IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

BRYN HAZELL, FRANCIS NELSON, TOM CIVILETTI, DAVID DELK, GARY DUELL, JOAN HORTON, and KEN LEWIS,

Plaintiff,

v.

BILL BRADBURY, Secretary of State of the State of Oregon,

and

HARDY MYERS, Attorney General of the State of Oregon,

Defendants.

and

CENTER TO PROTECT FREE SPEECH, INC., AND FRED VANNATTA,

Intervenor-Defendants/Cross-Claimants.

Case No. 06C22473

INTERVENOR-DEFENDANTS/CROSS-CLAIMANTS' MOTIONS FOR SUMMARY JUDGMENT

ORAL ARGUMENT REQUESTED

Pursuant to ORCP 47, Intervenor-Defendants/Cross-Claimants move for summary judgment on Plaintiffs' Complaint and on their Cross-Claim for Declaratory Relief. There are no material factual disputes and Intervenor-Defendants/Cross-Claimants are entitled to judgment as a matter of law. This Motion is supported by the following Points and Authorities. Intervenor-

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Defendants/Cross-Claimants request oral argument and official court reporting services. Intervenor-Defendants/Cross-Claimants estimate that the time required for oral argument on this Motion (and on the other parties' motions) will be two hours.[1]

POINTS AND AUTHORITIES

QUESTION PRESENTED

The question that this case presents is how much, if any, of Measure 47 has become (or can become) law. The answer is none; the Measure is void in its entirety.

INTRODUCTION

Measure 47 proposed a law to restrict campaign expenditures and contributions, but "Article I, section 8, [of the state constitution] prohibits laws restricting campaign expenditures and contributions." *Meyer v. Bradbury*, 341 Or 288, 293 n4 (2006) (citing *VanNatta v. Keisling*, 324 Or 514 (1997)).

The proponents of Measure 47 knew, therefore, that, for the Measure to stand, the constitution needed to change: "Measures 46 and 47 must both be passed[.]"[2] They made this constitutional change a prerequisite to the Measure's taking effect. Section 9(f) of the Measure reads:

> [T]his Act *** shall become effective at the time that the Oregon Constitution is found to allow, or is amended to allow, *** limitations [on political campaign contributions or expenditures].

However, by making the Measure's effectiveness contingent on a change in the constitution, the proponents offered a measure in a form that voters could not lawfully adopt.

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[1] As explained in the declaration of Fred VanNatta in support of the motion to intervene, Defendant-Intervenors/Cross-claimants are persons to whose conduct the provisions of Measure 47 are directed.

[2] Argument in Favor of Ballot Measure 46 by Irene Saikevych, Avis Adee, Robert Altaras, Gerald Cavanaugh, Michael Dawkins, Marshall Fox, Becky Hale, and Jackson County Citizens for the Public Good (Official Voters' Pamphlet, General Election, Nov. 7, 2006).

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DISCUSSION

1. A law cannot be made "effective" upon a change in the interpretation or terms of the constitution.

Ordinarily, a law proposed by an initiative measure becomes effective 30 days after adoption. Or Const Art IV, § 1 (4)(d). If, upon the adoption of a law, the constitution does not permit the government to *enforce or implement* that newly-effective law, then the people may give force to the law by amending the constitution to expressly validate the measure. *People's Util. Dist. v. Wasco Co.*, 210 Or 1, 12 (1957) ("a constitutional provision which from the language used shows expressly or by necessary implication that it was intended to operate retrospectively by validating antecedent unconstitutional legislation, renders valid all such legislation *** without reenactment by the legislature") (citation omitted).

But the proponents of Measure 47 did not follow the ordinary course. They chose instead to defer the Measure's *effectiveness* until such time as the constitution changed. Section 9(f) of the Measure states:

> [T]his Act *** *shall become effective* at the time that the Oregon Constitution is found to allow, or is amended to allow, *** limitations [on political campaign contributions or expenditures]. (Emphasis added.)

