

1  
**RECEIVED**  
STATE COURT ADMINISTRATOR  
VIA HAND DELIVERY  
MAR 25 2014  
**SUPREME COURT**  
**COURT OF APPEALS**

IN THE SUPREME COURT OF THE STATE OF OREGON

MARIE H. BOWERS, GERALD C. )  
FREEMAN and ROBERT A. )  
ZIELINSKI, JR., )  
 )  
Petitioners, )  
 )  
v. )  
 )  
ELLEN ROSENBLUM, Attorney General )  
State of Oregon, )  
 )  
Respondent. )  
 )  
\_\_\_\_\_)  
HANNA VAANDERING and )  
BETHANNE DARBY, )  
 )  
Petitioners, )  
 )  
v. )  
 )  
ELLEN ROSENBLUM, Attorney General )  
State of Oregon, )  
 )  
Respondent. )  
\_\_\_\_\_)

Supreme Court No. S062047 (Court of Appeals)  
062047

Supreme Court No. S062070

SUPPLEMENTAL REPLY MEMORANDUM  
OF PETITIONERS BOWERS, FREEMAN and  
ZIELINSKI RE: INITIATIVE PETITION NO. 43

Petitioners Bowers, Freeman, and Zielinski, who are the Chief Petitioners on this citizen initiative, supplement their Reply Memorandum with the following points in response to arguments presented by Petitioners Vaandering and Darby (Second-case Petitioners) in their Reply Memorandum.

There have been a series of proposed initiatives in regard to taxes which affect gifts between family members, or which affect estate taxes in different ways. There also has been an actual ballot measure on this subject, which is Ballot Measure 84, placed on the ballot in November 2012. This did not pass.

The Chief Petitioners recognize that this Court is not the place to make voter arguments. But, this Court does provide an opportunity – the only one available – to assure that the ballot title for a given initiative presents, as fairly and as completely as possible, a description as to what the initiative is all about.

The Second-case Petitioners, in effect, argue that each in this series of initiatives is essentially about the same thing. This is not correct. Each initiative has reflected a different public policy approach to the issue of taxation as to gift taxes, estate taxes, and inheritance taxes. Each initiative has taken a unique approach. The Second-case Petitioners believe that the common denominator is the statutory provision as to the \$1 million deduction on the Oregon estate tax. Simply put, this is wrong. The statutory initiatives have addressed the statutory system. The constitutional initiatives have much broader impact. In the present case, we have a constitutional initiative. The "existing law" to be addressed is not simply existing statutory law but is also existing constitutional law. The amendment presented in Initiative Petition 43 eliminates the power of the legislature, as well as local governments, to impose any tax on any gift from one family member to a member of the same family, whether during life or upon death. This should be the focal point of any ballot title, and voters should be able to read the ballot title and come away with that understanding.

The legislature has the power at any time to change whatever deduction amount it wishes to create as to the current statutory estate tax. Indeed, there are other statutory provisions with exemptions as to the estate tax. The point is that there is a complex statutory provision which will actually remain in place. There is also the power to impose gift and inheritance taxes which would remain in place. What is really

affected by Initiative Petition 43 relates to the authority to tax as to one type of transaction (gifts) and one group of people (family members). The focus is not on a particular statutory tax scheme or its details.

Yes, there has been a series of initiatives dealing with a variety of tax issues. Each initiative should be reviewed as to its own substance and as to its impact on Oregon governance. Initiative Petition 43 presents a somewhat novel and dramatic new public policy restriction for the State of Oregon: henceforth, there shall be no state or local tax on any gifts between members of the same family, whether made during life or upon death. The ballot title should communicate this to the voters. The political arguments can be left to political campaign ads.

DATED this 25<sup>th</sup> day of March 2014.

Respectfully submitted,

KEVIN L. MANNIX, P.C.

---

By: Kevin L. Mannix

OSB# 742021

Attorney for Petitioners Bowers, Freeman and Zielinski

MAR 25 2014

**CERTIFICATE OF FILING**

I certify that I directed the originals of the MOTION FOR LEAVE TO FILE SUPPLEMENTAL REPLY MEMORANDUM, and SUPPLEMENTAL REPLY MEMORANDUM OF PETITIONERS BOWERS, FREEMAN, AND ZIELINSKI (Initiative Petition #43) to be hand-delivered to the Appellate Court Administrator, Appellate Court Records Section on March 25, 2014, at:

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

**CERTIFICATE OF SERVICE**

I hereby certify that I provided service of the foregoing MOTION FOR LEAVE TO FILE SUPPLEMENTAL REPLY MEMORANDUM, and SUPPLEMENTAL REPLY MEMORANDUM OF PETITIONERS BOWERS, FREEMAN, AND ZIELINSKI (Initiative Petition #43) upon the following on March 25, 2014, by mailing a true, full, and exact copy thereof to each, with postage prepaid, in envelopes addressed to:

Attorney General Ellen F. Rosenblum, OSB# 753239  
Assistant Attorney General Matthew J. Lysne, OSB# 025422  
Department of Justice  
1162 Court St. NE  
Salem, OR 97310-4096  
Telephone: (503) 378-4402  
Facsimile: (503) 378-6306  
Email: [matthew.j.lysne@doj.state.or.us](mailto:matthew.j.lysne@doj.state.or.us)  
Attorney for Respondent

Aruna A. Masih  
Bennett, Hartman, Morris & Kaplan, LLP  
Suite 500  
210 SW Morrison Street  
Portland, OR 97204-3149  
Telephone: (503) 227-4600  
Email: [masiha@bennetthartman.com](mailto:masiha@bennetthartman.com)  
Attorney for Petitioners Vaandeving and Darby

DATED this 25<sup>th</sup> day of March 2014.

KEVIN L. MANNIX, P.C.

---

By: Kevin L. Mannix, OSB# 742021  
Attorney for Petitioners Bowers, Freeman and Zielinski  
2009 State St. - Salem, OR 97301



2009 State Street  
Salem, Oregon 97301-4349  
Phone (503) 364-  
Fax (503) 362-0513

MAR 25 2014

March 25, 2014

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

**RE: Supreme Court No. S062047 (Control) and  
Supreme Court No. S062070**

Dear State Court Administrator:

I present for filing the following documents:

- Motion for Leave to File a Supplemental Reply Memorandum of Petitioners Bowers, Freeman, and Zielinski Re: Initiative Petition No. 43
- Supplemental Reply Memorandum of Petitioners Bowers, Freeman, and Zielinski Re: Initiative Petition No. 43
- Certificate of Filing and Service as to the above.

Respectfully submitted,

**KEVIN L. MANNIX, P.C.**

By: Kevin L. Mannix  
OSB# 742021  
Attorney for Petitioners Bowers, Freeman and Zielinski

Cc Attorney General Ellen F. Rosenblum, OSB# 753239  
Assistant Attorney General Matthew J. Lysne, OSB# 025422  
Aruna A. Masih, Bennett, Hartman, Morris & Kaplan, LLP