



DEPARTMENT OF JUSTICE
APPELLATE DIVISION

April 4, 2024

Molly Woon
Director, Elections Division
Office of the Secretary of State
255 Capitol St. NE, Ste. 126
Salem, OR 97301

Re: Proposed Initiative Petition — Criminalizes Breeding Practices, Injuring/Killing Animals, Including for Food, Hunting, Fishing. Creates Transition Fund. Exceptions.

DOJ File #BT-28-24; Elections Division #2026-028

Dear Ms. Woon:

We received comments about the draft ballot title for the above-referenced measure from eleven electors or groups representing electors. We have reviewed each and every comment. Two commenters, Donna Bleiler and Dan Ewert, do not challenge the draft ballot title in any manner. Rather, they set forth their opposition to the measure. Many of the comments presented similar themes or argument, and we address those common concerns in this letter. To the extent that comments raise substantive concerns with the draft ballot title, we address each of the comments in this letter.

This letter summarizes the substantive comments, our responses to those comments, and the reasons why we altered or declined to alter the draft ballot title in response to the comments. ORAP 11.30(7) requires this letter to be included in the record if the Oregon Supreme Court is asked to review the ballot title.

A. Current law

Before explaining the proposed measure's changes, we set out current law. IP 28 amends ORS 167.310, ORS 167.315, ORS 167.320, ORS 167.325, ORS 167.330, ORS 167.332, ORS 167.333, and ORS 167.335. Under ORS 167.315, it is a misdemeanor to intentionally, knowingly, or recklessly injure an animal. Good animal husbandry practices are exempted, as are numerous practices set forth in ORS 167.335, including transportation of animals; rodeos; growing of poultry; the slaughter of animals by methods authorized by law; fishing, hunting, and trapping; lawful wildlife management; lawful scientific or agricultural research; control of vermin or pests; and reasonable handling and training techniques. The proposed measure removes all of those exceptions.

Under ORS 167.320, it is a crime, and may be a felony, to intentionally, knowingly, or recklessly cause serious physical injury to an animal, or to cruelly cause the death of an animal, subject to the same exceptions included in ORS 167.315 and 167.335. Once again, the proposed measure removes all of those exceptions. It would therefore be a crime, under this proposal, to slaughter livestock for food, or to kill rats, mice, or other vermin and pests. The measure reduces crimes under ORS 167.320 which may currently be prosecuted as felonies to Class A misdemeanors.

Under ORS 167.325, it is a crime to intentionally, knowingly, recklessly, or with criminal negligence fail to provide minimum care for an animal in a person's custody or control, or to tether a domestic animal in a way that causes physical injury. ORS 167.330 provides greater penalties if that conduct results in serious physical injury or death of a domestic animal. The proposed measure removes the exception to these provisions for practices that are otherwise authorized by law. For crimes under ORS 167.325 and 167.330 which may currently be prosecuted as felonies, the measure reduces them to Class A misdemeanors, and for crimes which may currently be prosecuted as A misdemeanors the measure reduces them to B misdemeanors.

ORS 167.333 makes sexual assault of an animal a felony. As currently defined, the crime applies to touching of the mouth, anus, or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person. The statute does not apply to the use of animal products, and thus allows, for example, artificial insemination. The proposed measure would make many current practices for breeding pets, livestock, and horses a criminal offense. Measure reduces crimes committed under ORS 167.333 from Class C felonies to A misdemeanors.

The proposed measure would thus criminalize many common farming and ranching practices, as well as recreational and commercial hunting, fishing, and trapping, pest control, and many other practices that are now specifically authorized by law. Commenters noted this would be a far-reaching change to the laws currently governing treatment of animals.

IP 28, Section 7(1) provides that "in lieu of" any other penalties imposed for violations of certain statutes, a defendant "*must* complete 100 hours" of community service at some kind of animal care facility. Section 7(2) provides for the same thing for 300 hours for different crimes. When read together, "in lieu of" and "must complete" would require community service for a person who has opted for the punishment of a fine or prison time.