Perhaps the proponents were trying to avoid having to craft a future constitutional amendment with language that expressly validated Measure 47. *See* Or Const Art XI, § 11(7) ("Notwithstanding any other existing or former provision of this Constitution, the following [previously adopted tax laws] are validated ***:"). Perhaps the proponents simply made the political choice that voters would be more likely to vote for Measure 47 if the Measure assured voters that they or their judges would need to change the scope of the constitution before the Measure took effect. Whatever the reason, the Measure's proponents, like others before them, offered voters a measure that contained too much for the Measure to be validly adopted. *See*, *e.g.*, *League of Oregon Cities v. State of Oregon*, 334 Or 645, 673-74 (2002) (measure unlawfully adopted because proposed too many amendments); *McIntire v. Forbes*, 322 Or 426,

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445 (1996) (measure unlawfully adopted because contained too many subjects).

Nevertheless, the Measure's proponents–now plaintiffs–contend that their section 9(f) is invalid and that Measure 47 "became effective on December 7, 2006" (Complaint, ¶ 10). Defendants, on the other hand, contend that section 9(f) is valid and that, although the substantive provisions of Measure 47 are not effective now, they could some day become effective:

> [T]he plain, natural, and ordinary meaning of the words of subsection (9)(f) of Measure 47 necessarily render dormant the remainder of Measure 47 until animated by subsequent action to amend or reinterpret the Oregon Constitution in the manner specified in subsection (9)(f).

Letter from Attorney General to Plaintiffs' Counsel, dated December 1, 2006 (attached behind Tab A).

Both plaintiffs and defendants are incorrect. Measure 47 is neither effective now nor dormant. Instead, the Measure is void in its entirety; the law that the Measure offered voters can never take effect because section 9(f) rendered all of Measure 47 in violation of Article I, section 21 of the state constitution.

The Attorney General's position suffers from the additional defect of being illogical. The Attorney General reads section 9(f) to render the entire Act ineffective until the constitution is amended or reinterpreted, but to reach that interpretation, the Attorney General must treat section 9(f) as if it were in effect. The problem with this logic is that section 9(f) is itself part of the Act that the Attorney General says is not yet in effect. The Attorney General's interpretation, therefore, "presents a variation on the 'chicken or the egg?' conundrum." *State v. Pine*, 181 Or App 105 (2002) (Haselton, J., dissenting), *rev'd*, 336 Or 194 (2003). If section 9(f) renders "the Act" ineffective, then section 9(f) must be ineffective, too.

Article I, section 21, provides in pertinent part:

> [N]or shall any law be passed the taking effect of which shall be made to depend on any authority, except as provided in this Constitution[.]

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Section 9(f) makes the effectiveness of Measure 47 contingent on one of two events: (1) an interpretation of the constitution by the courts, or (2) the amendment of the constitution by the people. Article I, section 21 prohibits making the effectiveness of a law dependent on a change in the interpretation *or* terms of the constitution. Therefore, the inclusion of either one of those contingencies renders Measure 47 invalid. The inclusion of both contingencies means that the Measure contains two fatal flaws, either of which is enough to render the entire Measure invalid.

2. **A law cannot take effect depending upon the future interpretation of the constitution.**

Portland v. Coffey, 67 Or 507 (1913) (attached behind Tab B), addressed a law that provided for certain electoral procedures to take effect depending on whether the Oregon Supreme Court interpreted the constitution to permit them:

> [I]n case the Supreme Court should hold the *** provisions for compulsory registration invalid, then *** the elector may register *** by subscribing to the following [procedures.]" 1913 Or Laws, ch 323, § 6.

Because "the validity of the enactment [wa]s to depend upon a decision of the Supreme Court[,]" the law violated Article I, section 21. *Portland*, 67 Or at 513. Although the courts are part of state government, they are an "authority" outside of the legislative branch on whose decisions, under Article I, section 21, the effectiveness of legislation cannot depend.[3]

Section 9(f) of Measure 47, therefore, confers authority the courts cannot accept. The courts may not join the process of declaring whether there is to be a law:

[3] The rule in *Portland v. Coffey* remains good law: "a provision of law that takes effect only upon a judicial declaration of the invalidity of another provision of law violates Article I, section 21, of the Oregon Constitution, which provides that no law shall be passed, "'the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.'" *Eckles v. State of Oregon*, 306 Or 380, 383 n3 (1988), *appeal dismissed*, 490 US 1032 (1989) (questioning, but not deciding, whether 1982 Oregon Laws (3rd Spec Sess) chapter 3, section 2 violated Article I, section 21, because tax's "tak[ing] effect" made contingent on the courts' enforcement of another law).

