

IN THE SUPREME COURT OF THE STATE OF OREGON

JACK LOUMAN and TERESA HARKE,

SC No. S061276

Petitioners,

PETITIONERS' PETITION FOR  
RECONSIDERATION

v.

ELLEN ROSENBLUM, Attorney  
General of the state of Oregon,

Respondent.

Petitioners Jack Louman and Teresa Harke respectfully petition this Court for reconsideration of its order granting Respondent's motion to dismiss and dismissing Petitioners' petition to review the ballot title for Initiative Petition #8 (2014). A copy of this Court's order granting respondent's motion to dismiss and dismissing the petition to review the ballot title is attached as Exhibit 1.

**POINTS AND AUTHORITIES**

**I. The Court's Decision Granting Respondent's Motion to Dismiss Seemingly Did Not Take Into Account the Procedural Irregularities of This Case**

For the sake of brevity, Petitioners will not revisit the facts concerning the filing of the Petitioners' Petition for Review of the Certified Ballot Title for Initiative Petition #8 (2014) (herein "Petition").

On June 20th, 2013, the Court granted Respondent's motion to dismiss the Petition. The Court granted Respondent's motion to dismiss because the Court found the Petitioners failed to comply with the statutory requirement that an elector seeking review of a ballot title notify the Secretary of State by 5 p.m. the next business day of the filing of the petition for review.

This is not a case where the Petitioners failed to give written notice to the Secretary of State concerning the filing of the Petition. It is uncontested the Petitioners gave notice to the Secretary of State. And while the Court's order frames the case as a matter of timeliness, in fact this is a case where the Oregon Rules of Appellate Procedure and the Court's order on Petitioners' Motion for Extension of Time (attached as Exhibit 2) created a no-win situation for the Petitioners.

At approximately 8:06 p.m. on Monday, April 22, 2013, Petitioners submitted their Petition with the court via e-file. Petitioners did not receive an acceptance or rejection notice from the Court during normal business hours on April 23, 2013. Instead, after the close of business on April 23, 2013, Petitioners received notice from the Court that the Petition had been rejected for failure to comply with the requirements of ORAP 16.15(5).

Petitioners did not send notice of the Petition to the Secretary of State prior to 5 p.m. on April 23, 2013 pursuant to ORS 250.085(4) because they had not received notice that the Petition had been accepted, which is required in order for the Petition to be considered "filed." The problem is that in order for the Petitioners to comply with the notice requirements of ORS 250.085(4) the petition for review must first be filed with the Court. As a matter of law, the Petition was not filed (i.e. submitted and accepted) until April 24<sup>th</sup>, 2013.

Petitioners also provided notice to the Secretary of State on April 24<sup>th</sup>, 2013, of the filing of the Petition. Accordingly, Petitioners complied with the requirements of ORS 250.085(4) - that is, Petitioners timely provided notice to the Secretary of State as required by law.

The problem is what happened after the Petition was filed and required notice was given to the Secretary of State.

On April 25, 2013, the Court denied Petitioners' MOET to file the Petition, but invoking the Court's authority under ORAP 1.20(5) accepted the re-formatted Petition, but

deemed it filed on April 22, 2013. By deeming the re-formatted Petition filed on April 22', 2013, the Court made it impossible for the Petitioners to comply with the notice requirements of ORS 250.085(4).

While the Petitioners appreciate the Court's willingness to accept the Petition, by deeming the Petition filed on April 22<sup>d</sup>, 2013 as opposed to April 24<sup>th</sup>, 2013 (the day the Petition was actually filed), the Court's order made the filing of the Petition completely illusory.

In other words, the Court's *nunc pro tunc* order put the Petitioners in the proverbial Catch -22 position of being able to file the Petition, but at the same time making it impossible for the Petitioners to comply with the notice requirements of ORS 250.085(4). The Court's decision granting the Respondent's motion to dismiss seemingly failed to take into consideration, and address, the unique position the Petitioners found themselves in.

Petitioners respectfully request the Court reconsider its decision granting Respondent's motion to dismiss in light of the procedural irregularities of this case. If the Court were to rescind the language in its April 25<sup>th</sup>, 2013 order "deeming" the Petition to be filed as of April 22<sup>nd</sup>, 2013, and instead "deeming" the Petition to be timely filed as of April 24<sup>th</sup>, 2013, then the Petitioners would have timely provided notice to the Secretary of State as required by ORS 250.085(4) and the review of the certified ballot title for Initiative Petition #8 (2014) could move forward.

**H. In the Interests of Fairness, This Court Should Reconsider its Decision, Deny the Motion to Dismiss, and Allow Review of the Certified Ballot Title to Move Forward**

Last week, the United States Supreme Court decided two cases concerning same-sex marriage. See *Hollingsworth v. Perry*, 570 U.S. \_\_\_\_ (2013); *United States v. Windsor*, 570 U.S. \_\_\_\_ (2013). At no time in our nation's history is the topic of same-sex marriage more debated than today.

In Oregon, Initiative Petition #7 would put the issue of same-sex marriage before the voters, notwithstanding the fact that nine years ago the voters of Oregon addressed the issue of same-sex marriage in Oregon by passing Ballot Measure 36 (2004). Initiative Petition #8 would result in a complete 180-degree shift of public policy in Oregon on the issue of same-sex marriage.

