apply or whether the interpretation called for in the ballot measure would apply. However, the text of the prospective petition makes clear that the petition would require the constitutional interpretation contained in the text of the initiative to apply in Deschutes County.

Therefore, any regulation of the right to keep and bear arms or ancillary firearms rights that violate the Second, Ninth, or Tenth Amendments to the Constitution of the United States of America, or Article I, sections 27 and 33 of the Constitution of the State of Oregon, *as articulated herein*, shall be regarded by the People on and in Deschutes County as unconstitutional.

Prospective Initiative Petition Section 2(C) (emphasis added).

In addition, the text of the initiative states that ammunition and firearms accessories are protected by the constitution.

Whereas the Ninth Amendment to the Constitution of the United States of America states: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people,' protects ancillary rights that are closely related to the right to keep and bear arms protected by the Second Amendment; including the right to manufacture, transfer, buy and sell firearms, firearm accessories and ammunition. Hereinafter these shall be referred to as 'ancillary firearms rights.'

1 Whereas Article 1, section 33 of the Constitution of the State of Oregon States:
2 ‘This enumeration of rights and privileges shall not be construed to impair or
3 deny others retained by the people.’ This section protects ancillary firearms rights
4 that are closely related to the right to keep and bear arms protected by Article I,
5 section 27 of the State of Oregon.

6 Prospective Initiative Petition Sections 2(B)(2) and 2(B)(5)

7 Because the prospective initiative requires that in Deschutes County, the Oregon and
8 United States Constitutional definitions of firearms be interpreted as including ammunition and
9 firearms accessories and the ballot title section in question states just this, the title is clear and
10 Petitioner’s argument should fail.

11 **II. Petitioner’s Second Argument**

12 Petitioner’s second argument is that the ballot title is unconcise and vague because it does
13 not list the specific laws the Deschutes County Sheriff would refuse to enforce if this ballot
14 initiative is approved by voters. A ballot title is not unconcise or vague if it correctly describes
15 an initiative that does not provide an elector with the clarity they might desire.

16 The ballot initiative requires the Sheriff of Deschutes County to determine if a firearms
17 law violates a constitutional provision.


18 It shall be the duty of the Sheriff of Deschutes County to determine as a matter of
19 internal policy and county concern per ORS 203.035 whether any federal, state or
20 local regulation affecting firearms, firearms accessories and ammunition, that is
21 enforceable within his/her jurisdiction, violates the Second, Ninth, or Tenth
22 Amendments to the Constitution of these United States, or Article I, sections 27
23 and 33 of the Constitution of the State of Oregon, as articulated herein.

24 Prospective Initiative Petition Section 2(E)

25 The fact Petitioner apparently desires the proposed initiative text to list the exact laws the
26 Sheriff will declare unconstitutional is of no legal consequence at this stage of the process.
27 Because the ballot title concisely, clearly, and accurately states what the result of passage of the

1 initiative would be (that the Sheriff would decide which firearms laws are unconstitutional) it is
2 not unconcise or vague and Petitioner's argument should fail.

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4 Dated this the 30th day of April, 2018.

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6 JOHN HUMMEL, OSB# 953061
7 DISTRICT ATTORNEY
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9-2018-1

Prospective Petition

Local Initiative and Referendum

SEL 370

rev 01/18 ORS 250.045,
250.165, 250.265, 255.135

Warning Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, a contact phone number and a signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status below must be reported to the Elections Division no later than the 10th day after you first have knowledge or should have had knowledge of the change.

Petition Information		Type	
This filing is an	<input type="checkbox"/> Original <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Initiative <input type="checkbox"/> Referendum		
Jurisdiction		Some Circulators may be Paid	
<input checked="" type="checkbox"/> County <input type="checkbox"/> City <input type="checkbox"/> District	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Title Subject or name you give your petition. Second Amendment Preservation Ordinance			
Website if applicable			

Petition Correspondence Select the method of receiving notices or other correspondence from the Filing Officer.		
<input type="checkbox"/> Correspondence Recipient <input checked="" type="checkbox"/> Email Chief Petitioners <input type="checkbox"/> Mail Chief Petitioners		
Recipient Information		
Name	Jerrad Robison	
Email Address	jerradtyrea@gmail.com	
Chief Petitioner Information At least one original chief petitioner must remain throughout the petition process or the petition is void.		
→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.		

