

IN THE SUPREME COURT OF THE STATE OF OREGON

PATRICK GREEN

Petitioner,

v.

ELLEN F. ROSENBLUM, Attorney
General, State of Oregon

Respondent.

Case No. S061610

**MEMORANDUM OF JASON WILLIAMS,
CHIEF PETITIONER FOR INITIATIVE
PETITION NUMBER 20 (2014)**

AS AMICUS CURIAE

On Petition to Review Ballot Title for Initiative Petition #20 as submitted for the
General Election of November 4, 2014

Ballot Title Certified by the Attorney General on August 20, 2013

Chief Petitioner: Jason Williams

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I. Introduction

Amicus Curiae Jason Williams submits this memorandum in support of the ballot title certified by the Attorney General for 2014 Initiative Petition Number 20 (“IP 20”) pursuant to ORAP 11.30(7). In the alternative, Amicus Curiae respectfully requests that the Court delete the caption's first three words, which are confusing and superfluous.

II. Amicus Curiae has a Strong Interest as IP 20's Chief Petitioner.

Amicus Curiae is IP 20's Chief Petitioner and an elector in the State of Oregon with a strong interest in IP 20, which expands democratic rights by ensuring that taxpayers have the opportunity to vote on large government expenditures. He timely submitted written comments with the Secretary of State on the draft ballot title for IP 20.¹

III. Argument and Authorities

A) Standard of Review

This Court reviews challenges to a ballot title caption “to determine whether the caption substantially complies with the pertinent statutory requirements.” *Whitsett v. Kroger*, 348 Or. 243, 245 (2010).

B) The Certified Ballot Title's Caption Substantially Complies with ORS 250.035(2)(a) Because it is not Ambiguous or Misleading.

A ballot title caption must “reasonably identif[y] the subject matter of the state measure.” ORS 250.035(2)(a). “As the 'headline' for the ballot title, the

¹ A copy of Amicus Curiae's comments to the Secretary of State is attached as Exhibit A.

caption 'provides the context for the reader's consideration of the other information in the ballot title.' *Mabon v. Myers*, 332 Or. 633, 634 (2001) (quoting *Greene v. Kulongoski*, 322 Or. 169, 174–75 (1995)). As such, the caption must use “terms that will not confuse or mislead potential petition signers and voters.” *Id.* Also, a caption should not copy a petition's non-neutral language if doing so “might mislead voters into supporting the proposal without understanding its true effects.” *Id.* at 638 n.2 (quoting *Earls v. Myers*, 330 Or. 171, 175 (2000)).

Here, Petitioner takes the phrase “voters of the local government” out of context in an attempt to conjure up ambiguity where none exists. IP 20 clearly states: “Any local law imposing or increasing a tax or fee shall be submitted to the voters of the local government and approved by at least a majority of the votes cast,” but this requirement does not apply certain taxes “adopted by a local government.” The presence of words like “submitted,” “approved,” and “votes cast,” along with the explicit exclusion of certain taxes “adopted by a local government,” make it clear that “voters” cannot plausibly be read to mean anything other than citizens voting on a ballot measure. In fact, these terms would not make sense in any other context. Also, Petitioner's suggestion that IP 20 is aimed at overriding local government body rules on supermajorities or quorums is nonsensical. Because the word “voters” is not confusing or misleading in any way, this part of the caption unquestionably meets the low standard of substantial compliance with the statutory requirements.

Likewise, Petitioner provides no logical basis for asserting that the phrase “local law” is confusing. IP 20's meaning and use of “local law” is consistent with use in the common vernacular and reasonably identifies the subject matter of the initiative. Also, IP 20's so-called definition of “local law” is actually an interpretation policy statement, not the redefinition of a common phrase. As such, Petitioner's suggestion of changing the caption to read “local law' (defined)”² would actually *create* confusion, instead of reducing it, because “local law” is not specifically defined in IP 20. The low standard of substantial compliance with the statutory requirements is easily satisfied on this point.

Finally, the word “imposing” is a neutral word in the context of taxation because taxes are obligatory and are thus “imposed” on taxpayers in various situations regardless of willingness to pay. Further, even if “imposing” were not a neutral word (which it is), its use in the phrase “imposing or increasing a tax or fee” does not create any danger of “mislead[ing] voters into supporting the proposal without understanding its true effects.” *Mabon*, 332 Or. at 638 n.2. Rather, the idea of “imposing” a tax or fee as used in IP 20 is clearly understood by the average person. Once again, the low standard of substantial compliance with the statutory requirements is easily met.

2 Although this suggestion is only implied in Petitioner's memorandum, it is explicit in the comments he submitted to the Secretary of State.

C) Alternatively, the First Three Words of the Certified Ballot Title's Caption Should be Deleted Because They are Confusing and Superfluous.

A ballot title must use “terms that will not confuse or mislead potential petition signers and voters.” *Mabon*, 332 Or. at 634 (2001) (quoting *Greene*, 322 Or. At 174–75). Here, the caption reads: “Majority of participating voters must approve certain local laws imposing or increasing taxes or fees.” As Amicus Curiae argued in written comments timely submitted to the Secretary of State,³ the first three words of the caption cause confusion.

The phrase “Majority of participating” creates an inaccurate and confusing implication that the current law, which IP 20 seeks to replace, has a requirement that a majority of *all* voters is needed to approve certain local tax laws—similar to the old double-majority rule. Similarly, a voter may mistakenly read this phrase to mean that the current law requires a supermajority vote or that IP 20 imposes a new type of voter participation requirement.

