

IN THE SUPREME COURT OF THE STATE OF OREGON

GAIL RASMUSSEN, BETHANNE
DARBY,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Supreme Court Case No. S061470

REPLY MEMORANDUM ON
PETITION TO REVIEW BALLOT
TITLE CERTIFIED BY THE
ATTORNEY GENERAL

Initiative Petition 12 (2014)

Petitioners Gail Rasmussen and BethAnne Darby submit this brief reply to the Attorney General's Answering Memorandum.

ARGUMENTS AND AUTHORITIES

I. Introduction

In the Answering Memorandum, the Attorney General acknowledges that Initiative Petition 12 (2014) ("IP 12") is similar to Initiative Petition 18 (2012) ("IP 18"). However, she argues that IP 18 was a significantly simpler measure than IP 12 and that, therefore, this Court's conclusions with regard to IP 18 cannot compel any particular conclusions here. *See* Answering Memo, pp. 1-3. Petitioners disagree. Petitioners maintain that the practical effect of IP 12 is the same as that of IP 18, albeit for a different category of people (*i.e.*, "family members" only). Thus, the ballot title this Court certified for IP 18 is highly instructive and should have informed the ballot title certified by the Attorney General here. Simply put, the ballot title certified by the Attorney General here fails to put the voter on notice of the changes that IP 12 effects in the context of current tax law to allow voters to

make an informed decision about the significant policy choice presented by the measure. For this reason, the certified ballot title is deficient and must be ordered modified.

II. Caption

With regard to the caption, the Attorney General maintains that it is difficult within the construct of IP 18's certified ballot title to also convey the concept that under IP 12 "[a]ll family giving is exempt from taxation." Therefore, "the certified caption simply uses the text of the proposed measure itself" [***] "while accurately alerting the voters that the measure provides its own definition of 'family giving.'" Answering Memo, p. 5. This Court has recognized, however, that "to comply with [***] statutory requirements, the Attorney General may have to go beyond the words of a measure in order to give the voters accurate and neutral information about a proposed measure." *Caruthers v. Myers*, 344 Or 596, 601, 189 P3d 1 (2008). Such is the case here.

The certified caption gives voters no information about what part of "family giving" is currently taxed. For example, voters may mistakenly believe that the state currently taxes estates passed between family members which are valued at less than \$1 million or that the state imposes a "gift" tax on property transferred between family members without compensation. A caption which tracks the language certified by the court for IP 18, in contrast, would correct such voter misperception and simultaneously allow the voter to better understand the policy choice presented by IP 12 by listing the manner in which the proposed measure is directed at changing the existing statutory tax scheme. The caption should, therefore, be ordered modified to track that of IP 18.

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III. Result Statements

The Attorney General raises the same arguments for the “yes” vote result statement she does for the caption. Petitioners incorporate herein by this reference their arguments relating to the caption outlined above. For those same reasons, petitioners request that the “yes” vote result statement be modified to track the “yes” vote result statement certified for IP 18.

With regard to the “no” vote result statement, the Attorney General provides no explanation for why she wastes precious words discussing the effect of “unpaid” estate taxes at the expense of providing concrete information about the current statutory scheme. The Attorney General argues that the phrase “income producing property transfers” was not actively litigated before the court for IP 18. While that may be the case, the statement is still an accurate statement of current law. Moreover, this Court has repeatedly held that the use of the indefinite words “certain estates” in the “no” vote result statement is insufficient to convey the policy choice inherent in the current statutory scheme which only taxes estates of \$1 million or more. *See Rasmussen v. Kroger*, 350 Or 533, 538-39, 258 P3d 1224 (2011)(“that vague and indefinite reference does not adequately inform voters *which* estates are now subject to estate or inheritance taxes and thus would continue to be subject to such taxes if the measure is rejected); *Rasmussen v. Kroger*, 351 Or 195, 203 n 4, 262 P3d 777 (2011)(“The phrase ‘estates of a certain value’ is too vague and general to inform voters of the policy choice that would be reversed if the proposed measure were adopted or that it would remain intact if the proposed measure were rejected); *Rasmussen v. Kroger*, 351 Or 358, 366, 266 P3d 87 (2011)(The Attorney General raised that argument

twice before in defense of similarly worded “yes” and “no” vote result statements [***]. We rejected the Attorney General’s argument in both matters [***]. For the reasons expressed in those decisions, the Attorney General must modify the “yes” and “no” vote result statements in this matter so that, individually or together, they inform the voter that current law only taxes estates valued at \$1 million or more.”). At a minimum, therefore, the Court should order the result statements modified to reflect this effect of the proposed measure and policy choice with greater specificity.

IV. Summary

Finally, with regard to the summary, the Attorney General argues that it is not necessary to reference current taxation of “income producing” property transfers because the mere transfer of such property is not a taxable event and it is not clear that the proposed measure would preclude taxation on all “income produced” by property that is transferred between family members. *See* Answering Memo, pp. 9-10. The text of IP 12, §7 expressly provides, however, that the measure “precludes taxation imposed on any property that is given from family member to another family member *during the family member’s lifetimes*.” The Attorney General should be ordered to modify the summary to reflect this effect, even if it is with some qualifiers.

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CONCLUSION

For these reasons and those in the petition, petitioners request that the Court certify the changes to the certified ballot title proposed by petitioners or else refer the title back to the Attorney General for modification.

DATED this 2nd day of August, 2013.

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

s/Aruna A. Masih

Aruna A. Masih, OSB #973241

Of Attorneys for Petitioners Rasmussen and Darby

CERTIFICATE OF FILING

I certify that, I directed the original and eight copies of the REPLY MEMORANDUM ON PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition #12) to be electronically filed with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16 on August 2, 2013.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing REPLY MEMORANDUM ON PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL Initiative Petition 12 (2014) upon the following individuals on August 2, 2013, by using the court's electronic filing system pursuant to ORAP 16 on August 2, 2013:

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DATED this 2nd day of August, 2013.

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