Name	Jerrad Robison	Contact Phone	541 408 8401
Residence Address street, city, state, zip	311 Antler ridge ct. Redmond OR. 97756		
Mailing Address if different		Email Address	
Signature	Jerrad Robison	Date Signed	04/11/2018

Name	Levin Belcher	Contact Phone	541-380-1155
Residence Address street, city, state, zip	4040 NE 40th Redmond, OR 97756		
Mailing Address if different		Email Address	rbelcher@hotmail.com
Signature	Levin Belcher	Date Signed	4/11/18

Name	Bruce J Soper II	Contact Phone	
Residence Address street, city, state, zip	9400 SW Harvest Ave Redmond, OR 97756		
Mailing Address if different		Email Address	CDG62014@gmail.com
Signature	Bruce J Soper II	Date Signed	4/11/18

18APR11 2

EXHIBIT

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9-2018-1

Prospective Petition

Local Initiative and Referendum

SEL 370

rev 01/18 ORS 250.045,
250.165, 250.265, 255.135

Warning Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, a contact phone number and a signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status below must be reported to the Elections Division no later than the 10th day after you first have knowledge or should have had knowledge of the change.

Petition Information		Type	
This filing is an	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment	<input type="checkbox"/> Initiative
			<input type="checkbox"/> Referendum
Jurisdiction		Some Circulators may be Paid	
<input checked="" type="checkbox"/> County	<input type="checkbox"/> City	<input type="checkbox"/> District	<input type="checkbox"/> Yes
			<input checked="" type="checkbox"/> No
Title Subject or name you give your petition.			
Second Amendment preservation ordinance			
Website if applicable			

Petition Correspondence Select the method of receiving notices or other correspondence from the Filing Officer.

☐ Correspondence Recipient ☒ Email Chief Petitioners ☐ Mail Chief Petitioners

Recipient Information

Name Jerrad Robison Email Address jerradtyrea@gmail.com

Chief Petitioner Information At least one original chief petitioner must remain throughout the petition process or the petition is void.

→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

Name	<u>Sharon Marie Preston</u>	Contact Phone	<u>541-788-5858</u>
Residence Address street, city, state, zip	<u>3435 NW Dogwood Ave Redmond, OR 97756</u>		
Mailing Address if different	Email Address	<u>ladiesofleadusa@gmail.com</u>	
Signature	<u>[Signature]</u>	Date Signed	<u>4-7-18</u>

Name	<u>Verlin Belcher</u>	Contact Phone	<u>541 380 1655</u>
Residence Address street, city, state, zip	<u>4040 NE 40th Redmond, OR 97756</u>		
Mailing Address if different	Email Address	<u>vbclcher@btmail.com</u>	
Signature	<u>[Signature]</u>	Date Signed	<u>4/7/18</u>

Name	<u>BRUCE J SOPIN II</u>	Contact Phone	<u>541-460-0414</u>
Residence Address street, city, state, zip	<u>6400 SW HARVEST AVE. REDMOND, OR 97756</u>		
Mailing Address if different	Email Address	<u>COCG2014@GMAIL.COM</u>	
Signature	<u>[Signature]</u>	Date Signed	<u>4/7/18</u>

18APR 9 9:03AM CLERK

**Deschutes County State of Oregon
Second Amendment Preservation Ordinance**

Section 1. **THE PEOPLE OF DESCHUTES COUNTY DO ORDAIN** that the following ordinance shall be known and may be cited as the **Second Amendment Preservation Ordinance**.

Section 2. This Second Amendment Preservation Ordinance

A. Preserves the right of the People of, on and in Deschutes County to:

- 1) Keep and bear arms as originally understood; in self-defense and preservation, and in defense of one's community and country.
- 2) Freely manufacture, transfer, sell and buy firearms, firearm accessories and ammunition, which are designed primarily for the same purposes.