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> [When] the validity of the enactment is to depend on a decision of the Supreme Court[, t]his is in effect combining independent departments of the state government which the organic law declares shall be kept separate[.]

Portland, 67 Or at 513 (citation omitted).

In *Marr v. Fisher*, 182 Or 383, 388 (1947) (attached behind Tab C), the Supreme Court expounded on the principle of separation of powers that underlies this rule:

> The purpose of the constitutional provision (Art. I, § 21) *** is to prevent unlawful delegation of legislative authority. The law-making power, under the Constitution of Oregon (Art. IV, § 1) is vested in the legislature, but the people have reserved unto themselves the power to initiate laws and to approve or reject at the polls any act of the legislative assembly. The people, having thus vested the legislative assembly with the law-making power, have in effect said that the legislature cannot confer such power upon any authority, except as provided in the Constitution. It is the constitutional function of the legislature to declare whether there is to be a law; and, if so, what are its terms. (Citations omitted.)

Under this rationale, the inclusion of the provision making Measure 47 "effective" upon a reinterpretation of the constitution violates Article I, section 21.

3. **A law cannot make itself effective upon the future amendment of the constitution.**

Even if a measure could make itself "effective" upon the reinterpretation of the constitution, a measure cannot makes itself "effective" upon an amendment to the constitution. At one time, the Supreme Court appeared to have permitted a law to "take effect" upon the adoption of a constitutional amendment, but the Supreme Court no longer grants that permission. A law cannot depend for its effectiveness on the adoption of another law by a later group of legislators or voters: A law is valid only if the law is "complete in itself, requiring nothing else to give it validity[.]" *Portland*, 67 Or at 513.[4]

[4] The people have modified this rule for income tax laws. Article I, section 21 allows the people to provide in the constitution for a law to take effect upon the actions of another authority and, in 1970, the people exercised that authority to add Article IV, section 32, which allows state income tax laws to become effective upon an action by Congress. Article IV, section 32, is, however, the only provision that authorizes a law to become effective upon subsequent action.

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In *State v. Rathie*, 101 Or 339 (1921), a case decided early in the Court's evolving jurisprudence, a party challenged the validity of a law, 1920 Or Laws, ch 19, that the Legislative Assembly wrote to "take effect" upon the adoption of a constitutional amendment. The Supreme Court rejected the argument in a single sentence, explaining that the contention was "fully answered in the negative and settled" by the Court's decision in *Libby v. Olcott*, 66 Or 124 (1913). *Rathie*, 101 Or at 364. The Court's reliance on *Libby* was curious because *Libby* did not address a law's taking effect upon the adoption of an amendment. The law at issue in *Libby* had merely set a date for the election on any laws that citizens might refer to the ballot. The Legislative Assembly's setting the date for an election that might or might not occur did not implicate Article I, section 21. *Libby*, 66 Or at 132. The only contingency was whether citizens would refer laws to the ballot, and the constitution itself prescribed when laws were to take effect depending on whether they became subject to referendum. *Compare* Or Const Art IV, § 28 (not subject to referendum: effective "ninety days from the end of the session") *with former* Or Const Art IV, § 1 (subject to referendum: effective "when it is approved"). As a result, *Libby* provided no support for the decision in *Rathie*.

Not surprisingly, therefore, the Supreme Court soon retreated from *Rathie*. In *State v. Hecker*, 109 Or 520 (1923) (attached behind Tab D), a party (1) sought to overrule *Rathie* and the approval of 1920 Or Laws, ch 19, and (2) challenged a second law, 1920 Or Law, ch 20, that the Legislative Assembly had also written to "take effect" upon the adoption of the constitutional amendment.[5]

If a law could take effect upon the adoption of a constitutional amendment, then the Court could have disposed of the appeal in *Hecker* simply by citing to *Rathie*. The Court did not, however, follow that path to a decision. The Court disposed of the renewed challenge to

[5] The discussion in *Hecker* can be confusing, because the court initially refers to *Rathie* as addressing 1920 Or Law, ch 20, 109 Or at 542, but *Rathie* addressed "Chapter 19," not chapter 20. *See Rathie*, 101 Or at 363 (citing and quoting provision).

