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HOW TO WRITE A POORLY DRAFTED BALLOT MEASURE WITH UNINTENDED CONSEQUENCES

By Bill Sizemore
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NewsWithViews.com

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Every face in the room stared intently, some with puzzled looks on their faces, when I announced to my rather large audience that I was going to tell them how to write a poorly drafted ballot measure that would have unintended consequences.

After all, I had written several ballot measures and collected enough signatures to insure that those measures appeared on the statewide ballot. Truth is, probably every person in the room at one time or another had read a news article or editorial claiming that some measure I had written was poorly drafted and would have unintended consequences. Some would say that qualified me as somewhat of an expert on the subject.

I could tell I had the audience's somewhat bemused

On the other hand, if the measure does something that limits the power of government or reduces tax revenues, the powers that be throw up their hands in utter dismay and wail endlessly that the language of the measure is so confusing that they simply cannot make

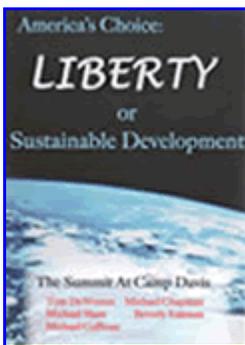
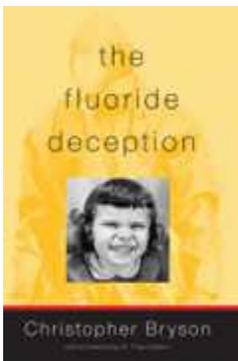
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attention.

“Here’s what you do,” I told them. “If you want to insure that a measure is poorly drafted and will have unintended consequences, the measure must reduce taxes, protect private property rights, or get tough on crime. If you do one of those things, I guarantee you, no matter how you write the measure, no matter what language you use, the liberals in the media and the powers that be in government will proclaim far and wide that the measure is poorly drafted and will do things that no one intended.”

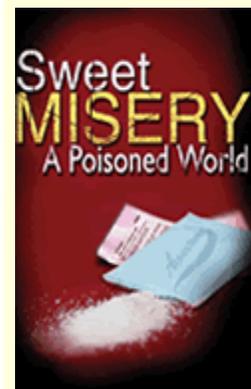
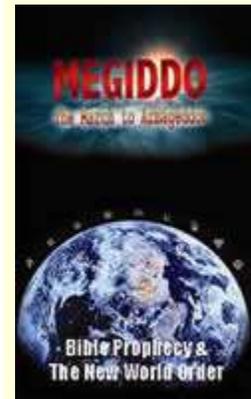
Over the years, I have observed that when a measure does something that liberal editors like or something that benefits the government class, they always understand it perfectly. They never have any questions about the language. The politicians happily tuck their new found mandate under their arm and race towards the goal line with record speed, as their throngs of media fans cheer them on from the stands.

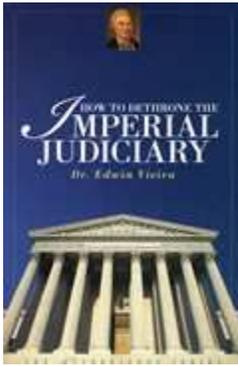
On the other hand, if the measure does something that limits the power of government or reduces tax revenues, the powers that be throw up their hands in utter dismay and wail endlessly that the language of the measure is so confusing that they simply cannot make sense of it. What sense they can make of it surely will bring consequences that no one in their right mind possibly could have intended.

Sometimes, it is almost laughable to observe the length to which those in government will go to discredit a conservative measure or neutralize it. I placed on the ballot in 1996 a measure to reduce property taxes in Oregon by approximately Five Hundred Million Dollars a year and cap future increases to not more than three percent per year. After being outspent by millions of public employee union dollars during the campaign and being castigated endlessly by those in the media, Measure 47 passed.

That’s when the real fun started. Two months later, the state legislature began to hold hearings on legislation to implement the measure I had written and voters approved. Back in their districts and at the state capitol, legislator after legislator stood before the television cameras and radio microphones and decried how poorly written and hopelessly confusing the measure was. “Impossible to implement,” I heard

sense of it.

