

IN THE SUPREME COURT OF THE
STATE OF OREGON

KARLA KAY EDWARDS)	SC S060837
)	
Petitioner,)	
)	
v.)	ORAL ARGUMENT REQUESTED
)	
ELLEN ROSENBLUM, Attorney General,)	
)	
Respondent.)	

**SECOND AMENDED PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY
GENERAL**

The Attorney General certified ballot title for Initiative Petition 2014-2 on October 24, 2012. The Chief Petitioner is Nicholas Urhausen. Karla Kay Edwards is Petitioner in this action. Petitioner submitted this Second Amended Petition to attach the ballot title documents and measure text that were included in the original petition filing but not attached with the (first) Amended Petition.

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Attorney for Petitioner

STANDING

Petitioner Karla Kay Edwards (Petitioner) is an Oregon elector dissatisfied with the Certified Ballot Title for Initiative Petition 2014-2 (IP 2014-2). Petitioner timely filed her written comments objecting to the Draft Ballot Title for IP 2014-2 with the Secretary of State on October 9, 2012 pursuant to ORS 250.067(1). For the following reasons, and pursuant to ORS 250.085(2), Petitioner seeks a modified ballot title because the certified ballot title inaccurately and incompletely conveys the contents of IP 2014-2. This petition relies on concerns raised by Petitioner in her comments to the Secretary of State during the comment period and changes to the ballot title after the comment period. *Nelson v. Myers*, 330 Or 92, 996 P2d 975 (2000).

OBJECTION

Under ORS 250.035(2)(a), the ballot title caption for a constitutional amendment shall be “not more than 15 words that reasonably identifies the subject matter of the state measure.” The Ballot Title Caption for Initiative Petition 2014-2 certified by the Attorney General does not meet this standard for two reasons. First it fails to identify the subject matter of the proposed amendment by ignoring the primary entities affected by the amendment – Oregon government bodies. Second, it overstates the effect of the measure on public employees by implying that the measure would ban all payroll deductions for public employees to their unions – even those accomplished without the assistance of an Oregon government body.

The ballot title must contain both “Yes” and “No” result statements. A “Yes” result statement must be a “simple and understandable statement of not more than 25 words that describes the result if the state measure is approved.” ORS 250.035(2)(b). The “Yes” Result Statement fails to inform voters of its limited effect on Oregon governments making payroll deductions. A “No” Result Statement must be a “simple and understandable statement of not

more than 25 words that describes the result if the state measure is rejected.” ORS 250.035(2)(b). The “No” Result Statement drafted by Respondent Attorney General ignores those entities actually affected (Oregon government entities), and suggests an incorrectly expanded the effect of the amendment.

A ballot title statement must be a “concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” ORS 250.035(2)(d). The Ballot Title Summary expands upon the errors made in the Caption and Results Statements by ignoring a primary affected entity (Oregon governments) and implying that the measure would prohibit payroll deductions made by non-government entities for public employees on behalf of unions.

ARGUMENTS AND AUTHORITIES

I. INTRODUCTION

In this case, the Certified Ballot Title from the Attorney General for IP 2014-2 takes great pains to avoid any mention that it controls the actions of government entities, not the individual employees of those entities or even their collective bargaining units. The text of IP 2014-2 (quoted fully below) is unambiguously focused on the authority of Oregon governments:

“SECTION 15. The people declare it is not in the public interest for government resources to be used to collect or assist in the collection of money for organizations which engage in collective bargaining with those governments. Therefore,

- (1) The State government of Oregon and any of its political subdivisions, including all local governments and special government bodies, are prohibited from withholding any funds from the pay or compensation of employees on behalf of, or for transfer to, any labor unions or organizations which engage in collective bargaining on behalf of government employees.
- (2) This Section does not apply to the current term of public employee contracts executed before November 4, 2014, but it does apply to any contracts existing on that date which are modified, renewed, extended or reformed, on or after the date the prospective petition for the ballot measure for this amendment is submitted to

the Secretary of State.

- (3) This Section becomes effective on the day it is enacted or approved by a majority of the votes cast thereon.

Unlike previous initiatives that sought to regulate the behavior of public employee unions or alter the relationship between public employees and their unions, this proposal simply and straightforwardly prevents **government** action. This proposed ballot measure may have an eventual, secondary impact upon public employees and their unions, but it is the government bodies that are the subject of the proposed measure. The failure to identify the main objects of the initiative is in error. If the Attorney General wishes to include public employees and unions in the ballot title, she must contend with the word limitations and direct subject matter of the initiative.