B. These rights are retained by the People and protected by the Constitution of these United States, and the Constitution of the State of Oregon as follows:

- 1) Whereas the Second Amendment to the Constitution of the United States of America states: "A well-regulated Militia being necessary to the security of a free State, the right of the People to keep and bear Arms, shall not be infringed."
- 2) Whereas The Ninth Amendment to the Constitution of the United States of America states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," - protects ancillary rights that are closely related to the right to keep and bear arms protected by the Second Amendment; including the right to manufacture, transfer, buy and sell firearms, firearm accessories and ammunition. Hereinafter these shall be referred to as "ancillary firearm rights."
- 3) Whereas the Tenth Amendment to the Constitution of the United States of America states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
- 4) Whereas Article 1, section 27 of the Constitution of the State of Oregon states: "The people shall have the right to bear arms for the defense of themselves, and the State, but the Military shall be kept in strict subordination to the civil power."
- 5) Whereas Article 1, section 33 of the Constitution of the State of Oregon states: "This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people." This section protects ancillary firearms rights that are closely related to the right to keep and bear arms protected by Article 1, section 27 of the Constitution of the State of Oregon.

C. Therefore, any regulation of the right to keep and bear arms or ancillary firearms rights that violate the Second, Ninth, or Tenth Amendments to the Constitution of the United States of America, or Article 1, sections 27 and 33 of the Constitution of the State of Oregon, as articulated herein, shall be regarded by the People on and in Deschutes County as unconstitutional; a transgression of the Supreme Law of the Land and its spirit of Liberty, and therefore by necessity void *ab initio*

- D. The People on and in Deschutes County do resolve by this instrument that the Deschutes County Government shall not authorize or appropriate governmental funds, resources, employees, agencies, contractors, buildings, detention centers or offices for the purpose of enforcing any element of such acts, laws, orders, mandates, rules or regulations, that infringe on the right of the People to keep and bear arms.
- E. It shall be the duty of the Sheriff of Deschutes County to determine as a matter of internal policy and county concern per ORS 203.035, whether any federal, state or local regulation affecting firearms, firearms accessories and ammunition, that is enforceable within his/her jurisdiction, violates the Second, Ninth, or Tenth Amendments to the Constitution of these United States, or Article 1, sections 27 and 33 of the Constitution of the State of Oregon, as articulated herein.

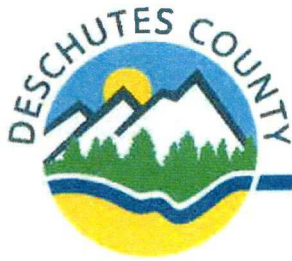
Section 3. PENALTIES

- A. Anyone within the jurisdiction of Deschutes County, Oregon found in violation of this ordinance may be made a defendant in a civil proceedings by the county seeking redress of the violation, per ORS 203.065.
- B. Fines recovered under ORS 203.030 - 203.075 shall be paid to the clerk of the court in which recovery is had. After first deducting court costs in the proceedings, the clerk shall pay the remainder to the treasurer of the county for the general fund of the county, per ORS 203.065.
- C. A civil offense against this ordinance is a Class A violation, per ORS 203.065, with a maximum fine of \$2,000 for an individual, and \$4,000 for a corporation, per ORS 153.018.
- D. Any peace officer, as defined by ORS 161.015, may enforce this ordinance, adopted under ORS 203.035.
- E. Under county authority per ORS 203.035, enforcement of this ordinance is in alliance with the oath to uphold and defend the Constitution of these United States, and the Constitution of the State of Oregon, which the elected officials and officers of Deschutes County are being held to by the People of this county. It is primary in their scope of duties, and may indemnify them against certain liability per ORS 30.285.

Section 4. If any provision of this ordinance or the application of any such provision to any person or circumstance should be held invalid by a Court of competent jurisdiction, the remainder of this ordinance or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 5. EFFECTIVE DATE

- A. This The Second Amendment Preservation Ordinance shall be effective immediately upon certification of approval by the voters of Deschutes County.



County Clerk

April 11, 2018

Honorable John Hummel
Deschutes County District Attorney
1164 NW Bond St
Bend OR 97701

RE: Request for Ballot Title - Second Amendment Preservation Ordinance, Prospective Initiative Petition

A prospective petition for a Deschutes County initiative was filed April 9, 2018. I have made the determination that it is qualified to receive a ballot title.

