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SUPREME COURT
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IN THE SUPREME COURT OF THE STATE OF OREGON

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

Petitioners,

v.

ELLEN ROSENBLUM, Attorney General,
State of Oregon,

Respondent.

NOV 25 2014
Supreme Court Case No. By *CK*

PETITION TO REVIEW
BALLOT TITLE CERTIFIED BY THE
ATTORNEY GENERAL

Initiative Petition 7 (2016)

1828

Initiative Petition 7 (2016)
Ballot Title Certified November 10, 2014

Chief Petitioners:

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Attorney for Respondent

PETITION

Petitioners herein are the Chief Petitioners on a proposed citizen initiative which amends the Oregon Constitution. Petitioners filed the text of the proposed amendment (Ex. A) with the Secretary of State on May 5, 2014. Thereafter, Petitioners filed the required 1,000 verified voter signatures to proceed with this citizen initiative, which is now Initiative Petition 7 (2016).

Pursuant to ORS 250.085(2) and ORAP 11.30, petitioners ask the Court to review the ballot title for this Initiative Petition 7 (2016) (Ex. B) which was certified by the Attorney General on November 10, 2014. 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 Bowers, Gerald Freeman, and Robert Zielinski, Jr., are Oregon electors who are the Chief Petitioners for this Initiative Petition #7 (2016), 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, and submitted comment to the Attorney General. Accordingly, Petitioners have standing under ORS 250.085(2) to seek review of the certified ballot title in this matter.

ARGUMENTS AND AUTHORITIES

I. Introduction

A citizen initiative which amends the Oregon Constitution is, quite properly, treated differently from a citizen initiative which is statutory in nature. This begins with the number of voter signatures required to get an initiative on the ballot: An "initiative law" requires qualified voter signatures equal to six percent of the total number of votes cast for all candidates for Governor in the preceding general election, whereas an "initiative amendment to the Constitution" requires voter signatures equal to eight percent of the votes so cast. Or. Const. Art IV, Sec. 1(2)(b) and (c).

Procedurally, as to ballot titles for a state measure, the caption for a constitutional amendment requires the phrase “Amends Constitution” at the beginning and allows for 17 words rather than 15 words. ORS 250.035(2)(a).

Substantively, this Court has recognized the deeper and wider effect of an initiative which is a constitutional amendment (or revision), and has adopted a different approach to reviewing such initiatives. See Armatta v. Kitzhaber, 327 Or 250, 959 P2d 49 (1998), and its progeny.

This Court has recognized that the ballot title for a constitutional amendment can incorporate a consideration that the constitutional amendment affects not only a specific statutory tax, but also proscribes a wider range of taxes. See Rasmussen v. Kroger, 350 Or 533, 258 P3d 1224 (2011). This Court recognized this distinction as to another citizen initiative in Rasmussen v. Kroger, 351 Or 358, 266 P3d 87 (2011).

The heart of the controversy is that Petitioners (Chief Petitioners on this initiative) are truly pressing for a constitutional amendment which protects a gift within a family from any type of tax.

While one specific statutory tax is presently affected, this initiative forbids any type of tax on any gift from one family member to another member of the same family. The prohibition is permanent, definite, and significantly broader than the certified ballot title's description in the caption and in the Result of “Yes” Vote and Result of “No” Vote provisions.

II. Caption

All of the ballot title requirements for a state measure are contained in ORS 250.035(2). Subsection (a) describes the caption requirements:

“(a) A caption of not more than 15 words that reasonably identifies the subject matter of the state measure. The caption of an initiative or referendum amendment to the Constitution shall begin with the phrase, ‘Amends Constitution,’ which shall not be counted for purposes of the 15-word caption limit.”

In evaluating the ballot title for this citizen initiative, Petitioners respectfully ask this Court to remember that regular voters do not evaluate language in the same fashion as attorneys and judges and may not understand the tax system and all its implications.

We ask the Court to keep this in mind when applying its own precedents: the caption must identify the measure's subject matter in terms that will not "confuse or mislead potential petition signers and voters." *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 998 (2001). The caption cannot overstate or understate the scope of the legal changes the measure would enact. *Kain/Waller v. Myers*, 337 Or 36, 93 P3d 62 (2004).

