

IN THE SUPREME COURT OF THE STATE OF OREGON

MICHAEL J. NEARMAN,

Petitioner,

v.

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

Respondent.

ANDREA MILLER,

Petitioner,

v.

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

Respondent.

No. S063787 (Control)

**PETITIONER ANDREA MILLER'S  
REPLY IN SUPPORT OF PETITION  
TO REVIEW BALLOT TITLE  
CERTIFIED BY THE ATTORNEY  
GENERAL FOR INITIATIVE  
PETITION NUMBER 51 (2016)**

No. S063789

As was set forth in Andrea Miller's Petition for Review, Initiative Petition No. 51 (2016) (the "Initiative") imposes onerous new voter registration requirements. Petition at 1-2. *See also* Initiative, §§ (a), (b) (setting forth those requirements). Currently registered voters who do not re-register under the new requirements within ten years will be disenfranchised. Petition at 2, 4. *See also* Initiative, § (c) (so mandating).

**A. The Ballot Title Does Not Adequately Describe the Initiative's Disenfranchisement of Currently Registered Voters.**

The Attorney General does not dispute that the Initiative disenfranchises all currently registered voters who do not meet the Initiative's severe registration requirements. *See* Answering Memo at 2 ("The Attorney General

agrees that the expiration of existing voter registrations is one of the major effects of IP 51”). However, she asserts (without elaboration) that the phrase “voter registrations expire” in the caption adequately describes that major effect. Answering Memo at 3. Ms. Miller respectfully disagrees.

The caption is the “cornerstone for the other portions of the ballot title.” *Greene v. Kulongoski*, 322 Or 169, 175, 903 P2d 366 (1995) (citation omitted). As the “headline” the caption “provides the context for the reader’s consideration of the other information in the ballot title.” *Greene*, 322 Or at 175. The caption cannot understate the scope of the legal changes an initiative would make “[b]ecause of its importance to the entire ballot title.” *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004).

“Voter registrations expire” does not meet those standards. The phrase does not inform readers that the Initiative disenfranchises *currently* registered voters who do not re-register under the Initiative’s new, strict requirements. A voter or potential petition signer who reads the caption would be left with the erroneous impression that under the Initiative, only registrations for newly registered voters expire. The right to vote is essential to representative democracy. Voters and potential petition signers must be informed of the Initiative’s dramatic infringement on that right. The caption (and other provisions of the ballot title) must provide that the Initiative would disenfranchise *currently* registered voters.

**B. The Phrase “Immigration Verification” Should Not Appear in the Result of Yes Statement.**

The Initiative does not address immigration. The Initiative sets new

registration requirements to vote in Oregon regardless of whether a qualified Oregon resident was born in the United States or elsewhere.

The Attorney General argues that the phrase “immigration verification” in the result of yes statement properly captures the procedure set forth in subsection (b)(xi) of the Initiative. That subsection provides a multi-step procedure for a qualified Oregon resident to register to vote who lacks the specific documentation delineated in subsections (b)(i)-(x). The applicant must first certify to the Secretary of State, under penalty of perjury, a lack of such documentation. The Secretary of State must then request that the United States Immigration and Naturalization Service (the “INS”) “verify the applicant’s *citizenship* status.” Initiative, § (b)(xi) (emphasis added). The INS’s determination is controlling. If the INS does not respond, the elector may offer evidence of his or her citizenship in a contested case hearing before the Secretary of State. *Id.* The Attorney General asserts that, “[g]iven the limited number of words available to convey complex processes, the Attorney General believes that ‘immigration status’ [sic] correctly describes the process.” Answering Memo at 6. Ms. Miller respectfully disagrees.

The fact that ORS 250.035(2)(b) sets a word limit does not mean the result of yes statement can be misleading or inaccurate. “Immigration verification” and “citizenship verification” are not synonymous. Many immigrants become citizens, but many do not. “Immigration verification” has no bearing on whether a person may vote; “citizenship verification” does. The words “immigration” and “citizenship” are not interchangeable.

Ms. Miller respectfully submits that “immigration verification” is particularly inapt here. Immigration reform is an emotionally charged, divisive and partisan political issue in the foreground of national and state politics. The Initiative does not impact *any* laws regarding immigration, and reference to “immigration” in the result of yes statement would mislead voters and potential petition signers into believing that the Initiative embraces a topic that is not at issue here. “Immigration verification” should not appear in the result of yes statement.

**C. The Summary Does Not Comply with ORS 250.035(2)(d).**

The phrase “if specified documents are unavailable, federal Immigration and Naturalization Service or an administrative hearing required” in the certified summary also inaccurately describes the procedure set forth in subsection (b)(xi). Voters and potential petitions signers reading the summary reasonably would conclude that subsection (b)(xi) provides for an INS hearing; yet subsection (b)(xi) sets forth no such requirement. Rather, subsection (b)(xi) requires the Secretary of State to ask the INS “to verify the applicant’s citizenship status.” The “administrative hearing” set forth in subsection (b)(xi) is a contested case proceeding conducted by the Oregon Secretary of State if the INS does not respond to the Secretary of State’s request for citizenship verification. Voters and potential petition signers reading the certified summary would have no reasonable way of knowing that subsection (b)(xi) sets forth a two step process: INS verification followed by a contested case hearing before the Oregon Secretary of State if the INS does not respond. The phrase

“federal Immigration and Naturalization Service or an administrative hearing required” is both inaccurate and misleading.

The Attorney General again argues that phrase is adequate, because of the word limits set by statute. Answering Memo at 8. The word limits in ORS 250.035(2)(d) do not allow for an inaccurate or misleading summary. Moreover, as was set forth in Ms. Miller’s petition, the certified summary contains *prospective* language describing current law that – “[e]ffective January 1, 2016, Driver and Motor Vehicle Division (DMV) will submit information” – that would be confusing to potential voters. Petition at 8. That language can (and should) be removed from the summary. The Attorney General could use those additional five words to clarify the effect of subsection (b)(xi).

### CONCLUSION

The court should certify to the Secretary of State a ballot title that complies with the requirements of ORS 250.035(2) in lieu of the ballot title certified by the Attorney General or refer the certified ballot title to the Attorney General for modification.

DATED this 1st day of February, 2016.

Respectfully submitted,

STOLL STOLL BERNE LOKTING &  
SHLACHTER, PC

By: /s/ Steven C. Berman  
Steven C. Berman, OSB No. 951769

Attorneys for Andrea Miller

**CERTIFICATE OF FILING AND PROOF OF SERVICE**

I hereby certify that on February 1, 2016, I electronically filed the original PETITIONER ANDREA MILLER'S REPLY IN SUPPORT OF PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL FOR INITIATIVE PETITION NUMBER 51 (2016) with the Appellate Court Administrator and electronically served it upon Paul Smith and Shannon Reel, attorneys for respondent; James Buchal, attorney for Michael J. Nearman; and, Gregory A. Chaimov, attorney for Amici Curiae American Civil Liberties Union of Oregon Inc, Kayse Jama and Joseph Santos-Lyons.

DATED this 1st day of February, 2016.

STOLL STOLL BERNE LOKTING &  
SHLACHTER P.C.

By: /s/ Steven C. Berman  
Steven C. Berman, OSB No. 951769

Attorneys for Andrea Miller