On its face, the Ballot Title implies that public employees would be prohibited from personally directing money to unions from their payroll if the amendment was enacted. This is a false inference. Under this proposed measure, a public employee may still automatically transfer funds from his or her paycheck to a union without the assistance of a government entity.

In this petition, Petitioners take exception to the Caption, the “Yes” Statement, the “No” Statement and the Summary in the Certified Ballot Title as confusing and misleading to the voters.

II. STANDARD OF REVIEW

A ballot title must fairly and accurately represent the main contents of the proposed ballot measure. ORS 250.035. A ballot title need not be perfect, as “substantial compliance with the requirements stated in ORS 250.035 is sufficient.” *Mabon v. Kulongoski*, 325 Or 121, 126, 934 P2d 403 (1997). Additionally, a ballot title must not misstate existing law, even by implication. *Sizemore v. Kulongoski*, 322 Or 229, 236, 905 P2d 1146, *mod on recons* 322 Or 387, 908 P2d 825

(1995).

III. OBJECTIONS TO THE CERTIFIED BALLOT TITLE

1. *EXCLUSION OF THE ENTITIES PRIMARILY AFFECTED BY MEASURE*

ORS 250.035(2)(a) provides in part that an initiative caption must “reasonably identify the subject matter” of the initiative, explaining how the measure will alter existing law in a way that does not confuse or mislead an average voter. *See* ORS 250.035(2)(a); *Crumpton v. Kulongoski*, 321 Or 279, 282, 896 P2d 1211 (1995); *Mabon v. Myers*, 332 Or 633, 637–8, 925 P2d 1234 (1996). *See also Dirks v. Myers*, 329 Or 608, 615, 993 P2d 808 (2000), *citing Rice v. Myers*, 326 Or 419, 423, 952 P2d 533 (1998) (“Representations in a caption about how a measure would modify existing law must not be misleading”). It is true that where possible, “the words of the measure should be employed” in the ballot title. *Crumpton v. Roberts*, 298 Or 774, 779, 697 P2d 180 (1985). Yet the Certified Ballot Title for IP 2014-2 fails to identify the primary target of the measure: “The State government of Oregon and any of its political subdivisions...”

The current Caption reads: “Amends Constitution: Prohibits all payroll deductions from public employees to/on behalf of any public employee union.” This Caption refuses to acknowledge that only Oregon governments are prohibited from making these sorts of payroll deductions. Even worse, it implies that any payroll deductions authorized by a public employee with a bank or other institution receiving a direct deposit from an Oregon government would be prohibited.

The proposed amendment does not in any way limit the ability of a public employee or public employee union to take independent action. Nevertheless, the Caption focuses on and greatly expands the indirect effects of the amendment on entities who are otherwise entitled to

continue their course of dues paying conduct without the direct assistance of an Oregon government. “The caption is the cornerstone for the other portions of the ballot title. As the headline for the ballot title, it provides the context for the reader’s consideration of the other information in the ballot title.” *Greene v. Kulongoski*, 322 Or. 169, 175, 903 P.2d 366 (1995). The “subject matter” of a proposed initiative includes any feature of a measure that “goes to the heart of the proposed measure,” and any such feature must be incorporated into the Caption. *Kain v. Myers*, 337 Or. 36, 44, 93 P.3d 62 (2004) (further stating “[t]he caption then consumes 12 more words in describing the kind of property to which the cap would apply. As a result, the Attorney General had no words remaining with which he could describe the proposed measure’s subject matter completely”).

There is no mention in the certified Caption that Oregon government bodies are in fact the entities directly governed by the amendment. Therefore, the Caption fails to identify the “subject matter” of the proposed measure.