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1920 Or Laws, ch 19, by noting that the renewed challenge did not present a justiciable controversy. The constitutional amendment on which 1920 Or Laws, ch 19, depended to "take effect" was "a repetition" of 1920 Or Laws, ch 19; therefore, a successful challenge to 1920 Or Laws, ch 19, would gain nothing. *Hecker*, 109 Or at 543-44. The Court in *Hecker* did not say so, but the clear implication of the decision was that the Court in *Rathie* should not have reached the merits of the challenge. If the adoption of the constitutional amendment rendered the renewed challenge to the law moot, then the original challenge to the law in *Rathie* must have been moot, too.

The Court could not avoid deciding the validity of 1920 Or Law, ch 20, because the constitutional amendment did not repeat that law. The Court upheld 1920 Or Law, ch 20, but in a way that demonstrates that Measure 47 is invalid. To uphold 1920 Or Law, ch 20, the Court interpreted the law to have taken effect 90 days after adjournment as provided in Article IV, section 28, and then to have become operative (*i.e.*, capable of enforcement) upon the adoption of the later constitutional amendment. *Hecker*, 109 Or at 544-46. Under this interpretation, the law did not depend on the constitutional amendment to become effective. To reach its decision, the Court relied on *Fouts v. Hood River*, 46 Or 492, 497 (1905) (attached behind Tab E), which had ruled that "the legislative assembly *** cannot leave it to a vote of the people to determine whether or not [a law] shall become a law, because the taking effect thereof is thereby made to depend upon an authority other than that provided for in the Constitution." Although Article I, section 21, did not permit a law to take effect upon a decision in a future election, the Court in Fouts said that "the Legislature [could] enact a law, and make its operation depend on the contingency of a popular vote[.]" 46 Or at 501 (emphasis added).

In *Hecker*, 109 Or at 546, the Court acknowledged that the Legislative Assembly had used the phrase "take effect," but interpreted "take effect," which would have been unconstitutional under Article I, section 21, to mean to "become operative," which was permissible under Article I, section 21:

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> It is true that section 4 of chapter 20, Laws 1920, uses these words: "Shall take effect"; but for the purpose of this case we shall assume that the language of section 4, chapter 20, is not used in the sense in which like language is employed in article 4, section 28, of the Constitution, and we shall also assume that section 4 of chapter 20 merely means that the active operation of chapter 20 is postponed until the adoption of the 1920 amendment to the Constitution.

109 Or at 546.

Since *Hecker*, legislation has carefully distinguished between a measure's becoming "effective" and a measure's becoming "operative." *Marr v. Fisher*, 182 Or at 389, reinforces how, following *Fouts* and *Hecker*, and by using the prescribed terminology, the legislative branch may leave a law dormant pending future action without violating Article I, section 21. In *Marr*, the Legislative Assembly had passed a tax law that provided different exemptions and credits depending upon whether the people adopted or rejected a measure that would create a sales tax. Opponents challenged the tax law under Article I, section 21, contending that the contingency of a future vote rendered the tax law invalid. The Supreme Court upheld the tax law—but not on the ground that the subsequent legislation was not an "authority"—a result that would have been inconsistent with *Fouts*. Instead, the tax law was valid because, as in *Fouts* and *Hecker*, the *effectiveness* of the tax law did not depend on whether the people adopted the subsequent measure.

From *Fouts* and *Hecker*, the legislative branch had learned to clearly distinguish between "effective" and "operative." To avoid making the effectiveness of the tax law dependent on the later measure, the Legislative Assembly expressly made the tax law *effective* as the constitution prescribed (90 days after adjournment as prescribed by Article IV, section 28), but made the *operation* of the law dependent on the outcome of the vote on the subsequent measure. Section 7 of 1947 Or Laws, chapter 536 read: "this act shall not become *operative* *** if *** [the other] act *** has become *effective and operative*" (emphasis added). By using both "effective" and "operative" together, the Legislative Assembly demonstrated that the two terms have different meanings.

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The Court in *Marr*, 182 Or at 389, explained this pivotal distinction between *effective* (which may not be dependent on a subsequent measure) and *operative* (which may be dependent on a subsequent measure):

> The Act went into effect as a law upon the expiration of ninety days from and after the final adjournment of the legislative session. Its operative effect was suspended until the happening of the contingency designated in the Act. If the Act was complete in the sense that the legislative assembly had exercised its discretion and judgment as to the expediency or inexpediency of the income tax exemption provisions---and we think it did---it had the power to determine the conditions on which such Act should go into operation. Indeed, the Constitution itself (Art. I, § 22) expressly confers upon the legislative assembly the right to suspend the operation of laws.

