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IN THE SUPREME COURT OF THE STATE OF OREGON

SUPREME COURT
COURT OF APPEALS

MARIE H. BOWERS, GERALD C. FREEMAN,
and ROBERT A. ZIELINSKI, JR.,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney General,
State of Oregon,

Respondent.

Supreme Court Case No.
062047

PETITION TO REVIEW
BALLOT TITLE CERTIFIED
BY THE ATTORNEY GENERAL

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Initiative Petition 43 (2014)
Ballot Title Certified February 12, 2014

FEB 14 2014
By CK #1740
R14P

Chief Petitioners:

Marie H. Bowers Bowers Drive Harrisburg, OR 97446	Gerald C. Freeman Oak Grove Road Rickreall, OR 97371	Robert A. Zielinski, Jr. River Road N. Gervais, OR 97026
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Attorney for Respondent

PETITION

Pursuant to ORS 250.085(2) and ORAP 11.30, petitioners ask the Court to review the ballot title for Initiative Petition 43 (2014) (Ex. A). The ballot title was certified by the Attorney General on February 12, 2014 (Ex. D). Petitioners ask the Court to either modify the ballot title of the Court's own accord, or to refer the ballot title back to the Attorney General for modification.

PETITIONERS' INTEREST

Petitioners Marie H. Bowers, Gerald C. Freeman and Robert A. Zielinski, Jr. are Oregon electors who are the Chief Petitioners for this Initiative Petition 43, and who seek review of this ballot title in their individual capacities as electors. As Chief Petitioners on this Initiative, Petitioners have a keen interest in ensuring that this initiative has an accurate and informative ballot title. Petitioners reviewed the draft ballot title (Ex. B), and submitted comments to the Attorney General. (Ex. C). Accordingly, Petitioners have standing under ORS 250.085(2) to seek review of the certified ballot title in this matter. The importance of well-drafted ballot titles was articulated by this court as early as 1906. In holding that ballot titles must strictly comply with the constitution, this court said:

"We think the assertion may safely be ventured that it is only the few persons who earnestly favor or zealously oppose the passage of a proposed law initiated by the petition who have attentively studied its contents and know how it will probably affect their private interests. The greater number of voters do not possess this information and usually derive their knowledge of the merits of a proposed law from an inspection of the title thereof, which is sometimes secured only from the very meager details afforded by a ballot which is examined in an election booth preparatory to exercising the right of suffrage."

State ex rel. Gibson v. Richardson, 48 Or 309, 319, 85P 225 (1906)

The one modern update to the above is that voters now examine a vote-by-mail ballot, perhaps with access to the separately-mailed Voters' Pamphlet. But many

voters will never read the text of the proposed measure which is printed in that Voters' Pamphlet.

ARGUMENTS AND AUTHORITIES

I. Introduction

Initiative Petition 43 presents a proposed amendment to the Oregon Constitution. The amendment would add a new Section to Article IX of the Constitution (references to "the amendment" are to the proposed new Section as presented in this initiative).

The amendment addresses the taxing power of the state and every other unit of government in Oregon. This amendment provides, at the outset: "1. No tax shall be imposed on any gift of property from one family member to another member of the same family."

The amendment focuses on the parties to the transaction (family members) and the nature of the transaction (gifting property). The type of any tax is not as significant as the parties and the act of giving.

The timing of the protected act of giving is broad: a gift from one member of a family to another member of the same family is protected from any tax "no matter whether the gift is made during life, upon death, or after death." Subsection 2 of the amendment.

The amendment defines "family member" or "member of the same family" in a broad, inclusive fashion. Relationships which are included are those "by blood, marriage, domestic partnership, adoption, or by other laws recognizing family relationships, between a giver and a recipient, within the third degree of relationship between the giver and the recipient." Subsection 3 of the amendment. While this language is fairly straightforward, it also represents noteworthy inclusiveness.