There is no reason to risk such confusion since the phrase “Majority of participating” is superfluous. Due to longstanding custom, voters already expect that a vote on a local law that has been referred to the voters will be decided based on a majority of the voters participating in the election. As such, the caption's first three words add nothing but possible confusion.

³ See Exhibit A.

D) The Certified Ballot Title's Results Statements Substantially Comply with ORS 250.035(2)(b)–(c) Because they are Simple and Understandable.

ORS 250.035(2)(b)–(c) requires that a ballot title contain “simple and understandable statement[s]” describing, in twenty-five words or less, the result if the state measure is approved or rejected. Here, the phrase “whether or not it requires approval by majority of participating local voters” easily satisfies the standard of substantial compliance with the “simple and understandable” requirement. This phrase is not worded in such a way that it implies inappropriate disapproval of the current law.⁴ Instead, the phrase is a simple summary of the current law. Further, although the phrase “whether or not” is somewhat redundant, it will be easier for the average person to understand than the alternative—deleting the words “or not.”

Petitioner's objection to the pronoun “it” disregards contextual clarity. As a preliminary matter, it is important to remember that the abbreviated nature of a 25-word limit necessitates some linguistic creativity and departure from formal style guidelines. The statement's substantial compliance with the statute's “simple and understandable” standard is what matters. Here, the pronoun “it” does not refer to “local government” because then the wording “it requires approval” would not

⁴ If petitioner's argument contains an element of truth, it is only due to an accidental admission. The Secretary of State's unbiased, fact-based recitation of the current law in the certified ballot title's “result of no” statement will likely give the average voter sufficient grounds to conclude that the current law is inadequate—but this is only because IP 20's expansion of democratic rights is a positive improvement over current law. Amicus Curiae appreciates petitioner's inadvertent endorsement of the policy in IP 20.

make sense. Instead, “it” refers to “local law,” which is an accurate and understandable description. Regardless, even if there was some possibility of confusion, it would not rise to the level of defeating substantial compliance with the statutory requirements.

E) The Certified Ballot Title's Summary Statement Substantially Complies with ORS 250.035(2)(d) Because it is not Ambiguous or Misleading.

ORS 250.035(2)(d) requires a ballot title to contain a statement accurately summarizing the measure and its major effects in a concise and impartial manner. Here, the summary statement easily complies with this standard. Petitioner's blanket incorporation of his previously disproved arguments is unpersuasive for the same reasons discussed above.

IV. Conclusion

The ballot title prepared by the Attorney General substantially complies with the applicable requirements of ORS 250.035(2) for the reasons herein stated. Amicus Curiae respectfully asks the Court to certify the Attorney General's proposed ballot title as appropriate. However, if the Court decides that the caption is ambiguous, Amicus Curiae respectfully requests that the Court remedy this by deleting the caption's confusing first three words.

DATED this 17th day of September 2013.

Respectfully submitted,

/s/ Nathan R. Rietmann

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July 15, 2013

To All Interested Parties:

Secretary of State Kate Brown is responsible for the pre-election review of proposed initiative petitions for compliance with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. This review will be completed before approving the form of the cover and signature sheets for the purpose of circulating the proposed initiative petition to gather signatures.

The Secretary of State is seeking public input on whether proposed initiative petition (#20), satisfies the procedural constitutional requirements for circulation as a proposed initiative petition. Petition #20 was filed in our office on July 12, 2013, by Jason Williams, for the General Election of November 4, 2014.

A copy of the text of this proposed initiative petition is on the second page of the letter. If you are interested in providing comments on whether the proposed initiative petition meets the procedural constitutional requirements, please write to the secretary at the Elections Division. Your comments, if any, must be received by the Elections Division no later than August 5, 2013, in order for them to be considered in the review.

KATE BROWN
Secretary of State

BY:

Lydia Plukchi
Compliance Specialist

Be It Enacted By The People Of Oregon:

Section 1. (1) Any local law imposing or increasing a tax or fee shall be submitted to the voters of the local government and approved by at least a majority of the votes cast thereon, before taking effect. However, the requirements of this section shall not apply to:

- a. Any local law imposing or increasing a tax or fee, adopted by a local government, that is reasonably estimated by the local government to raise no more than \$750,000 during the three year period immediately following enactment.

Section 2. (1) For purposes of this 2014 Act:

- a. The term "local law" shall be liberally construed to include ordinances, resolutions, and any other law of a local government.
- b. "Local government" means any entity or body defined as a "local government" in ORS 174.116 or a "special government body" as defined in ORS 174.117.

Section 3. This 2014 Act does not apply to any local law adopted by a local government prior to the effective date of this 2014 Act.

Section 4. The provisions of this 2014 Act are intended to be severable and if any part of this 2014 Act is held unconstitutional or invalid, the remaining parts shall remain in full force and effect.

SECRETARY OF THE STATE
KATE BROWN

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CERTIFICATE OF FILING AND SERVICE

I certify that on September 17, 2013, I filed the Memorandum of Jason Williams as *Amicus Curiae* ("Memorandum") with the Supreme Court Administrator, Records Section, Supreme Court Building, 1163 State Street, Salem, OR 97301-2563 using the court's electronic filing system.

I further certify that on September 17, 2013, I served copies of this Memorandum on the following

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