Here is the certified caption:

Amends Constitution: Exempts "gifts" (undefined) within families from tax on estates worth \$1 million, other taxes

Please set aside your deeper understanding of the law and read the Plain English of this caption as it will be read by the regular voter: The measure exempts gifts within families from a "tax on estates worth \$1 million." Is there a tax on estates worth less than \$1 million? Then there is the dangling phrase "other taxes." What about the "other taxes?" Are there "other taxes" on "estates worth \$1 million?" The caption is an exercise in confusion.

Here is the reality: This initiative relates to all taxes, state or local, of whatever type imaginable, and protects any gift, from one member of a family to another member of the same family, from such taxes. It does not just relate to "estates worth \$1 million." It relates to persons. The personhood of the giver and receiver are critical. The nature of the transaction – a gift – is critical. The amount of property involved is not part of this amendment. This measure prohibits taxes on any amount of property given within a family.

The Attorney General's focus on "tax on estates worth \$1 million" is not only confusing; it is misleading. The reference to "other taxes" in a dangling phrase is also confusing and misleading. The measure prohibits all taxes on gifts within a family, regardless of the size of the gift – not just "other" taxes.

The focus on "estates worth \$1 million" comes from the existing \$1 million statutory deduction allowed for a single person under the Oregon estate tax. This focus leads to a fallacy: allowing the specific to define the general.

In fact, the reference to \$1 million as to estates is wrong. The Oregon estate tax statutes contain variable deductions, such as \$2 million for a couple, \$7.5 million for

natural resources property, and a deduction for family-owned businesses. See ORS 118.010, 118.013, 118.120, and 118.140.

This focus on a specific dollar amount is also ephemeral, as this deduction amount is subject to change. It has changed four times in the last ten years, with deduction figures of \$700,000; \$850,000; \$950,000; and \$1 million. ORS 118.160. And, never mind the marital estate, which doubles the deduction.

Finally, the specific dollar amount in the caption can be plain wrong, if the Legislative Assembly changes the deduction level during the 2015 or 2016 sessions. This caption must remain reasonably accurate until November 2016; this Court should not allow the caption for a constitutional amendment, where the amendment has broad application, to be defined by a narrow statutory provision.

One cannot perceive the breadth and depth of this measure from the caption. We proposed a truthful, complete caption to the Attorney General in our comment letter, and it should be adopted here because it is neither over-inclusive nor under-inclusive, and it will not confuse or mislead voters:

Amends Constitution: Prohibits tax on gift from family member to another member of the same family.

The Plain English of our proposed caption says it all.

However, if this Court believes that the caption for a constitutional amendment should identify an existing statute which is affected, the caption should at least be changed so it is not confusing or misleading. Such a caption could read:

Amends Constitution: Exempts gifts between "family members" (defined) from state or local taxes, including existing estate tax.

We have changed the "gifts (undefined)" language to delete the "undefined" word there. The measure relies on the plain meaning of the word "gift," a word easily understood by voters. The one place where "(defined)" may be appropriate is in reference to the "family member" portion, since this measure deliberately adopts a broader definition of "family member" and is meant to be inclusive as to such relationships.

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. *Towers v. Myers*, 341 Or 487, 145 P3d 147 (2006). The certified ballot title here has a broken cornerstone which weakens the entire ballot title. It must be repaired.

III. The Result of "Yes" Vote and Result of "No" Vote

The relevant requirements for these provisions are contained in ORS 250.035(2), and read:

"(b) A simple and understandable statement of not more than 25 words that describes the result if the state measure is approved. The statement required by this paragraph shall include either the phrase, "I vote" or "vote yes," or a substantially similar phrase, which may be placed at any point within the statement."

"(c) A simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected."

"...Any thing or action described both in the statement required by paragraph (b) of this subsection and in the statement required by this paragraph shall be described using the same terms in both statements, to the extent practical. Any different terms must be terms that an average elector would understand to refer to the same thing or action. The statement shall include either the phrase, "I vote" or "vote no," or a substantially similar phrase, which may be placed at any point within the statement; ..."

The certified ballot title, relating to the Result provisions, reads as follows:

Result of "Yes" Vote: "Yes" vote exempts property "gifts" within families from state/local taxes, including existing tax on estates worth \$1 million or more; reduces state revenue.