Operative is the key term: "the legislature may constitutionally enact a law and make its *operation* depend upon the contingency of the [subsequent law] being, or not being, in effect[.]" *Marr*, 182 Or at 392 (emphasis added). As a result, when in the exercise of legislative power a law is made contingent on a future occurrence, it is the operation—not effect—of the law that remains dormant.[6] Regardless of the nature of the contingency, the lawful term "operative" is used uniformly and the unlawful term "effective" is not used at all:

1. Future judicial interpretation, 2003 Or Laws, ch 801, § 25 (1):

> The amendments to ORS 293.535 by section 22 of this 2003 Act *become operative* 31 days after entry of a final judgment that invalidates the amendments to ORS 293.535 by section 21 of this 2003 Act.

2. Future action by voters, 1987 Or Laws, ch 565, § 2:

> If approved by the electors of the Port of Coos Bay ***, this *** Act *becomes operative* on January 1, 1988.

3. Future adoption of rules, 1995 Or Laws, ch 662, § 7:

[6] This practice has the additional benefit of avoiding the logical conundrum that the Attorney General creates by trying to give effect to a clause that makes an entire act's effectiveness contingent on a future event.

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> ORS 465.315 (1)(b)(B), (d) and (e) as set forth in this Act shall not *become operative* until the Environmental Quality Commission adopts implementing rules pursuant to ORS 465.315(2) as set forth in this Act.

4. Future legislative action by other states, 1999 Or Laws, ch 164, § 4(2):

> This section *remains operative* only while laws or administrative rules in California and Washington are operative that contain, in substance or effect, provisions similar to the provisions of ORS 508.840(1).

5. Future action by Congress, 1995 SB 8, § 9:

> Section 8 of this Act and the amendments to statute sections by sections 1 to 7 of this Act *become operative* when Congress enacts a law repealing the federal maximum speed limits or otherwise lifts any requirement that states enact specific speed limits in order to receive federal funds.

6. Future action by the Legislative Assembly, 2005 SB 3402, § 164(2):

> Notwithstanding subsection (1) of this section, sections 33 to 148 and 162 of this 2005 Act and the amendments to statutes by sections 149 to 160 of this 2005 Act do not *become operative* if this state has not entered into the Streamlined Sales and Use Tax Agreement, as defined in section 25 of this 2005 Act, by January 1, 2006.

The proponents of Measure 47, however, did not make the law's *operation* contingent on a change in the interpretation or terms of the constitution; they provided for the contingencies to make the law "effective," and those contingencies Article I, section 21 does not permit.

4. **Voters did not intend for "effective" to mean "operative."**

The only argument available to the proponents is that, when voters read "effective," they understood the term to mean "operative." After the lesson taught by *Fouts*, *Hecker*, and *Marr*—that "effective" does not mean "operative"—that argument cannot prevail.

When interpreting a measure "adopted through the initiative process, [the court's] task is to discern the intent of the voters." *Ecumenical Ministries v. Oregon State Lottery Comm*,

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318 Or 551, 559 (1994). To discern voters' intent, the court examines the text and context of the measure, 318 Or at 559, including prior judicial interpretations of the terms in question, *Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 61 (2000), and similar initiative measures. *O'Mara v. Douglas County,* 318 Or 72, 76 n. 1 (1993). If, and only if, the measure remains unclear, after the examination of the text and context, does the Court examine the history of the measure as found in Voters' Pamphlet statements and media editorials. *Ecumenical Ministries*, 318 Or at 559 n8, 560.

All of the evidence of voters' understanding of "effective" leads to the conclusion that voters understood the term to mean what it says– "effective" –and not the different concept, "operative." Voters are not like Humpty Dumpty, able or prone to use the same word in the same context, but to mean different things:

> "When I use a word," Humpty Dumpty said in a rather scornful tone, "it means just what I choose it to mean – neither more or less."
>
> "The question is," said Alice, "whether you *can* make words mean so many different things."
>
> "The question is," said Humpty Dumpty, "which is to be master – that's all." Lewis Carroll, *Through the Looking-Glass* ch 6 (1872).[7]

When voters say "effective," they mean "effective." First, since 1920, the courts have treated "effective" and "operative" as expressing different concepts. Second, since 1920, citizens exercising the powers of the legislative department—whether through bills or initiative measures–have said "effective" when they meant "effective" and "operative" when they meant "operative." For example, in section 34(2) of 2000 Ballot Measure 6, which also sought to reform campaign spending, voters showed they knew that "operative" was the term to use to

[7] Quoted by Edmunds, J., dissenting in *State v. Weaver*, 121 Or App 362, 371, *adhered to on reconsideration*, 124 Or App 615 (1993) (e*n banc*), *aff'd*, 319 Or 212 (1994) (complaining that "reasonable" could not mean "unreasonable").