For purposes of simplicity, in this petition we use the phrase "family gift" to mean a gift from one member of a family to another member of the same family, as covered by the amendment.

The definitions of "Property" (Subsection 5 of the amendment) are straightforward and likely require no additional explanation.

It is significant that the purpose of the amendment is clearly stated: "These provisions are intended to create a 'safe harbor' to allow family members, at any time, to give to other family members without taxes being imposed." Subsection 6 of the amendment.

II. Context of the Initiative

Oregon first enacted a Gift Tax statute in 1933. Or. Laws 1933, Spec. Sess., Ch. 427. This Gift Tax remained in effect, with changes over the years, until it was repealed in 1997. Or. Laws 1997, Ch. 99. So, for 64 years, Oregon statutes had a Gift Tax in place. The power to reinstitute a gift tax remains in place.

Oregon has had an Inheritance Tax or an Estate Tax, in various forms, since the first statutory enactment in 1903. Or. Laws 1903, p.49 et seq. In 2011, the Legislative Assembly significantly revised the statutory scheme, eliminating references to "death taxes" and "inheritance" taxes, and clarifying that the current system is essentially an estate tax. Or. Laws 2011, Ch. 526. While exemption or deduction amounts have changed over the years (e.g. Or. Laws 2003, Ch. 806), the most recent iteration has a \$1 million deduction before the estate tax kicks in. ORS 118.010.

Units of government can presently enact income, estate, inheritance or gift taxes. Generally, they have not yet done so. But there are unique local tax efforts.

For example, Multnomah County enacted a three-year personal income tax in 2003. Measure 26-48, May 20, 2003. Multnomah County has a Business Income Tax. Multnomah County, Oregon, Municipal Code Vol. 1, Sec. 12.

The City of Portland now has an "Arts Education and Access" tax. Portland, Oregon, Municipal Code Sec. 5.73.

The city of Eugene recently attempted to adopt an income tax, which was put to the voters and defeated. Ballot Measure 20-182, City of Eugene Temporary Income Tax for Schools, which failed during the May 17, 2011 Eugene special election.

So, the prospect of local taxes being imposed on family gifts remains.

Then, consider the Oregon income tax. ORS Ch. 316. This presently could be amended to treat gifts or inheritances as income.

This amendment changes all of the above. A safe harbor is established for all family gifts, and this cannot be evaded by state or local governments absent a subsequent constitutional amendment.

All of the above provides a context for evaluating the certified ballot title.

III. The Caption

Pursuant to ORS 250.035(2)(a), the ballot title shall contain a caption "of not more than 15 words that reasonably identifies the subject matter of the state measure." The caption must identify the measure's subject matter "in terms that will not confuse or mislead potential petition signers and voters." *Greene v. Kulongoski*, 322 OR 169, 174-175, 903 P2d 366 (1995). The caption cannot "overstate or understate the scope of the legal changes that the proposed measure would enact." *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004).

This court has recognized that it is appropriate that a constitutional amendment which ultimately would have a "broader and more lasting effect of prohibiting the legislature in the future from enacting laws" imposing taxes have "a caption that focused on that broad constitutional change, without mentioning the specifics of the existing laws" that would be changed. *Rasmussen v. Kroger*, 351 Or. 195, 200, 262 P3d 777 (2011) (emphasis in original).

Understanding that the amendment in Initiative Petition 43 restricts the power of the legislature, and all other units of government, as to estate taxes, inheritance taxes, gift taxes, or income taxes, we now turn to the language of the Caption:

Amends Constitution: Exempts transfers within families from tax on inherited estates worth \$1 million, other taxes

There are two stunning errors in this Caption. First, there is the phrase "transfers within families." The word "transfers" is grossly over-inclusive, as it can include sales or trades. The actual transaction covered by this amendment is a gift, which cannot include sales or trades. Indeed, the words "gift," "giving," or "giver" appear eight times in the amendment itself. The only time the word "transfers" appears is in the definition of "gift" is subsection 5 of the amendment:

" 5. 'Gift' means to give property without compensation by voluntary act or by operation of law, including intestate succession and similar uncompensated transfers."

