

# BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

GREGORY A. HARTMAN  
MICHAEL J. MORRIS  
HENRY J. KAPLAN§  
NELSON R. HALL  
THOMAS K. DOYLE♦  
ARUNA A. MASIH♦  
MARGARET S. OLNEY♦  
TALIA Y. GUERRIERO♦  
RICHARD B. MYERS  
NORA J. BROKER

## ATTORNEYS AT LAW

210 S.W. MORRISON STREET, SUITE 500  
PORTLAND, OREGON 97204-3149  
(503) 227-4600  
FAX (503) 248-6800  
[www.bennethartman.com](http://www.bennethartman.com)

ROBERT A. BENNETT (1931-2018)

LINDA J. LARKIN\*

\* OF COUNSEL  
♦ ALSO MEMBER  
WASHINGTON BAR  
§ ALSO MEMBER  
NEW YORK BAR

October 25, 2018

Via email: [elections.sos@oregon.gov](mailto:elections.sos@oregon.gov)

Stephen N. Trout  
Director, Elections Division  
Oregon Secretary of State  
255 Capitol Street NE, Suite 501  
Salem, OR 97310-0722

Re: Complaint -- Keep Portland Affordable PAC  
Our File No. 18716

Dear Mr. Trout:

This office represents the Portland Clean Energy Initiative – Measure 26-201. I write to lodge a formal election law complaint against the anti-Measure 26-201 campaign (“Keep Portland Affordable PAC”, Committee #19398), its directors (Patrick McCormack and Robert Short) and its consultants (Quinn Thomas and Rebecca Tweed.) We believe that the “no” campaign has intentionally misled at least two small business owners to (falsely) claim their support. They led these individuals – for whom English is a second language – to believe that they were expressing support for not taxing their groceries and beverages, instead of opposing Measure 26-201. As discussed below, this conduct violates ORS 251.405, ORS 250.532 and ORS 260.715. We request that your office conduct a thorough investigation and prosecute to the full extent allowed by law.

### 1. Background

Measure 26-201 is a local initiative to raise money through a business tax surcharge on certain “large retailers” doing business in Portland. Those funds are dedicated to clean energy projects in Portland and job training, with a particular focus on helping low-income Portlanders. It has drawn wide support across Portland, from small businesses to community-based organizations. *See*, Statements in Support, Multnomah County Voters Pamphlet,

<https://multco.us/file/75625/download>; Portland Clean Energy Initiative endorsements, <https://www.portlandcleanenergyinitiative.com/>.

As part of their campaign, “Keep Portland Affordable PAC” sought out small business owners to speak against the measure. This included soliciting written statements that are undated and do not reference Measure 26-201 (attached). More specifically, the campaign obtained and submitted a voters’ pamphlet statement from Eva Liu, the owner of Kings Omelet, and used her image on their website and paid advertising. It also published a statement from Harry Lal, another person of color working in the restaurant business, purporting to oppose Measure 26-201, and posted his picture on the website. The problem is that neither of these individuals actually oppose the Portland Clean Energy Initiative, nor did they authorize the use of their photos. Rather, according to both Ms. Liu and Mr. Hal, they were led to believe that they were simply opposing a measure that would tax their food and beverages.

Notably, even though neither is fluent in English, the “no” campaign made no efforts to ensure that Ms. Liu or Mr. Hal understood the legal documents they were signing. In contrast, the Portland Clean Energy Campaign used a translator to get a clear account of what happened and to explain what Measure 26-201 does. After hearing the explanation, both Ms. Liu and Mr. Hal expressed their support for the measure and unambiguously stated that opponents described none of Measure 26-201’s specific provisions or provide any other information about the measure, either verbally or in writing. Ms. Liu was also not told that her statement and name would be in the voters’ pamphlet. Finally, neither Ms. Lieu nor Mr. Hal understood that their images would be used in advertising or on the campaign’s website. Simply put, they felt misled and used.

When my clients learned that the statement attributed to Ms. Liu was inaccurate and improperly obtained, it assisted Ms. Liu in demanding that her name and the voters’ pamphlet statement be removed from the “Keep Portland Affordable” website. The “no” campaign has done so on its website, but not paid advertising. Once it removed Ms. Liu’s statement, the “no” campaign posted the statement from Mr. Lal. As discussed above, Mr. Lal similarly reports that he thought he was signing on to oppose a tax on food and beverages. My clients have demanded that Mr. Lal’s statement and photo be removed from the “Keep Portland Affordable” website. His picture appears to have been removed, but not his statement.