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defer the application of a law:

> In accordance with subsection (1) of this section:
>
> (a) The amendments to ORS 260.188 and 316.102 by sections 27 and 28 or 29 of this 2000 Act become *operative* January 1, 2001;
>
> (b) Sections 4, 7 to 19 and 22 to 26 of this 2000 Act become *operative* July 1, 2001; and
>
> (c) Subject to section 39 of this 2000 Act, the repeal of statutes by section 33 of this 2000 Act becomes *operative* January 1, 2001.
>
> (3) The Secretary of State may take any action prior to the operative date of any provision of this 2000 Act that is necessary to implement any provision of this 2000 Act on or after the operative date of any provision of this 2000 Act. (Emphasis added.)

Likewise, in section 6 of 1996 Ballot Measure 38, voters delayed a law through the use of "operative," not effective:

> This Act shall become *operative*:
>
> (1) On public land, which includes federal lands:
>
> (a) On January 1, 1997, for waters of the state that supply drinking water or constitute salmon, steelhead or trout habitat; and
>
> (b) On January 1, 2002, for all other waters of the state.
>
> (2) On private land:
>
> (a) On January 1, 2002, for waters of the state that supply drinking water or constitute salmon, steelhead or trout habitat; and
>
> (b) On January 1, 2007, for all other waters of the state. (Emphasis added.)

There is no contrary evidence from which the Court could conclude that, by using "effective," voters intended to ignore 85 years of legislative practice and Supreme Court precedent and to express the concept "operative."

(Even if the court were to interpret the word "effective" to mean "operative," the

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Measure is still subject to the "'chicken or the egg?' conundrum." If "effective" could mean "operative," then section 9(f) would render the entire Act "inoperable." But because 9(f) is part of the Act, that section, too, would be "inoperable.")

5. **A measure that violates Article I, section 21, is void.**

The consequence of violating Article I, section 21 should not be, as plaintiffs suggest, the severing of section 9(f), and the law's taking effect on terms other than voters were told. Laws adopted in violation of Article I, section 21 are void. *General Electric Co. v. Wahle*, 207 Or 302, 333 (1956) (act is "unconstitutional and void, being in violation of *** Art. 1, § 21"); *LaForge v. Ellis*, 175 Or 545, 554 (1945) ("the challenged act is unconstitutional and void"); *Van Winkle v. Meyers*, 151 Or 455, 470 (1935) (violation of Article I, section 21 "in itself alone *** render[s] the act void").

CONCLUSION

The proponents of Measure 47 might not have intended to propose a law that the constitution prohibits voters from adopting, but good intentions do not suffice for compliance with the constitution. *See*, *e.g.*, *Christ/Tauman v. Myers*, 339 Or 494, 499 (2005) (proponents erroneously proposed law instead of constitutional amendment); *Kerr v. Bradbury*, 193 Or App 304, *rev dism'd*, 340 Or 241, *adh'd to on recons*, 341 Or 200 (2006) (proponents erroneously failed to include entire text of provision measure proposed to amend).

As Judge Byers noted with respect to another Measure 47 that voters passed in an earlier election cycle, a consequence of citizens crafting legislation can be laws that are "poorly drafted and thought out" and that, as a result, "reap unwanted and unanticipated consequences." *Chart Development Corp. v. Dept. of Rev.*, 2 Or St Tax Rptr ¶ 400-345 at 15,175 (CCH 2000). Although the invalidation of Measure 47 may not be the proponents' intended consequence, invalidation is the consequence that the constitution prescribes.

This Court should grant Intervenor-Defendants/Cross-Claimants' Motions for Summary Judgment and declare that Measure 47 is void.

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DATED this _____ day of February, 2007.

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