

SHEMIA FAGAN

SECRETARY OF STATE

CHERYL MYERS

DEPUTY SECRETARY OF STATE



DEBORAH SCROGGIN

DIRECTOR

255 CAPITOL STREET NE, SUITE 501  
SALEM, OREGON 97310-0722

(503) 986-1518

# I N I T I A T I V E P E T I T I O N

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The Elections Division received a certified ballot title from the Attorney General on June 30, 2021, for Initiative Petition **2022-014**, proposed for the November 8, 2022, General Election.

## **Caption**

Amends Constitution: Legislators with ten unexcused absences from floor sessions disqualified from holding next term of office

## **Chief Petitioners**

Andrea Kennedy-Smith 3243 NE Daffodil Drive McMinnville, OR 97128

Reed Scott-Schwalbach 1049 SE 80th Avenue Portland, OR 97215

## **Appeal Period**

Any registered voter, who submitted timely written comments on the draft ballot title and is dissatisfied with the certified ballot title issued by the Attorney General, may petition the Oregon Supreme Court to review the ballot title.

If a registered voter petitions the Supreme Court to review the ballot title, the voter must notify the Elections Division by completing and filing form [SEL 324 Notice of Ballot Title Challenge](#). If this notice is not timely filed, the petition to the Supreme Court may be dismissed.

## **Appeal Due**

July 15, 2021

## **How to Submit Appeal**

Refer to Oregon Rules of Appellate Procedure, Rule 11.30 or contact the Oregon Supreme Court for more information at 503.986.5555.

## **Notice Due**

1<sup>st</sup> business day after appeal filed with Supreme Court, 5 pm

## **How to Submit Notice**

Scan and Email: [irrlstnotifier.sos@oregon.gov](mailto:irrlstnotifier.sos@oregon.gov)

Fax: 503.373.7414

Mail: 255 Capitol St NE Ste 501, Salem OR 97310

More information, including the certified ballot title and the Secretary of State's determination that the proposed initiative petition is in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions, is contained in the [IRR Database](#) available at [www.oregonvotes.gov](http://www.oregonvotes.gov).



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## CONSTITUTIONAL REQUIREMENT RULING

Initiative Petition No.	Date Filed	Comment Deadline	Certified Ballot Title Due
2022-014	December 21, 2020	June 14, 2021	June 29, 2021

### Draft Ballot Title Caption

Amends Constitution: Legislators with ten unexcused absences from floor sessions disqualified from holding next term of office

### Chief Petitioners

Andrea Kennedy-Smith 3243 NE Daffodil Drive McMinnville, OR 97128

Reed Scott-Schwalbach 1049 SE 80th Avenue Portland, OR 97215

### Procedural Constitutional Requirement Commentor

None

### Certification

I have reviewed the above-captioned initiative petition, including any comments submitted regarding constitutional requirements, and find that:

It **complies** with the procedural constitutional requirements.

It **does not comply** with the procedural constitutional requirements.

Shemia Fagan, Secretary of State

06/28/2021

Dated



**DEPARTMENT OF JUSTICE**  
APPELLATE DIVISION

June 22, 2021

Deborah Scroggin  
Director, Elections Division  
Office of the Secretary of State  
255 Capitol St. NE, Ste. 501  
Salem, OR 97301

Re: Proposed Initiative Petition — Amends Constitution: Legislators With Ten Unexcused Absences From Floor Sessions Disqualified From Holding Next Term of Office.

DOJ File #BT-14-21; Elections Division #2022-014

Dear Ms. Scroggin:

We have received the comments submitted in response to the draft ballot title for prospective Initiative Petition #14 (2022) (IP 14). Comments were submitted by Margaret S. Olney on behalf of Chief Petitioners Andrea Kennedy-Smith and Reed Scott-Schwalbach and by Rick Hangartner. We provide the enclosed certified ballot title.

This letter summarizes the comments we received, our responses to those comments, and the reasons we did not make changes to the ballot title. 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.

The draft ballot title provides:

**Amends Constitution: Legislators with ten unexcused absences from floor sessions disqualified from holding next term of office**

**Result of “Yes” Vote:** “Yes” vote disqualifies legislators with ten unexcused absences from legislative floor sessions from holding office as legislator for term following current term of office.

**Result of “No” Vote:** “No” vote retains existing law. Absent legislators may be punished by legislative chamber (potentially expelled by supermajority); present legislators have legal authority to compel attendance.