## 2. Violations

The Portland Clean Energy Initiative and its supporters are seasoned political activists. They are used to a certain degree of hyperbole in campaigns. Thus, although the name of the “no” campaign appears to be intentionally designed to sow confusion with other measures and to divert attention away from the substance of Measure 26-201 – reducing Portland’s carbon footprint in a way that expressly addresses the needs of low income Oregonians by reducing utility bills, creating jobs, and providing job training in a field that will obviously be growing – they would not be filing this election law challenge on that basis alone. However, a line is

crossed when a campaign misleads individuals who do not speak English well into lending their name to the campaign by failing to accurately describe or identify the measure. That is what occurred here. Aside from being unethical, it violates the following:

A. ORS 251.405 (Prohibitions re: names on County Voters' Pamphlet Statements))

This statute makes it unlawful for any person (including a campaign) to submit a voters' pamphlet statement that includes the name of an individual where that person has not consented to the use of his or her name. In this case, Ms. Liu is unsure about what was printed on the endorsement form when she signed. Regardless, even if the form refers to Measure 26-201, she cannot have provided "consent" within the meaning of the statute if she was misled as to what measure she was supporting and did not understand that her signature meant that her statement would be published in the voters' pamphlet. On this point, it is worth noting that another small business owner, also not fluent in English, was similarly misled. In other words, the "no" campaign cannot credibly claim that it was "just a misunderstanding." Both Ms. Liu and Mr. Hal reported that the proponents provided virtually no information about any aspect of the actual proposed measure when soliciting their signatures. They did not use a translator. The only point they wanted to make was that the measure would allow taxes on their groceries and beverages, which is itself inaccurate (Measure 26-201 exempts food and beverages from the surcharge). Before using an individual's name in the voters' pamphlet, the campaign has an obligation to make sure that the person truly supports the requested position.

B. ORS 260.715(1) (False Statement)

This statute provides that a person may not knowingly make a false statement when that is required under the election laws. By submitting a voters' pamphlet statement for which it failed to obtain true consent, the campaign violated this provision.

C. ORS 260.532 (False Publication)

The "Keep Portland Affordable PAC" has knowingly published statements in the voters' pamphlet and in its advertisements that are false and has continued to do so even after notice of their falsity. This violates ORS 260.532. My clients will continue to demand that advertisers and other outlets refuse to publish this false information. They also have the right to bring an action in circuit court to prove the falsehood and seek damages and attorney fees. ORS 260.532(5) and (6). In the meantime, however, they ask that this allegation be investigated pursuant to ORS 260.345(1), which authorizes complaints "alleging a violation of any election law or rule \* \* \* under ORS Chapters 246 to 260." That is, although the remedies awarded by a court are the "exclusive remedy" for any violation, that does not strip the Secretary of State of investigating the allegation itself.

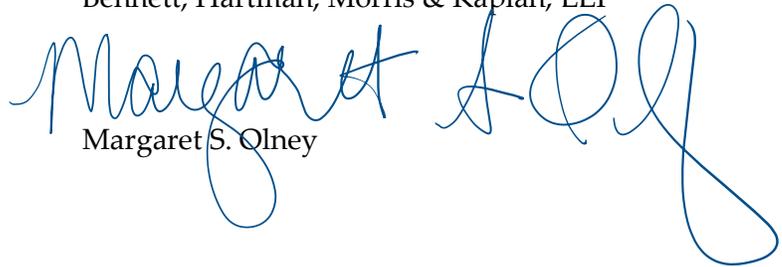
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3. Conclusion

Thank you for your consideration of this complaint. It is extremely troubling to me and my client that the opposition would obtain and publish false statements of support in a cynical effort to bolster its claim that Measure 26-201 would hurt small businesses and people of color. Campaigns in Oregon have generally avoided the kind of conduct seen elsewhere that erodes the public's confidence in the election system. To keep it that way, it is essential that "Keep Portland Affordable" campaign be held accountable for its actions.