Result of "No" Vote: "No" vote retains existing tax on property "gifts" within families for estates worth \$1 million or more, legislature's power to tax "gifts" within families.

We reiterate our arguments as to the caption regarding the misleading and confusing focus on a single existing statute; they apply here.

As to the reference to "estates worth \$1 million or more:" adding "or more" to the "\$1 million" does not alleviate the problem of allowing a specific statute to define a

constitutional amendment. It also is misleading, as a voter may ask: is there an existing tax on estates worth less than \$1 million? How is this affected?

The real problem is that the entire ballot title wants to avoid the dramatic and novel effect of this constitutional amendment which prohibits any tax, state or local, on any gift from one family member to another member of the same family. This "safe harbor" for families is not given appropriate recognition.

We propose alternative language which meets the statutory requirements and properly describes this measure:

Result of "Yes" Vote: "Yes" vote establishes constitutional prohibition on any state or local tax on gift of property from one family member to another member of same family.

Result of "No" Vote: "No" vote retains existing power of state or local government to impose tax on gift from one family member to another member of same family.

This is clear, simple, and true. This measure is about the power to tax, not just about an existing statutory tax.

IV. The Summary

Pursuant to ORS 250.035(2)(d), a state measure ballot title shall include:

"(d) A concise and impartial statement of not more than 125 words summarizing the state measure and its major effect."

Our concern as to the summary is straightforward: the summary should first describe the state measure, then describe its major effect. That is the order in which the statute describes the requirements, and it complies with common sense: first describe what the voter is voting upon, and then describe its major effect. The certified ballot title's summary has this backwards.

We may have what we think is a better summary than the Attorney General's summary. But, that is not the standard of review: the standard of review is whether the certified ballot title substantially complies with statutory requirements. As to the summary, we will not pursue an argument for any change ordered by this Court. We instead ask this Court to address the remainder of the certified ballot title, which does fail to substantially comply with the statutory requirements.

CONCLUSION

For the reasons stated above, the certified Ballot Title fails to substantially comply with the statute. The Court should modify the ballot title of its own accord or refer the ballot title back to the Attorney General for modification.

DATED this 25th day of November 2014.

Respectfully Submitted,
KEVIN L. MANNIX, P.C.

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

PROTECT FAMILY GIVING FROM TAXES

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, no matter whether the gift is made during life, upon death, or after death.
2. "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.
3. This Section protects family gifts from gift taxes, income taxes, inheritance taxes, estate taxes, and any other form of state or local taxation.

Certified by Attorney General ~~on November 10, 2014.~~

Assistant Attorney General

BALLOT TITLE

Amends Constitution: Exempts “gifts” (undefined) within families from tax on estates worth \$1 million, other taxes

Result of “Yes” Vote: “Yes” vote exempts property “gifts” within families from state/local taxes, including existing tax on estates worth \$1 million or more; reduces state revenue.

Result of “No” Vote: “No” vote retains existing tax on property “gifts” within families for estates worth \$1 million or more, legislature’s power to tax “gifts” within families.

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 “any gift of property” (undefined) made during life, at death, or after death, from one “family member” to another “member of the same family.” “Family member” or “member of the same family” means relationship by blood, marriage, domestic partnership, adoption, or other law, within the third degree of relationship. Measure reduces state revenues, provides no replacement.

EXHIBIT B

CERTIFICATE OF FILING

I certify that I directed the original of the PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition #7) to be hand-delivered to the Appellate Court Administrator, Appellate Court Records Section on November 25, 2014, at:

State Court Administrator
Records Section
Supreme Court Building
1163 State Street
Salem, Oregon 97301

CERTIFICATE OF SERVICE

I certify that I served the foregoing PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL (Initiative Petition #7) upon the following individuals on the 25th day of November, 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 97301-4096
Telephone: (503) 378-4402
Facsimile: (503) 378-6306
Attorney for Respondent

And upon the following individual via hand delivery:

Kate Brown, Secretary of State
Elections Division
255 Capitol St. NE, Suite 501
Salem, Oregon 97310-0722
Telephone: (503) 986-1518
Fax: (503) 373-7414

DATED this 25th day of November 2014.

Kevin L. Mannix, #742021
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