Petitioner respectfully propose the following ballot title caption to satisfy ORS 250.035(2)(a):

Amends Constitution: Prohibits Oregon governments from withholding funds from employees’ pay for transfer to public employee unions.¹

2. CORRECTION OF FLAWS IN THE “YES” AND “NO” STATEMENTS

The “Yes” Statement is flawed in the same manner as the Caption. The “Yes” Statement should describe the “result or results of enactment that would have the greatest importance to the

¹ This alternative ballot title caption was first submitted to the Secretary of State by Don during the official comment period. Respondent treated Mr. comments on the Draft Ballot Title Caption as similar to concerns raised by Petitioner as to focus of the caption. Although neither Petitioner nor Mr. submitted alternative Yes/No statements or summaries in their comments to the Secretary of State, the concerns each raised in the comments were directed to the subject matter identification flaws that run throughout the entire ballot title.

people of Oregon.” *Novick v. Myers*, 337 Or 568, 574, 100 P3d 1064 (2004). The “Yes” and “No” statements in the certified Ballot Title provides, in pertinent part, that:

“Yes” vote amends the constitution to prohibit public employees from making payroll deductions to or on behalf of any public employee union for any purpose.

“No” vote rejects amending constitution to prohibit public employee payroll deductions to unions; retains statute permitting public employee payroll deductions of own money to unions.

As with the Caption, the certified Ballot Title’s “Yes” and “No” Statements fail to mention the entities that are directly controlled by it (Oregon government bodies). Beyond that it also implies that public employees will be directly prohibited from making deductions from their own pay (after it has been transferred from a public employer). With the extra words allotted to the “Yes” statement, respondent felt compelled to add the descriptive phrase “for any purpose” to the end of the statement (as if “prohibit” was not clear enough). This Ballot Title is infused with language used on previous ballot titles for proposed initiatives that are completely unrelated to this one. Those extra words could be put to a much better purpose, namely to mention the entities primarily governed by the measure!

Petitioner respectfully proposes the following ballot title “Yes” Statement to satisfy ORS 250.035(2)(b):

“Yes” vote amends constitution to prohibit Oregon’s state and local governments from withholding portions of employee pay to benefit labor unions or collective bargaining organizations.

The “No” Statement expands the deficiencies described in the “Yes” Statement by conflating payroll money that has not been transferred to an employee as the employee’s “own money.” This further exacerbates the likelihood that voters will conclude that the amendment will directly limit the actions of public employees after they have received their paychecks (once they are clearly in possession of their “own money”.)

Petitioner respectfully proposes the following ballot title "No" Statement to satisfy ORS 250.035(2)(c):

"No" vote rejects amending constitution to prohibit Oregon governments from making union payroll deductions for employees; Retains statute permitting union payroll deductions with government resources.

3. *THE SUMMARY*

To the extent that the Summary uses the same language that ignores the effect on Oregon governments and wrongly implies a prohibition on the right of public employees to pay union dues through third parties, it suffers from the same failings as the Caption and Statements and is thereby confusing and misleading to the voter.

IV. CONCLUSION

The Caption, "Yes" Statement, and Summary are incomplete and will mislead the average voter. Therefore the certified Ballot Title for IP 2014-2 fails to meet the standards set out under ORS 250.035. This is not a case where Petitioner is merely asking this Court for a better ballot title; the certified ballot title for IP 2014-2 is significantly misleading and incomplete and thus statutorily inadequate. Petitioners pray this Court remedy the proposed defects as outlined above and certify Petitioners' proposed changes to the ballot title for IP 2014-2.

DATED this 5th day of December, 2012.

Respectfully Submitted,

s/ *Eric C. Winters*

Eric Winters, OSB #98379
Attorney for Petitioner

CERTIFICATE OF FILING AND SERVICE

I certify that on December 6, 2012, I filed this **Amended Petition to Review Ballot Title Certified by the Attorney General** by electronic filing with the State Court Administrator at this address: <https://appellate-efile.ojd.state.or.us/filing/>

I also certify that on December 6, 2012, I served the following counsel through the electronic filing system:

Erin C. Lagesen
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1162 Court St NE
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Of Attorneys for Respondent

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Of Attorneys for Amici Rassmussen and Darby

I further certify that on December 6, 2012, I served this **Amended Petition to Review Ballot Title Certified by the Attorney General** upon:

Hon. Kate Brown
Secretary of State
Elections Division
255 Capitol Street NE, Suite 501
Salem, OR 97310-0722

by sending a copy thereof, contained in a sealed envelope, addressed to said party, with correct postage attached thereon via first class mail, and deposited at the United States Post Office, in Wilsonville, Oregon on December 6, 2012

DATED this 6th day of December, 2012,

s/ *Eric C. Winters*

Eric C. Winters, Attorney for Petitioner