Sincerely,

Bennett, Hartman, Morris & Kaplan, LLP

  
Margaret S. Olney

MSO:  
cc: Clients

# Measure Argument for County Voters' Pamphlet

**Important! Read all instructions before completing this form.** Use this form when filing a 'Measure Argument for County Voters' Pamphlet' with your County Elections office. Please note that each county produces a separate County Voters' Pamphlet. If the jurisdiction or district is located in more than one county a separate 'Measure Argument for Voters' Pamphlet' form must be filed and the fee paid or certified petition provided to each county where the argument is to be printed.

### Filing Information

Election:  Primary 20\_\_\_\_  General 20<sup>18</sup>\_\_\_\_  Special \_\_\_\_\_

Original Statement  Amended Statement Measure # <sup>26</sup>\_\_\_\_ - 201\_\_\_\_

Argument in Favor  Argument in Opposition Order # \_\_\_\_\_

"This information furnished by" (as it should appear in the Voters' Pamphlet):

~~Eva Lui, King's Omelet~~ EVA LUI KING'S OMELETS RESTAURANT

Argument paid for or petition provided by:

Keep Portland Affordable PAC E-Mail: info@keepportlandaffordable.com

Name of person or organization paying or submitting petition for argument

Phone: Cell: (503) 860-6033 Work: Home:

### Contact information for authorized changes:

Eva Lui E-Mail: elin633@aol.com

Name of person authorized to make changes to Argument

Phone: Cell: (503) 253-0808 Work: Home:

### Filer checklist for Measure Argument for County Voters' Pamphlet (VP).

- Typewritten & signed Measure Argument form and Argument for County VP.
- Fee or certified petition (Petition ID # \_\_\_\_\_) provided.
- (If applicable) Endorsement Statement #: \_\_\_\_\_.
- Word Count (325 MAX).

**By signing this document, I (we) hereby state I (we) am (are) responsible for the content of this argument. ORS 251.415**

Organization name person(s) is (are) authorized to represent, if applicable: Keep Portland Affordable

Eva Lui [Signature] 9-10-18

Printed name of person furnishing argument Signature of person furnishing argument Date

Printed name of person furnishing argument Signature of person furnishing argument Date

Printed name of person furnishing argument Signature of person furnishing argument Date

**Note:** If this argument is not being filed by a registered Oregon Political Committee, you may be required to register as a political committee with the Secretary of State. Refer to the Campaign Finance Manual for further details.

### For Office Use only:

County: \_\_\_\_\_ Required Info?  Yes  No Word count (325 max): \_\_\_\_\_

Cash-receipt #: \_\_\_\_\_ Signed?  Yes  No Providing digital copy?  Yes  No

Check #: \_\_\_\_\_ Amount \$ \_\_\_\_\_ Endorsements?  Yes # \_\_\_\_\_  No Received digital copy?  Yes  No

Intake Staff initials: \_\_\_\_\_ Review Staff initials: \_\_\_\_\_

## Keep Portland Affordable

Restaurant: King's Omelet

Location: [10711 NE Halsey St, Portland OR 97220](#)

Owner: Eva Liu

Contact: (503) 253-0808

Quote: *"Portland is a foodie town, but eating out takes extra spending money. If you make it more expensive for people to live here, they're going to have less money to enjoy our food scene. Besides, I'm small so I mainly shop at the same places everybody else does. It's going to cost me more to run my business too."*



EVA LIU

## Keep Portland Affordable

Restaurant: Spice Kitchen

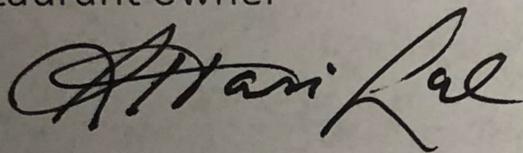
Location: 8245 SE Division St, Portland OR 97266

Owner: Harry Lai

Contact: 503-774-3978

Quote: "Running a small restaurant takes a lot of work, and my profit margins are really slim. Every little bit counts. That's why I'm opposing Measure 26-198. If it passes, all my food and supplies are going to cost more money and I'll probably have to pass that cost along to my customers. It'll make it harder to stay afloat in a city where it already costs too much to live."

Harry L., SE Portland restaurant owner

A handwritten signature in black ink that reads "Harry Lai". The signature is written in a cursive, flowing style with a large initial 'H' and 'L'.