The definition emphasizes giving property without compensation. It then provides this occurs by voluntary act. It also provides that this can occur by operation of law. This is because there may be a number of transactions which may occur - such as in a pour-over trust - where there is no compensation and the act is substantively a gift. The idea is to provide protection for such acts of giving. One specific example is included - intestate succession - because the statutes on this subject generally are a substitute for formal family giving, where a family exists, a person

has died, but there is no will. We added the phrase "and similar uncompensated transfers" to cover such esoteric situations as may occur in trusts and estates.

The Attorney General has taken a molehill of a supplemental, explanatory clause and turned it into a mountain of a term in the Caption.

The second part of the caption describes the exemption as "from taxes on inherited estates worth \$1 million, other taxes." Upon reading this, the ordinary voter may ask, "Why doesn't this also exempt inherited estates worth more than \$1 million, or inherited estates worth less than \$1 million? Why is this limited to inherited estates? What about gifts between parents and children?" The thrown-in phrase, "other taxes" does not remedy this gross distortion.

The ballot title's caption is the cornerstone for the other portions of the ballot title and must identify the proposed measure's subject matter in terms that will not confuse or mislead potential petition signers and voters. Additionally, the caption must not understate or overstate the scope of the legal changes that the proposed measure would enact. *Towers v. Myers*, 341 Or 487, 145 P3d 147 (2006).

To determine the subject matter of a proposed initiative measure, this court first considers the text and context of the measure, then examines the changes, if any, that the proposed measure would enact in the context of existing law, and finally, examines the words of the caption to determine whether they reasonably identify the proposed measure's subject matter. The inquiry is made, in part, to ensure that the ballot title does not misstate, even by implication, the law that the proposal would enact. *Rogers v. Myers*, 344 Or 219, 179 P3d 627 (2008). The Attorney General's task in writing the caption is to highlight the actual major effect of the measure. *Brady v. Kroger*, 347 Or 331, 221 P3d (2009).

The caption here manages to violate all of the above concepts: it is over-inclusive in using "transfers within families;" it is under-inclusive in referencing "inherited estates worth \$1 million" and by failing to clearly describe the effect upon local taxing authority. Adding the clumsy phrase "other taxes" at the end is also woefully under-inclusive, as it can easily be read to imply that the amendment does not exempt gifts within families from all taxes.

Here is an alternative Caption, which meets the statutory requirements and is neither under-inclusive nor over-inclusive:

**Amends Constitution: Prohibits state, local taxes on gift from
family member to another member of same family**

IV. Result of "Yes" and "No" Vote Statements

This part of the certified ballot title reads:

Result of "Yes" Vote: "Yes" vote exempts transfers within families from existing tax on inherited estates worth \$1 million; prohibits taxing transfers between family members; reduces state revenue.

Result of "No" Vote: "No" vote retains law taxing estates worth \$1 million or more and making those to whom estate property passes liable for unpaid estate tax.

The statute requires a simple and understandable statement of not more than 25 words that describes the result if the state measure is approved, and 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) and (c). This court has recognized that the statements describing the "Yes" and "No" results should be read together. See Rasmussen v. Kroger, 351 Or358, 266 P3d 87 (2011).

The Result of "Yes" Vote language repeats the failures of the Caption and by so doing extends the distortion of the substance of this initiative. We ask that this court apply our reasoning, as to the Caption, to the Result of "Yes" Vote.

The Result of "No" Vote language compounds the errors noted above. It leads the reader to think that this amendment is only about a statutory tax on inherited estates with a value of \$1 million. It does not describe the prohibition on local taxes. It does not describe the prohibition on any form of tax – whether in the guise of a gift tax, an income tax, an inheritance tax, or an estate tax. It also improperly implies that the existing "law taxing estates worth \$1 million or more" will be ended by this measure. It will not.