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**Summary:** Amends Oregon Constitution to add language prescribing consequences for unexcused absences by legislators from floor sessions. Currently, Senators and Representatives may be “punished” or, by the concurrence of two-thirds of the Senator’s or Representative’s chamber, “expelled” for “disorderly behavior,” but law does not define “disorderly behavior.” Additionally, absent legislators may be “compelled” to attend legislative floor sessions, but current law does not specify consequences for unexcused absences. Measure specifies that “disorderly behavior” includes legislator’s failure to attend ten or more legislative floor sessions during a regular or special legislative session without permission or excuse. Under measure, legislator who engages in “disorderly behavior” through unexcused absences is disqualified from serving as a Senator or Representative for the term following the end of the legislator’s current term.

**A. We decline to modify the draft ballot title in response to Olney’s comments.**

Commenter Olney acknowledges that the draft ballot title for IP 14 is identical to the ballot title for IP 63 (2022) and that the ballot title “meets statutory standards.” (Olney Letter 2). Olney submits the same comments she submitted for IP 63, and asserts that the “no” result and summary can be improved by removing the reference to the legislature’s present ability to “compel” attendance. (Olney Letter 2–3).

For the same reasons stated in the letter responding to comments for IP 63 (2020), we disagree that the draft ballot title should be modified as Olney contends. As explained in that letter:

Olney contends that the “no” result statement should not refer at all to the “illusory ability to ‘compel’ attendance since that is not the focus of IP 63.” Olney explains that IP 63 establishes consequences for legislators who “repeatedly fail” to attend legislative floor sessions, but does not add a mechanism to force or legally compel legislators to attend such sessions. Olney believes that, by referencing the authority to “compel” the presence of absent legislators, the draft “no” result statement erroneously suggests that IP 63, if passed, would itself legally compel attendance, which the measure is not intended to do. We decline to make Olney’s proposed modification, however, because the reference to the legal authority to “compel” the presence of absent legislators in the draft “no” result statement informs voters that, under current law, there may already be consequences for legislators who fail to attend legislative sessions, including that their presence may be compelled by present legislators. Thus, the draft “no” result statement accurately summarizes, in general terms, current law as it pertains to the consequences of a legislator’s failure to attend legislative floor sessions.

Comment Response Letter for Initiative Petition 63 (2020) at 3, April 23, 2020.

**B. We decline to modify the draft ballot title in response to Hangartner’s comments.**

Commenter Hangartner asserts that draft ballot title is “misleading on its face” because the ballot title “does not state that the proposed amendment to the Oregon Constitution to abridge the constitutional right of individuals from holding office does not itself provide who has the power to define an ‘excused’ absence or to designate an absence as ‘unexcused’.” (Hangartner Letter 1). We disagree that the ballot title is misleading. All parts of the ballot title accurately and appropriately describe the major effect of the proposed constitutional amendment. That the amendment does not identify who has the power to determine whether an absence is excused or unexcused is not a major effect, and there is no requirement that the ballot title address that topic. We decline modify the draft ballot title.

Hangartner further asserts that the ballot title fails to “disclose” that the “amendment as stated is either meaningless or violates the right of voters to choose their own representatives[.]” (Hangartner Letter 1). That assertion appears to be a substantive challenge to IP 14 and is beyond the scope of the ballot title drafting process. *See* OAR 165-14-0028 (providing that the Secretary of State “will not review any prospective petition for substantive constitutional or legal sufficiency”). Accordingly, we do not address that comment here.

**C. Conclusion**

We certify the attached ballot title.

Sincerely,

/s/ Carson L. Whitehead

Carson L. Whitehead  
Assistant Attorney General  
carson.l.whitehead@doj.state.or.us

Enclosure

Rick Hangartner

*Sent via email*

Margaret Olney  
210 SW Morrison St., Suite 500  
Portland, OR 97204

Certified by Attorney General on June 22, 2021.

Carson Whitehead  
Assistant Attorney General

## BALLOT TITLE

### **Amends Constitution: Legislators with ten unexcused absences from floor sessions disqualified from holding next term of office**

**Result of “Yes” Vote:** “Yes” vote disqualifies legislators with ten unexcused absences from legislative floor sessions from holding office as legislator for term following current term of office.

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**Summary:** Amends Oregon Constitution to add language prescribing consequences for unexcused absences by legislators from floor sessions. Currently, Senators and Representatives may be “punished” or, by the concurrence of two-thirds of the Senator’s or Representative’s chamber, “expelled” for “disorderly behavior,” but law does not define “disorderly behavior.” Additionally, absent legislators may be “compelled” to attend legislative floor sessions, but current law does not specify consequences for unexcused absences. Measure specifies that “disorderly behavior” includes legislator’s failure to attend ten or more legislative floor sessions during a regular or special legislative session without permission or excuse. Under measure, legislator who engages in “disorderly behavior” through unexcused absences is disqualified from serving as a Senator or Representative for the term following the end of the legislator’s current term.