

IN THE SUPREME COURT OF THE STATE OF OREGON

DAVID FIDANQUE, JANN CARSON,
and RABBI DEBRA KOLODNY,

Petitioners,

v.

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

Respondent.

Case No. S062127 (Control)

SHERRIE SPRENGER and TERESA
HARKE,

Petitioners,

v.

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

Respondent.

Case No. S062130

PETITIONERS SHERRIE
SPRENGER AND TERESA
HARKE'S REPLY
MEMORANDUM

Initiative Petition 52 (2014)

The Attorney General argues in her Answering Memorandum that IP52 is different from IP8 because IP8 “has the effect of preserving state statutory and constitutional protections that otherwise might be construed as conflicting with the first part of the amendment.” (Respondent’s Answering Memorandum, 9). With respect to IP52, the Attorney General argues it is distinguishable from IP8 because it “would statutorily except certain religious belief-based conduct that *presently* constitutes unlawful discrimination, from the enforcement provisions

of the unlawful discrimination statutes.” (Id., emphasis added). But the Attorney General provides no binding authority for her statement that “certain religious belief-conduct . . . presently” violates antidiscrimination statutes.¹ It is petitioners’ position that the religious free exercise protections addressed in IP52 are *existing* rights and that IP52 – just like IP8 avers – has the effect of preserving those existing Federal and State constitutional protections.²

Regardless, whether the religious freedom protections being discussed in IP8 and IP52 currently exist or are being sought is irrelevant to how the subject matter of the state measure is identified. IP52 seeks to protect religious freedom that is indistinguishable from IP8. IP52 is entitled to the same deference, clarity, and presentation as IP8. Indeed, the religious free exercise rights recognized as “existing” in IP8 (with which petitioners agree) exist not from any specific constitutional grant to clergy or religious institutions, but derivatively from the specific freedoms afforded individuals, as confirmed in

¹ Except for her unilateral construal of one statute that appears will likely be litigated soon as a matter of first impression.

² It appears the Attorney General wants to treat the religious freedoms of clergy and religious institutions differently from the religious freedoms of individuals. But neither the Federal nor the Oregon State constitutions distinguish between religious clergy or institutions and individuals. Indeed, both constitutions focus on the individual. U.S. Const. amend. I (“Congress shall make no law . . . prohibiting the free exercise [of religion]”); Or. Const. Art I, §2 (“All men shall be secure in the Natural right, to worship Almighty God according to the dictates of their own consciences”), Or. Const. Art I, §3 (“No law shall in any case whatever control the free exercise, and enjoyment of religeous [sic] opinions, or interfere with the rights of conscience”); *See, Employment Div. Dep’t of Human Services v. Rogue Valley Youth for Christ*, 307 Or 490, 498, 770 P2d 588 (1989) (“The state is also prohibited from interfering with any *individual’s* or group’s right to worship or *exercise* of ‘religious opinion’ or ‘rights of conscience’ under Article 1, sections 2 and 3.”) (emphasis added).

our founding charters. So, how can individuals of faith and conscience have less protection and be subjected to greater marginalization than the persons and institutions that have derived their freedoms from those individual parishioners, congregants, and adherents? They cannot. In that light, the Attorney General's use of "discrimination" for IP52 and use of "protects" for IP8 demonstrates that the certified ballot title for IP52 was not drafted "impartially," as required by *Hamilton*. See also, *Peppers. v. Meyers*, 325 Or 611, 942 P2d 273 (1997).

What we have here, with the Attorney General's certified ballot title, is a failure to communicate the essence of IP52 to Oregon voters and a use of politically charged and emotionally laden language that will confuse and mislead the voter – who will vote after reading the Ballot Title, with many (sadly) never resorting to the Voters' Pamphlet to read the text of the measure.

Just for a moment, pretend you only vaguely recall what the Federal and Oregon constitutions provide as to religious free exercise protections. Pretend you have not read the text of IP52. Then read the Attorney General's certified ballot title. What does it tell you? It suggests the proposal would give people license to ignore antidiscrimination laws and to run amok acting in an arbitrary or prejudicial manner under the cloak of "religious beliefs." It utterly fails to acknowledge that it will "protect" genuine and deeply held convictions and religious faith expressly acknowledged and sanctioned in our constitutions. Attorneys and judges need to approach this process from the perspective of the Oregon voter.

Petitioners Sprenger and Harke's alternative ballot title language fulfills the essence of the statutory requirements: to tell the voters, in as plain language as possible, what this measure is really all about – and it does so in a way that is fair, accurate, and impartial. Petitioners ask the Court to modify the ballot title by using petitioners Sprenger and Harke's language of the Court's own accord.

DATED this 11th day of April 2014.

Respectfully submitted,

HARRIS BERNE CHRISTENSEN LLP

/s/ Shawn M. Lindsay
Shawn M. Lindsay, OSB #020695
Attorney for Petitioners Sprenger and Harke

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I directed to be electronically filed the PETITIONERS SHERRIE SPRENGER AND TERESA HARKE'S REPLY MEMORANDUM (Initiative Petition 52 (2014)) with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16 on April 11, 2014 and that I directed a full and exact copy of the PETITIONERS SHERRIE SPRENGER AND TERESA HARKE'S REPLY MEMORANDUM (Initiative Petition 52 (2014)) be served upon the following individuals on April 11, 2014 by using the Court's electronic filing system:

Anna Marie Joyce, OSB#013112
Matthew J. Lysne, OSB #025422
DOJ Appellate Division
1162 Court St NE
Salem OR 97301
Email: anna.joyce@doj.state.or.us
Email: matthew.j.lysne@doj.state.or.us
Attorneys for Respondent
Rosenblum

Gregory A. Chaimov, OSB #822180
Davis Wright Tremaine LLP
1300 SW Fifth Avenue, Suite 2400
Portland, OR 97201-5682
Email: gregorychaimov@dwt.com
Attorney for Petitioners Carson,
Fidanque and Kolodny

Margaret S Olney, OSB #881359
Bennett Hartman Morris
210 SW Morrison St Ste 500
Portland OR 97204
Email: olneym@bennetthartman.com
Attorney for Amicus Curiae
Campbell, Frazzini and Shepard

DATED this 11th day of April 2014.

HARRIS BERNE CHRISTENSEN LLP

/s/ Shawn M. Lindsay
Shawn M. Lindsay, OSB #020695
Attorney for Petitioner Sprenger and Teresa
Email: shawn@hbclawyers.com