We offer as an alternative the following “yes” and “no” statements. They are neither over-inclusive nor under-inclusive; they are understandable and they are not misleading:

Result of “Yes” Vote: “Yes” vote prohibits any kind of state, local tax on any gift from one family member to another member of the same family; reduces state revenue.

Result of a “No” Vote: “No” vote maintains existing power of legislature and local governments to impose taxes on gifts from one family member to another member of the same family.

V. The Summary

The Summary gets off on the wrong foot by discussing current statutory law as to one tax - the estate tax.

The Summary must contain a concise and impartial statement summarizing the state measure and its major effect. ORS 250.035 (2)(d); *Whitsett v. Kroger*, 348 Or. 243, 230 P3d 545 (2010).

The function of the summary of the ballot title for a proposed initiative measure to amend the state constitution is to provide voters with enough information to understand what will happen if the proposed measure is approved – that is, to advise voters of the breadth of a measure's impact. *See Whitsett v. Kroger, supra* at 252.

One accurate sentence in the Summary states: “Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of ‘property’ (defined) from one ‘family member’ (defined) to another member of the same family.” This provides a partial basis for understanding the real meaning of the amendment. But the first portion of the Summary inappropriately focuses on one existing law – the estate tax – without covering the real range of power which is circumscribed by this amendment. In addition, the Summary needs to describe the definition of “family member.” It need not use the “includes but is not limited to” listing of family members, due to the limited number of words available. But it should include the basic definition, including the reference to “third degree of relationship,” as this is a clear line of demarcation. It is also important to clearly describe the range of existing tax powers, or else the Summary is under-inclusive.

Accordingly, we recommend the following alternative, which overcomes these problems:

Summary: Currently, state and local governments have general power to impose taxes such as income, gift, estate, and inheritance taxes. Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of "property" (defined) from one "family member" to another member of the same family, whether gift is made during life, upon death, or after death. Measure defines "family member" to mean "a relationship by blood, marriage, domestic partnership, adoption, or by other laws recognizing family relationships" within the third degree of relationship. Measure defines "gift" as giving property without compensation, including by interstate succession. State presently has an estate tax, with \$1 million deduction. Effect of measure includes restriction on imposition of existing estate tax. Measure reduces state revenues.

The above Summary language provides a more accurate description of the effects of the measure, especially in regard to the expansive definition of "family." Nowhere else does our current Oregon constitution include domestic partnerships in the definition of "family."

CONCLUSION

The review by this court offers the Chief Petitioners their last chance for a ballot title which properly and fairly presents this measure to the voters, regardless of whether one agrees or disagrees with the measure. The state should simply advise the voters, as best one can, in Plain English, as to the meaning of a measure. Here, we respectfully ask this court to look at the operative language of this constitutional amendment, drawn from the actual language of subsections (1) of the amendment:

"No tax shall be imposed on any gift of property from one family member to another member of the same family."

The Attorney General actually "got it" in one sentence in the middle of her Summary: "Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of "property" (defined) from one "family member" (defined) to another member of the same family."

These 32 words are encapsulated in the 15 words we have presented in our proposed caption, and the 50 words we have presented in our proposed Result of "Yes" Vote and Result of "No" Vote language.

While we do not believe the Summary meets statutory standards, it does not contain the egregious errors of the earlier parts of the ballot title. The Caption, Result of "Yes" Vote and Result of "No" Vote portions of the certified ballot title contains such distortions that they not only fail to meet statutory standards, but they are a gross miscarriage of justice - no just as to the Chief Petitioners, but as to the voters.

This court should modify the ballot title of its own accord or refer the ballot title back to the Attorney General for modification.

DATED this 14th day of February, 2014.