IP 28 creates a "Humane Transition Fund" which is funded by all state funding that is currently distributed for use in a purpose that IP 28 would ban, *e.g.*, livestock breeding and slaughter, fishing, hunting, wildlife management). The fund is intended to provide grants to help with food assistance, income replacement and job training for persons who lose their livelihoods as a result of IP 28's passage. The fund would also provide funds for animal care, conservation, rewilding and "[a]ny other purpose that is unanimous agreed upon by all members of the Transitional Oversight Council."

The Caption

Under ORS 250.035(2)(a), a ballot title for a state measure must include “[a] caption of not more than 15 words which reasonably identifies the subject of the state measure.” The draft caption prepared for IP 28 was as follows:

Criminalizes injuring or killing animals, including killing for food, hunting, fishing; criminalizes breeding practices. Exceptions

Several of the commenters, including representatives of Safari Club International, Oregon Hunters Association, Delta Waterfowl, and Backcountry Hunters and Anglers state that the caption complies with the statutory requirements and, therefore, suggest no changes.

Ducks Unlimited and the American Kennel Club suggest that the caption should include a reference to accidental injury or killing of animals. But the major effect of the measure is to criminalize various activities or omissions to animals when committed intentionally, knowingly, or with criminal recklessness. Thus, stating that the measure applies to accidental deaths or injuries overstates the breadth of the measure.

Ducks Unlimited suggests that the wording should be changed to include a reference to Native American cultural rights. Commenters representing the Oregon Farm Bureau, Oregon Cattleman’s Association, and Oregon Dairy Farmers Association make a similar suggestion, proposing that the caption use the term “cultural” as a substitute for hunting and fishing to alert the voters to the fact that hunting and fishing are cultural activities for many, including tribal community. Given the changes that IP 28 would enact, we conclude that such a substitution would be unclear to many voters and likely to cause confusion.

Chief Petitioner Michelson contends that the creation of the transition fund is a major aspect of the measure that needs to be included in the caption. Commenters representing the Oregon Farm Bureau, Oregon Cattleman’s Association, and Oregon Dairy Farmers Association raise similar concerns. Upon review, we agree that the creation of the transition fund is a major aspect of the measure and change the caption accordingly.

Chief Petitioner Michelson also contends that use of “criminalizes” is inaccurate, because IP 28 provides community service as an alternative to criminal penalties. First, as discussed above, it is not clear that, as drafted, IP 28 provides community service as an alternative to fines or prison time. Second, even if that is the case, the acts in question are still categorized as misdemeanors and, accordingly, remain criminal acts. Thus, “criminalizes” is accurate.

Chief Petitioner Michelson proposes changing “breeding practice” to “insemination.” In his view, IP 28 criminalizes only artificial insemination rather than any natural mating practices. To the extent that natural breeding practices are still allowed, the caption’s use of “[e]xceptions” signals any exceptions that may exist.

We certify the following caption:

Criminalizes breeding practices, injuring/killing animals, including for food, hunting, fishing.
Creates transition fund. Exceptions

The Result Statements

ORS 250.035(2)(b) and (c) requires “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is approved, and “[a] simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected.” The draft result statements were as follows:

Result of “Yes” Vote: “Yes” vote criminalizes injuring or killing animals, including farming, ranching, hunting, fishing, trapping, pest control, research/teaching; criminalizes breeding practices. Exempts some veterinary practices, self-defense.

Result of “No” Vote: “No” vote retains current laws allowing farming, ranching for food, hunting, fishing, trapping, pest control, animal research, common animal husbandry practices, and accepted veterinary practices.

With respect to the results statements, many of the commenters repeated their comments on the caption, and those comments are addressed above. Some of the commenters stated that the “No” statement did not need changes.

The Chief Petitioner contends that the “Yes” statement should mention the creation of the fund to provide support for those who lose livelihoods if IP 28 were to pass. The Oregon Farm Bureau, Oregon Cattlemens Association, and the Oregon Dairy Farmers Association raise the same point. We agree that, given the greater word limit, inclusion of information about the fund should be included.

The American Kennel Club contends that the measure would criminalize training, handling and care of pets and other animals. While IP 28 may apply to some techniques currently used by pet or animal owners, it is not accurate to say that it criminalizes training and handling techniques in general. With respect to the “No Statement,” the American Kennel Club contends that it implies that current law allows for the “blatant, intentional harm of an animal.” But the draft “No Statement” correctly states that injuring or killing animals is allowed in some circumstances, many involving intentional human conduct. We decline to make the suggested changes.