ORS 250.175(2) provides that I supply the district attorney with a copy of the proposed measure.

ORS 250.175(3) states that not later than the 5th business day after receiving the copy of the prospective petition, the district attorney shall prepare a ballot title for the county measure to be initiated and certify the ballot title to the county clerk.

Sincerely,

Nancy Blankenship
Deschutes County Clerk

Enc: Copy of Prospective Petition and Text
Copy of Determination Certificate

cc: Deschutes County Legal Counsel
Deschutes Board of County Commissioners
Jerrad Robison, Chief Petitioner
Verlin Belcher, Chief Petitioner
Bruce J Soper II, Chief Petitioner





County Clerk

Certificate

I, Nancy Blankenship, Deschutes County Clerk and Chief Election Official of the County of Deschutes, State of Oregon, being duly sworn, do depose and say:

The Oregon Constitution, Article IV, section 1(2)(d), requires that a measure embrace one subject only and matters properly connected therewith.

The measure must be legislative rather than administrative in nature; and must include the full text.

On April 9, 2018, a prospective initiative petition titled **"Second Amendment Preservation Ordinance"** was filed to place an initiative measure on the ballot for electors of Deschutes County.

ORS 250.168 requires the county clerk to determine in writing that the initiative measure meets the requirements of section 1(2)(d), Article IV, of the Oregon Constitution.

I, hereby determine that the proposed initiative meets the requirements of section 1(2)(d), Article IV, of the Oregon Constitution and is qualified to receive a ballot title.

ORS 250.175(2) calls for the county clerk to supply the district attorney with a copy of the proposed measure and 250.175(3) states that not later than the 5th business day after receiving a copy of the prospective petition, the district attorney shall prepare a ballot title in accordance with ORS 250.035(1). The ballot title of any measure, other than a state measure, to be initiated or referred shall consist of:

- (a) A caption of not more than 10 words which reasonably identifies the subject of the measure;
- (b) A question of not more than 20 words which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure; and
- (c) A concise and impartial statement of not more than 175 words summarizing the measure and its major effect.

Any elector dissatisfied with this determination by the county clerk may file a petition for review with the Deschutes County Circuit Court not later than the 7th business day after the prepared ballot title is filed with the county clerk, ORS 250.168(4).

Dated this 11th day of April, 2018


Nancy Blankenship, Deschutes County Clerk

cc: Deschutes County District Attorney
Deschutes County Legal Counsel
Deschutes Board of County Commissioners
Jerrad Robison, Chief Petitioner
Verlin Belcher, Chief Petitioner
Bruce J Soper II, Chief Petitioner



John Hummel District Attorney

1164 NW Bond Street • Bend, Oregon 97701
(541) 388-6520 • Fax: (541) 330-4691
Grand Jury Fax: (541) 330-4698
www.dcta.us

April 18, 2018

Nancy Blankenship
Deschutes County Clerk
SENT VIA EMAIL ONLY

RE: Petition #9-2018-1

Dear Nancy:

I prepared the following ballot caption, question, and summary for the firearms prospective petition:

CAPTION

Expands definition of firearms and limits enforcement of firearms laws.

QUESTION

Should Deschutes County expand constitutional definition of firearms and prohibit enforcement of laws that regulate their manufacture, sale, and possession?

SUMMARY

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.

Approval of this measure would make unconstitutional in Deschutes County any law or regulation that restricts a person from possessing firearms, ammunition, and firearms accessories.

Approval of this measure would require the Deschutes County Sheriff to review federal, state, and local laws affecting firearms, firearms accessories, and/or ammunition and determine whether they violate the United States and Oregon Constitutions as defined by this measure

Approval of this measure would prohibit Deschutes County Government from enforcing any law that restricts the right of people to possess firearms, firearms accessories, and/or ammunition.

And approval of this measure would subject people or corporations who violate this measure to a fine of up to \$2,000 for an individual and \$4,000 for a corporation.

Attached is this information in Word and PDF formats. Be in touch if you have questions.

Sincerely,

John Hummel
District Attorney