Respectfully Submitted,

KEVIN L. MANNIX, P.C.

By: Kevin L. Mannix
OSB# 742021
Attorney for Petitioners

NO TAXES ON FAMILY GIVING

The People of the State of Oregon enact the following new Section to be added to Article IX of the Oregon Constitution:

1. No tax shall be imposed on any gift of property from one family member to another member of the same family.
2. This means that no unit of government in Oregon, from the state government down to the smallest district, can in any fashion place any tax on any gift from one family member to another member of the same family, no matter whether the gift is made during life, upon death, or after death.
3. "Family member" or "member of the same family" means a relationship by blood, marriage, domestic partnership, adoption, or by other laws recognizing family relationships, between a giver and a recipient, within the third degree of relationship between the giver and the recipient. This includes, by example, but is not limited to, relationships within the range of spouses, domestic partners, great grandparents, grandparents, parents, children, grandchildren, great grandchildren, great uncles, great aunts, uncles, aunts, nephews, nieces, great nephews, great nieces, siblings, and cousins. A trust for the benefit of a family member is included in the same degree of relationship as that family member.
4. "Property" includes, but is not limited to, any legal or equitable interest in anything of value, including real property and tangible and intangible personal property.
5. "Gift" means to give property without compensation by voluntary act or by operation of law, including intestate succession and similar uncompensated transfers.
6. These provisions are intended to create a "safe harbor" to allow family members, at any time, to give to other family members without taxes being imposed. These provisions shall be generously construed to effectuate this intent.
7. These provisions do not cover or restrict ordinary property taxes that are imposed based upon ownership of an interest in property.

SECRETARY OF THE STATE
KATE BROWN

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EXHIBIT A

DRAFT BALLOT TITLE

Amends Constitution: Exempts gifts within families from tax on inherited estates worth \$1 million, other taxes

Result of "Yes" Vote: "Yes" vote exempts gifts within families from existing tax on inherited estates worth \$1 million; prohibits taxing gifts between family members; reduces state revenue.

Result of "No" Vote: "No" vote retains law taxing estates worth \$1 million or more and making those to whom estate property passes liable for unpaid estate tax.

Summary: Current statutory law imposes one-time tax on deceased person's estate when the estate's value—as determined by federal law—is \$1 million or more; if the estate does not pay the tax, those to whom the estate property passes are liable; current law does not otherwise tax property received as gifts or inheritance. Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of "property" (defined) from one "family member" (defined) to another member of the same family. Defines "gift" as giving property without compensation, including by intestate succession. Measure does not prohibit or restrict ordinary property taxes imposed based on ownership of an interest in property. Measure reduces state revenues, provides no replacement. Other provisions.

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EXHIBIT B



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January 28, 2014

Office of the Secretary of State
Elections Division
255 Capitol St. NE
Suite 501
Salem OR 97310

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KATE BROWN
SECRETARY OF THE STATE

RE: Draft Ballot Title, Initiative Petition 43

Ladies and Gentlemen:

This letter presents comments in regard to the draft ballot title prepared by the Attorney General for Initiative Petition 43 (No Taxes on Family Giving). I present these comments on behalf of myself, as an Oregon elector, and as an attorney on behalf of Marie H. Bowers, Gerald C. Freeman, and Robert A. Zielinski, Jr., all Oregon electors and the three Chief Petitioners on this citizen initiative.

Overview of the Initiative

Initiative Petition 43 presents a proposed amendment to the Oregon Constitution. The amendment would add a new Section to Article IX of the Constitution (references to "the amendment" are to the proposed new Section as presented in this initiative).

The amendment addresses the taxing power of the state and every other unit of government in Oregon. This amendment provides, at the outset: "1. No tax shall be imposed on any gift of property from one family member to another member of the same family."

The amendment focuses on the parties to the transaction (family members) and the nature of the transaction (gifting property). The type of any tax is not as significant as the parties and the act of giving.