As with the caption, the Chief Petitioner also contends that it is necessary to change “breeding practices” to “insemination.” The Chief Petitioner further suggests removing “some” before “veterinary practices” because the measure does not remove or modify the exemption for “animals subject to good veterinary practices” that is contained in ORS 686.030. In his view, all veterinary practices are thus exempt. The Oregon Hunters Association shares a similar view. But as explained above, IP 28 criminalizes artificial insemination even if performed by a veterinarian. Accordingly, it is not accurate to say that all veterinary practices are exempt from IP 28.

We certify the following results statements:

Result of “Yes” Vote: “Yes” vote criminalizes injuring/killing animals, including for agriculture, hunting, fishing, trapping, pest control, research/teaching; criminalizes some breeding practices.

Result of “No” Vote: “No” vote retains laws allowing farming, ranching for food, hunting, fishing, trapping, pest control, animal research, common animal husbandry practices, and accepted veterinary practices.

The summary

The summary of a ballot title consists of “[a] concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” The draft summary was as follows:

Summary: Under current law, activities that do or may kill or injure animals are lawful, including animal husbandry practices such as dehorning, docking, castration, or neutering; slaughtering livestock and poultry; animal breeding practices; fishing, hunting, and trapping; wildlife management practices; rodeos; scientific or agricultural research and teaching; control of vermin and nuisance animals; reasonable handling, training techniques. Proposed measure would make those practices, and other common practices involving animals, criminal offenses if injury/death occurs. Criminalizes breeding practices for domestic, livestock, and equine animals; exception for “good veterinary practices” and self-defense. Applies to mammals (including vermin), birds, reptiles, amphibians, fish. Eliminating hunting and fishing licenses would remove funding from wildlife management. Creates job training fund for persons who lose livelihood due to initiative’s enactment. Other provisions.

Many commenters repeated their comments as to the previous sections. Consistent with those comments and the changes above, we make similar changes to the summary.

The Chief Petitioner suggests that more detailed information about the effects of the “transition fund” be included, specifically, information explaining what kind of support may be covered by the fund. Commenters for the Oregon Farm Bureau, Oregon Cattlemen’s Association, and the Oregon Dairy Farmer’s Association make similar comments. Given the greater word limit, we provide more explanation on the fund.

The Chief Petitioner contends that the summary should include mention of the “alternative to criminal penalties.” As discussed above, we conclude that as drafted the community service is mandatory and the criminal penalties remain in place. Accordingly, we decline to make Chief Petitioner’s suggested change.

The Chief Petitioner suggests substituting different words in the summary, but the issue is not whether another word might be better, but whether the challenged words are inaccurate. He does not argue that they are inaccurate and, accordingly, we decline to make the proposed changes.

We certify the following summary:

Summary: Under current law, activities that do or may kill or injure animals are lawful, including animal husbandry practices; slaughtering livestock and poultry; animal breeding practices; fishing, hunting, and trapping; wildlife management practices; rodeos; scientific or agricultural research/teaching; control of vermin/nuisance animals; reasonable handling, training techniques. Proposed measure would make those practices, and other common practices involving animals, criminal offenses if injury/death occurs. Criminalizes breeding practices for domestic, livestock, and equine animals; exception for “good veterinary practices” and self-defense. Applies to mammals (including vermin), birds, reptiles, amphibians, fish. Eliminates hunting and fishing licenses, which would remove funding from wildlife management. Directs state money to fund for animal welfare, food assistance, job training for persons who lose livelihood due to initiative’s enactment. Other provisions.

Sincerely,

/s/ Jeff J. Payne

Jeff J. Payne
Senior Assistant Attorney General
jeff.j.payne@doj.state.or.us

Enclosure

sent via email

David Michelson
Donna Bleiler
Dan Ewert
Brian Tinker
Amy Patrick
Timm Wagner
Edward May
James Corbett
Greg Addington
Kip Krebs
Christopher Hager

Issac Farias and Sean Rice
25 NW 23rd Place
Suite 6, 402
Portland, OR 97210