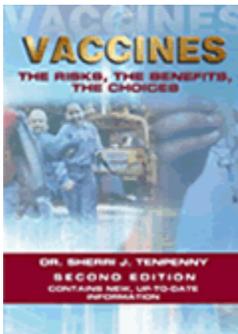




repeatedly. Easy to say, however, when there was no one there to challenge their claims.

This went on for months with their never ending wailing reported daily in newspapers across the state. Eventually, polling showed that something like 60 percent of the citizens of the state believed that my measure was poorly drafted and impossible to implement.

Finally, as the author of the measure, the time came for me to testify before the Joint House and Senate Revenue Committee that was holding hearings on my measure, which had become the primary issue of the entire legislative session. The hearing room was packed, as I made my way to the witness table to address the committee.

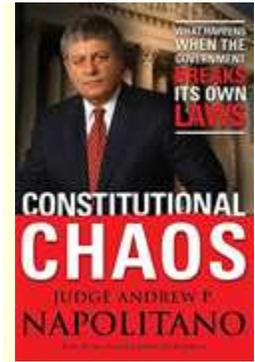


My words to the dozen or so Senators and Representatives on the committee went something like this: For months now, I have listened to almost every member of this committee tell the media over and over that Measure 47 is poorly drafted and impossible to implement. Now that we are finally face to face, I would like for someone on this committee to point out one provision of this measure that they do not understand or that cannot be implemented.

Then I sat and waited. Starting at one end of the room, I let my eyes move across the room, stopping and staring into the faces of each and every legislator, daring one of them to back up the statements they had made so often to the media. No one spoke. Not one legislator would point to even one provision of the measure that was what they had called so many times “poorly written”.

Finally, the chairman of the committee broke the silence in the room by announcing that that was not really the issue. The problem they had, he said, was the effect the reduction in revenue required by the measure would have on some small counties in the state and on some rural hospitals, which were highly subsidized by property tax revenue.

There it was, the real problem. It was not that the measure was poorly drafted. The problem was that the voters had spoken and said that they wanted a reduction in property taxes and those in government did not like the consequences of that decision. Never



mind that voters were warned ad nauseum before the election that the world would end and the sky would fall if the measure passed, and yet had passed it. Still, legislators contended, they could not have intended to reduce “so drastically” the revenue available for government services.

Funny thing is, though the hearing room was packed that day and several reporters were present, not one news story covered the fact that when confronted face to face by the author of the measure, which they had so strongly condemned, not one could point to one provision of the measure that was “poorly drafted”. The media still reports to this day that the measure had to be rewritten by the legislature, because it was poorly drafted.

Four years later, voters approved another measure I had written, Measure Seven, a measure that required government to pay just compensation to property owners, if a government restriction on the use of their property reduced their property values. Once again, after it passed, the measure was condemned by the media and those in government as hopelessly confusing. Primarily, they couldn't figure out whether the measure was retroactive or only applied to future regulatory takings. Of course, they did not want the measure to be applied retroactively. They wanted to keep everything they had stolen from property owners in the past and only curtail future thefts, if they had to.

Was the measure really confusing, though? Decide for yourself. Here is the actual language of the measure:

(d) Compensation shall be due the property owner if the regulation was adopted, first enforced or applied after the current owner of the property became the owner and continues to apply 90 days after the owner applies for compensation under this section.



Is there really any question whether the measure was

retroactive? It seems clear as a bell from this section that an owner is entitled to compensation if the regulation was adopted or first applied after the current owner became the owner. If you bought the property 20 years ago and a year later government placed a restriction on your use of it, you were entitled to compensation. How else could you read it?

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It might have been confusing to those who didn't like what the measure told them to do. To everyone else, though, it couldn't have been clearer.

I could offer dozens of examples to illustrate my point, but hopefully these will suffice. Over the past decade or so, I have become somewhat of an expert at drafting and placing on the ballot what the political left calls "poorly drafted" measures. Given what I now know about the rules of the game, I consider that a badge of honor.

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Bill Sizemore is considered one of the foremost experts on the initiative process in the nation, having placed dozens of measures on the statewide ballot. Bill was raised in the logging communities of the Olympic Peninsula of Washington state, and moved to Portland in 1972. He is a graduate of Portland Bible College, where he taught for two years. A regular contributing writer to www.NewsWithViews.com.

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