The timing of the protected act of giving is broad: a gift from one member of a family to another member of the same family is protected from any tax "no matter whether the gift is made during life, upon death, or after death." Subsection 2 of the amendment.

The amendment defines "family member" or "member of the same family" in a broad, inclusive fashion. Relationships which are included are those "by blood, marriage, domestic partnership, adoption, or by other laws recognizing family relationships, between a giver and a recipient, within the third degree of relationship between the giver and the recipient." Subsection 3 of the

amendment. While this language is fairly straightforward, it also represents noteworthy inclusiveness.

For purposes of simplicity, in this letter I shall use the phrase "family gift" to mean a gift from one member of a family to another member of the same family, as covered by the amendment.

The definitions of "Property" (Subsection 5 of the amendment) are straightforward and likely require no additional explanation.

It is significant that the purpose of the amendment is clearly stated: "These provisions are intended to create a 'safe harbor' to allow family members, at any time, to give to other family members without taxes being imposed." Subsection 6 of the amendment.

Context of the Initiative

Oregon first enacted a Gift Tax statute in 1933. Or. Laws 1933, Spec. Sess., Ch. 427. This Gift Tax remained in effect, with changes over the years, until it was repealed in 1997. Or. Laws 1997, Ch. 99. So, for 64 years, Oregon statutes had a Gift Tax in place. The power to reinstitute a gift tax remains in place.

Oregon has had an Inheritance Tax or an Estate Tax, in various forms, since the first statutory enactment in 1903. Or. Laws 1903, p.49 et seq. In 2011, the Legislative Assembly significantly revised the statutory scheme, eliminating references to "death taxes" and "inheritance" taxes, and clarifying that the current system is essentially an estate tax. Or. Laws 2011, Ch. 526. While exemption or deduction amounts have changed over the years (e.g. Or. Laws 2003, Ch. 806), the most recent iteration has a \$1 million deduction before the estate tax kicks in. ORS 118.010.

Units of government can presently enact income, estate, inheritance or gift taxes. Generally, they have not yet done so. But there are unique local tax efforts.

For example, Multnomah County enacted a three-year personal income tax in 2003. Measure 26-48, May 20, 2003. Multnomah County has a Business Income Tax. Multnomah County, Oregon, Municipal Code Vol. 1, Sec. 12.

The City of Portland now has an "Arts Education and Access" tax. Portland, Oregon, Municipal Code Sec. 5.73.

The city of Eugene recently attempted to adopt an income tax, which was put to the voters and defeated. Ballot Measure 20-182, City of Eugene Temporary Income Tax for Schools, which failed during the May 17, 2011 Eugene special election.

So, the prospect of local taxes being imposed on family gifts remains.

Then, consider the Oregon income tax. ORS Ch. 316. This presently could be amended to treat gifts or inheritances as income.

This amendment changes all of the above. A safe harbor is established for all family gifts, and this cannot be evaded by state or local governments absent a subsequent constitutional amendment.

All of the above provides a context for evaluating the draft ballot title.

The Caption

Pursuant to ORS 250.035(2)(a), the ballot title shall contain a caption “of not more than 15 words that reasonably identifies the subject matter of the state measure.” The caption must identify the measure’s subject matter “in terms that will not confuse or mislead potential petition signers and voters.” *Greene v. Kulongoski*, 322 OR 169, 174-175, 903 P2d 366 (1995). The caption cannot “overstate or understate the scope of the legal changes that the proposed measure would enact. *Kain/Waller v. Myers*, 337 Or 36, 40, 93 P3d 62 (2004).

The Supreme Court has recognized that it is appropriate that a constitutional amendment which ultimately would have a “broader and more lasting effect of prohibiting the legislature in the future from enacting laws” imposing taxes have “a caption that focused on that broad constitutional change, without mentioning the specifics of the existing laws” that would be changed. *Rasmussen v. Kroger*, 351 Or. 195, 200, 262 P3d 777 (2011) (emphasis in original).