As discussed in the Petition, the certified ballot title for Initiative Petition #8 is seriously flawed. It fails to inform the voter of one of the significant changes to Oregon law made by Initiative Petition #8. It is no coincidence that the change the certified ballot title is silent on - the fact that Initiative Petition #8 would require all political subdivisions in the state of Oregon to issue marriage licenses to same-sex couples - is also the change that would most likely deter voters from supporting Initiative Petition #8.

As it currently stands, the Petitioners maintain that the certified ballot title is blatantly biased and fundamentally unfair, drafted by the Attorney General in such a way as to engender support for Initiative Petition #8.

The purpose of a ballot title is to give the voter a fair, unbiased and accurate explanation of the measure to be voted on. *Hamilton v. Myers*, 326 Or 44, 943 P2d 214 (1997). In a campaign that will most certainly be full of biased rhetoric from both sides of the issue, it is very important that the Ballot Title for this petition be as impartial and accurate as possible. The voters of Oregon deserve as much.

It may be that after conducting a review of the certified ballot title the Court disagrees with the Petitioners' reading of the text of Initiative Petition #8 and "blesses" the certified ballot title. While the Petitioners would be disappointed, the Petitioners, and indeed all Oregonians, would understand that the certified ballot title went through the review process fair-and-square and the Court has determined the certified ballot title presents a fair, unbiased and accurate explanation of the measure.

If the Court does not reconsider its decision to dismiss the Petition, Oregonians will be deprived of those assurances.

As a matter of fundamental fairness - especially in light of the unique procedural irregularities discussed above - the Court owes it to the people of Oregon to conduct a full and fair review of the certified ballot title for Initiative Petition #8. Accordingly, Petitioners' motion for reconsideration should be GRANTED and upon reconsideration, for the reasons contained in Petitioners' Response to Respondent's Motion to Dismiss, Respondent's motion to dismiss should be DENIED.

DAY LAW GROUP, P.C.

/s/ Ross Day  
Ross Day, OSB 002395  
Of Attorneys for Petitioners

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on July 3<sup>rd</sup>, 2013, I filed the original of Petitioners' Motion For Reconsideration:

Trial Court Administrator  
Oregon Supreme Court  
1163 State Street  
Salem, Oregon 97301

via c-Filing

I also certify that on July 3<sup>rd</sup>, 2013, I filed the original of Petitioners' Motion For Reconsideration:

Jeff J. Payne  
Dept of Justice  
1162 Court St., NE  
Salem, OR 97301  
Attorney for Attorney General

by depositing it with the US Postal Service, first-class mail, postage prepaid

Dated: this 3<sup>rd</sup> day of July, 2013.

DAY LAW GROUP, P.C.

/s/ Ross Day  
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*Of Attorneys for Petitioners*

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ELLEN ROSENBLUM, Attorney General, State of Oregon.  
Respondent.

S061276

**ORDER GRANTING MOTION TO DISMISS AND DISMISSING PETITION TO  
REVIEW BALLOT TITLE**

The motion to dismiss filed by respondent Ellen F. Rosenblum is granted. The petition to review the ballot title for proposed Initiative Petition No. 8 (2014), filed by petitioners Jack Louman and Teresa Harke, is dismissed. See *Sizemore v. Myers*, 327 Or 71 (1998) (elector not entitled to review of proposed ballot title, where elector failed to meet statutory requirement under ORS 250.085(4) of notifying Secretary of State that elector had filed review petition by 5 p.m. of next business day).

6/20/2013  
7:47:49 AM

THOMAS A. BALMER  
CHIEF JUSTICE, SUPREME COURT

**DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS**

Prevailing party: Respondent

☒ [ X ] No costs allowed

Appellate Judgment Effective Date:

SUPREME COURT

c: Ross A Day  
Margaret S Olney  
Jeff J Payne  
Jeana Frazzini  
Kate Brown

kag

**ORDER GRANTING MOTION TO DISMISS AND DISMISSING PETITION TO  
REVIEW BALLOT TITLE**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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EXHIBIT \_\_\_\_\_  
PAGE 1 OF \_\_\_\_\_

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**ORDER DENYING MOTION FOR EXTENSION OF TIME AND ORDER ON THE  
COURT'S OWN MOTION WAIVING ORAP 16.15(5)**

Petitioners' motion for extension of time to serve and file the petition to review the ballot title certified by the Attorney General in Initiative Petition #8 (2014) is denied. Pursuant to ORAP 1.20(5), the court, on its own motion, waives application of ORAP 16.15(5) to the initiating document in this case. The petition for review of the ballot title is deemed to have been filed on April 22, 2013, the original date of submission to the court's efilg system.

4/25/2013  
2:19:18 PM

DAVID V. BREWER  
PRESIDING, SUPREME COURT

c: Ross A Day  
Anna Marie Joyce  
Jeana Frazzini

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**ORDER DENYING MOTION FOR EXTENSION OF TIME BUT WAIVING ORAP  
16.15(5) ON THE COURT'S OWN MOTION**

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REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,  
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EXHIBIT 2 -  
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