

IN THE SUPREME COURT OF THE STATE OF OREGON

**ELSPETH MCCANN,**

**Petitioner,**

**v.**

**ELLEN ROSENBLUM,  
Attorney General, State of Oregon,**

**Respondent.**

Supreme Court Case No. S062154  
(Control)

**PETITIONERS  
ROMAIN AND DODGE’S  
REPLY MEMORANDUM**

Initiative Petition 58 (2014)

**(ORAL ARGUMENT REQUESTED)**

**PAUL ROMAIN and  
RONALD R. DODGE,**

**Petitioners,**

**v.**

**ELLEN ROSENBLUM,  
Attorney General, State of Oregon,**

**Respondent.**

Supreme Court Case No. S062157

**LAUREN G. R. JOHNSON and  
LYNN T. GUST,**

**Petitioners,**

**v.**

**ELLEN ROSENBLUM,  
Attorney General, State of Oregon,**

**Respondent.**

Supreme Court Case No. S062158

Petitioners Romain and Dodge submit this Reply Memorandum in support of their Petition for this Court to modify the certified ballot title for Initiative Petition 58 (“IP 58”) to conform to the one they proposed in their Petition. The “yes” vote

statement and summary should be modified; the caption and “no” vote statement in the ballot title certified by the Attorney General for IP 58 are accurate.

## 1. The Caption and “No” Vote Statement

As set forth in their Petition, Petitioners Romain and Dodge do not object to the certified caption and “no” vote statement for IP 58. The Chief Petitioners, on the other hand, object to the caption because it uses the phrase “wholesale sales tax” to describe the “State Revenue Replacement Fee” in Section 16(1) of IP 58.

Petitioners Romain and Dodge agree with the analysis of the Attorney General regarding whether or not the revenue-raising mechanism in the proposed initiative creates a wholesale sales tax or simply a fee. In the comments they submitted to the Attorney General concerning these taxes with regard to Initiative Petition 47 (“IP 47”), the Chief Petitioners themselves stated that the money raised from the sale of liquor is “the third largest contributor to Oregon’s General Fund.” *Ans. Memo.* (IP 47), p. 111. The “State Revenue Replacement Fee” in Section 16(1) of IP 58, therefore, falls within the definition of a “tax,” not a “fee”<sup>1</sup>:

“Tax” is defined as “[a] monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue.” *Black’s Law Dictionary* 1496 (8<sup>th</sup> ed. 2004). Its common meaning is virtually identical. *See Webster’s Third New Int’l Dictionary* 2345 (unabridged ed 2002) (defining “tax” to mean “a usu. pecuniary charge imposed by legislative or other public authority upon persons or property for public purposes: a forced contribution of wealth to meet the public needs of a government”).

*Homebuilders Ass’n of Metropolitan Portland v. Metro*, 250 Or App 437, 444,

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<sup>1</sup> “Fee” is defined as “a charge fixed by law or by an institution (as a university) for certain privileges or services < a license ~ > < a toll-road ~ > < a college-admission ~ > < research ~s > < laboratory ~s > < tuition ~s >.” *Webster’s Third New Int’l Dictionary* 833 (unabridged ed 2002).

281 P3d 621 (2012).

As stated by the Attorney General, the vast majority of the revenue to the state will come from a tax that is based exclusively upon the sales price of the product. Every seller is required to pay the tax to the state at the wholesale level. This is properly referred to in the ballot title as a “wholesale sales tax” because the tax is measured as “71.1 percent of the price for which the holder sells the distilled liquor.” IP 58, Section 16(1).

The phrase “sales tax” is defined as “[a] tax imposed on the sale of goods and services, usu. measured as a percentage of their price.” *Black’s Law Dictionary* 1597 (9<sup>th</sup> ed. 2009). Its common meaning is similar. *Webster’s Third New Int’l Dictionary* 2003 (unabridged ed 2002) (defining “sales tax” as “a tax on the privilege or freedom of making sales of tangible personal property that is usu. measured by a percentage (as 3%) of the purchase price, is collected for the government imposing the tax by the seller, and is distinguished from a tax imposed on the property itself”).

The Chief Petitioners’ argument that they can decide what label to place on the revenue-raising scheme is absurd. The purpose of the ballot title is to inform the voter of what is actually in a proposed initiative; its purpose is not to give the Chief Petitioners a chance to mislead the voter. For these reasons, the Court should certify the caption certified by the Attorney General for IP 58, and adopt an identical caption for IP 47.

## **2. The “Yes” Vote Statement**

Only the third phrase of the “yes” vote statement should be modified to give the voter a clear understanding of what is in the proposed initiative. That phrase reads

as follows:

**“establishes regulatory requirements for sales and distribution.”**

That phrase is incomplete and can be misleading.

One of the most important things about this initiative is that the Oregon Liquor Control Commission (“OLCC”) will still be around and probably have an even greater role in the control, distribution, and taxation of distilled spirits. It is very important for the voter to realize that the OLCC does not cease to exist; in fact, the state agency will grow in its efforts to regulate the new private distribution of the product and expand its tax collection efforts to enforce the new wholesale sales tax and bottle tax. A vast majority of those potential taxpayers are located outside of the State of Oregon and have no assets in the state. Tax collection involving any entity outside of the state or the country is extremely difficult, yet it is also extremely important to the state that such efforts be undertaken.

For these reasons and for the reasons stated in their Petition, Petitioners Romain and Dodge submit that the last phrase of the “yes” vote statement should read as follows:

**“keeps state agency for tax collection/regulation.”**

### **3. The Summary**

The summary as written is somewhat confusing. Petitioners Romain and Dodge disagree with the priorities in the proposed initiative that should be summarized for the voter, but will not repeat here the arguments they made in their Petition.

## CONCLUSION

The Chief Petitioners submitted eight ballot initiatives that, for all practical purposes for the voter, are identical. Ballot title shopping is not prohibited in the State of Oregon, but it should not be encouraged or rewarded. It is a waste of the resources of the Court, the Attorney General, and all others interested in the subject matter.

The most accurate ballot title certified by the Attorney General for the two remaining initiative petitions filed by the Chief Petitioners (IP 47 and IP 58) is the one submitted for IP 58. With the modifications suggested by Petitioners Romain and Dodge, the Court should certify the ballot title for IP 58 and adopt the same ballot title for IP 47, or refer the ballot title to the Attorney General with instructions to modify the ballot titles for both initiatives.

DATED this 22nd day of April, 2014.

THE ROMAIN GROUP, LLC

BLACK HELTERLINE LLP

s/ Paul R. Romain

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## **CERTIFICATE OF FILING**

I hereby certify that on the 22nd day of April, 2014, I caused to be electronically filed the foregoing **PETITIONERS ROMAIN AND DODGE'S REPLY MEMORANDUM** with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system.

## **CERTIFICATE OF SERVICE**

I further certify that on the 22nd day of April, 2014, I served a copy of the foregoing **PETITIONERS ROMAIN AND DODGE'S REPLY MEMORANDUM** upon the following individuals using the court's electronic filing system:

Matthew J. Lysne, OSB No. 025422  
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and upon the Chief Petitioners listed below via first class mail:

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DATED this 22nd day of April, 2014.

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