Understanding that the amendment in Initiative Petition 43 restricts the power of the legislature, and all other units of government, as to estate taxes, inheritance taxes, gift taxes, or income taxes, we now turn to the language of the draft Caption:

Amends Constitution: Exempts gifts within families from tax on inherited estates worth \$1 million, other taxes

This caption apparently is tied to the current \$1 million deduction in the current statute establishing the estate tax. The phrase “from tax on inherited estates worth \$1 million” is woefully under-inclusive and misleading. The amendment exempts gift within families from all taxes, whether currently in place or devised in the future. Adding the clumsy phrase “other taxes” at the end is also woefully under-inclusive, as it can easily be read to imply that the amendment does not exempt gifts within families from all taxes.

Here is an alternative Caption, which meets the statutory requirements and is neither under-inclusive nor over-inclusive:

Amends Constitution: Prohibits state, local taxes on gift from family member to another member of same family

The above Caption says it all, in Plain English.

We now turn to the draft “Yes” and “No” Result statements, recognizing two points.

First, the statute requires a simple and understandable statement of not more than 25 words that describes the result if the state measure is approved, and 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) and (c).

Second, the Supreme Court has recognized that the statements describing the “Yes” and “No” results should be read together. See *Rasmussen v. Kroger*, 351 Or. 358, 266 P3d 87 (2011).

So, let us look at the draft Results statements:

Result of “Yes” Vote: “Yes” vote exempts gifts within families from existing tax on inherited estates worth \$1 million; prohibits taxing gifts between family members; reduces state revenue.

Result of “No” Vote: “No” vote retains law taxing estates worth \$1 million or more and making those to whom estate property passes liable for unpaid estate tax.

Under the “Yes” provision, there is one clean and correct statement: “prohibits taxing gifts between family members.” Unfortunately, the rest of the statement muddies this clear language. The reference to exemption of “gifts within families from existing tax on inherited estates worth \$1 million” is confusing. It tells the reader that a specific exemption occurs, suggesting that other exemptions do not occur.

First, the amendment is not an exemption. It is a prohibition: “No tax shall be imposed on any gift of property from one family member to another member of the same family.” Subsection 1 of the amendment.

Second, even if this were interpreted to be an exemption, it is an “exemption” not only of an “existing” tax but of any future tax, state or local.

Third, this is not just an exemption as to “inherited estates worth \$1 million.” It is an exemption as to inherited estates of any value. We recognize that the Attorney General has included the reference to the “existing” tax, but no regular reader other than an attorney, judge, or English professor will understand that the word “existing” limits the entire following phrase. In any event, the entire reference to the “existing” tax is under-inclusive, as explained above.

The “No” statement compounds the errors noted above. It leads the reader to think that this amendment is only about a statutory tax on inherited estates with a value of \$1 million or more.

It does not describe the prohibition on local taxes.

It does not describe the prohibition on any form of tax – whether in the guise of a gift tax, a transfer tax, an income tax, an inheritance tax, or an estate tax.

We offer as an alternative the following “yes” and “no” statements. They are neither over-inclusive nor under-inclusive; they are understandable and they are not misleading:

Result of “Yes” Vote: “Yes” vote prohibits any kind of state, local tax on any gift from one family member to another member of the same family; reduces state revenue.

Result of “No” Vote: “No” vote maintains existing power of legislature and local governments to impose taxes on gifts from one family member to another member of same family.

The Summary

The draft Summary gets off on the wrong foot by discussing current statutory law as to one tax – the estate tax.

The Summary must contain a concise and impartial statement summarizing the state measure and its major effect. ORS 250.035 (2) (d); *Whitsett v. Kroger*, 348 Or. 243, 230 P3d 545 (2010).

The function of the summary of the ballot title for a proposed initiative measure to amend the state constitution is to provide voters with enough information to understand what will happen if the proposed measure is approved – that is, to advise voters of the breadth of a measure’s impact. See *Whitsett v. Kroger*, *supra* at 252.

One accurate sentence in the draft Summary states: “Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of ‘property’ (defined) from one ‘family member’ (defined) to another member of the same family.” This provides a partial basis for understanding the real meaning of the amendment. But the first portion of the draft Summary inappropriately focuses on one existing law – the estate tax – without covering the real range of power which is circumscribed by this amendment. In addition, the Summary needs to describe the definition of “family member.” It need not use the “includes but is not limited to” listing of family members, due to the limited number of words available. But it should include the basic definition, including the reference to “third degree of relationship,” as this is a clear line of demarcation. It is also important to clearly describe the range of existing tax powers, or else the Summary is under-inclusive.

Accordingly, we recommend the following alternative, which overcomes the problems with the draft:

Summary: Currently, state and local governments have general power to impose taxes such as income, gift, estate, and inheritance taxes. Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of “property” (defined) from

one "family member" to another member of the same family, whether gift is made during life, upon death, or after death. Measure defines "family member" to mean "a relationship by blood, marriage, domestic partnership, adoption, or by other laws recognizing family relationships" within the third degree of relationship. Measure defines "gift" as giving property without compensation, including by interstate succession. State presently has an estate tax, with \$1 million deduction. Effect of measure includes restriction on imposition of existing estate tax. Measure reduces state revenues.

It is helpful to define "gift" to some extent. But, compared to the draft we have left out the discussion of ordinary property taxes, as this is a technical distinction not necessary to an understanding of the meaning of the amendment. We also do not think it is necessary to discuss no replacement of the reduced state revenues, as there is no suggestion that the measure enacts any additional taxes.

Thank you for your consideration.

Sincerely,

Kevin L. Mannix
Attorney at Law

KLM/alk

Asst. Atty. Gen.

BALLOT TITLE

Amends Constitution: Exempts transfers within families from tax on inherited estates worth \$1 million, other taxes

Result of “Yes” Vote: “Yes” vote exempts transfers within families from existing tax on inherited estates worth \$1 million; prohibits taxing transfers between family members; reduces state revenue.

Result of “No” Vote: “No” vote retains law taxing estates worth \$1 million or more and making those to whom estate property passes liable for unpaid estate tax.

Summary: Current statutory law imposes one-time tax on deceased person’s estate when estate’s value—as determined by federal law—is \$1 million or more; if estate does not pay the tax, those to whom estate property passes are liable; current law does not otherwise tax property received as gifts or inheritance. Measure amends state constitution to provide that no state or local tax shall be imposed on gifts of “property” (defined) from one “family member” (defined) to another member of the same family. Defines “gift” as giving property without compensation, including by operation of law, intestate succession. Measure does not prohibit or restrict ordinary property taxes imposed based on ownership of an interest in property. Measure reduces state revenues, provides no replacement. Other provisions.

CERTIFICATE OF FILING

I certify that I directed the original of the PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition 43) to be hand-delivered to the Appellate Court Administrator, Appellate Court Records Section on February 14, 2014 at:

State Court Administrator
Records Section
Supreme Court Building
1163 State Street
Salem, OR 97310

CERTIFICATE OF SERVICE


I hereby certify that I served the foregoing PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition 43) upon the following individuals on February 14, 2014, by delivering a true, full, and exact copy thereof, by hand delivery to:

Attorney General Ellen F. Rosenblum, OSB #753239
Department of Justice
1162 Court Street NE
Salem, OR 97310-4096
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Kate Brown, Secretary of State
Elections Division
255 Capitol Street NE, Suite 501
Salem, OR 97310-7414
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DATED this 14th day of February, 2014.

KEVIN L. MANNIX, P.C.


By: Kevin L. Mannix, OSB #742021
Attorney for Petitioners