

IN THE SUPREME COURT OF THE STATE OF OREGON

KNUTE BUEHLER and DUANE RAY
FLETCHALL,

Petitioners,

v.

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

Case No. S062255 (Control)

HANNA VAANDERING AND
BETHANNE DARBY,

Petitioners,

v.

ELLEN ROSENBLUM, Attorney
General, State of Oregon,

Respondent.

Case No. S062267

REPLY MEMORANDUM OF
PETITIONERS VAANDERING AND
DARBY

Initiative Petition 59 (2014)

Initiative Petition 59 (2014)
Ballot Title Certified February 12, 2014

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REPLY MEMORANDUM OF PETITIONERS VAANDERING AND DARBY

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Attorneys for Respondent

Petitioners Vaandering and Darby submit this brief reply memorandum to address the Attorney General’s arguments, as well as the arguments made by Chief Petitioners, Buehler and Fletchall.

1. The Caption is Underinclusive

In their petition, Vaandering and Darby argue that the caption fails to meet the statutory standards because it is underinclusive. That is, the certified caption mentions some but not all aspects of the measure in a manner that is deceptive. The Attorney General does not dispute Petitioners’ basic argument, but simply claims that “given the word limits and the elaboration in both the result statements and the summary,” the court should find the caption compliant. The problem with this argument is that, as the “headline” for the ballot title, it is critically important that the caption not understate the scope of the changes made. *Kain/Waller v. Myers*, 337 Or 36, 93 P3d 62 (2004). This is true even if the result statements and the summary provide more information. *See, Caruthers v. Myers*, 346 Or 300, 304 (2009) (because caption may be only portion of ballot title printed on ballot, it is particularly important that it be accurate). Finally, the lack of word space is an argument that the court has viewed skeptically. *See e.g. Caruthers v. Kroger*, 346 Or 581, 587 (2009) (rejecting suggestion that it would be impossible to include all concepts within word space).¹

¹ In any event, it is possible to include all concepts within the word space. It is more important to provide detail regarding the nature of the laws being changed than it is to describe the types of lawsuits permitted in detail. For example, Changes petition signature qualification/verification/counting laws; authorizes lawsuits; shorter measures’ text replaces ballot title

2. The “No” Vote Result Statement is Underinclusive and Misleading

Petitioners Vaandering and Darby next argue that the first phrase of the “no” vote result statement is both underinclusive and misleading. It reads: “No” vote retains existing laws *allowing disqualification of signatures* unlawfully obtained, not matching voter records, *signed by registered voter.*” This is a change from the draft caption which accurately referred to *inactive* voters. In response, the Attorney General states that not all aspects of current law need to be included in the “no” statement. Regarding the misleading wording, the Attorney General simply states that voters will be *unlikely* to be confused. However, she at no time explains why that choice of words makes sense or is necessary. Moreover, a plain reading of the statement *does* suggest that current law “allows disqualification of signatures signed by a registered voter,” *in addition to* the disqualification of signatures “unlawfully obtained” or “not matching voter records.” This phrasing must be corrected in order to not mislead voters.

3. The Summary Fails to Describe a Major Effect of the Measure

Petitioners Vaandering and Darby next argue that the summary fails to make clear that the initiative would effectively require elections officials to count every signature of a registered voter, because of the risk of lawsuit for failing to do so. Accordingly, they suggested including the following sentence:

“Secretary of State must count every signature of a registered voter, regardless of whether signature was lawfully obtained, or risk lawsuit.”

Petition, p. 7. In response, the Attorney General states that the proposed language is inaccurate, perhaps not noting that Petitioners made clear that the proposal creates this effect if elections officials wish to avoid lawsuit. Again, this is an accurate statement and

the practical effect of the measure. It must be included in order for voters to cast an informed vote.

4. Chief Petitioner's Arguments are Without Merit

Chief Petitioners filed a petition challenging on the "no" vote result statement, arguing that it incorrectly suggests that the proposal would undercut existing laws protecting against "bad signatures." The Attorney General correctly rejected this argument. By creating an "enforceable right" to have one's signature count that can be enforced by filing a lawsuit, the proposal does change current law and allow signatures that were collected unlawfully to be counted. Except as discussed above, the "no" vote result statement correctly sets out the relevant current law. Indeed, it is exactly because the initiative creates this enforceable right and authorizes lawsuits that the practical effect of the measure will be to err on the side of counting all signatures of registered voters in order to avoid litigation.

5. Conclusion

For the reasons stated above, the court should find that the Attorney General's certified ballot title is deficient and refer it back to the Attorney General for modification.

DATED this 27th day of May, 2014.

Respectfully Submitted,

BENNETT, HARTMAN, MORRIS & KAPLAN, LLP

s/Margaret S. Olney

Margaret S. Olney, OSB #881359

of Attorneys for Petitioners Vaandering and Darby

CERTIFICATE OF FILING

I certify that, I directed the REPLY MEMORANDUM OF PETITIONERS VAANDERING AND DARBY (Initiative Petition #59) to be electronically filed with the Appellate Court Administrator, Appellate Court Records Section, by using the court's electronic filing system pursuant to ORAP 16 on May 27, 2014.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing REPLY MEMORANDUM OF PETITIONERS VAANDERING AND DARBY (Initiative Petition #59) upon the following individuals on May 27, 2014, by using the court's electronic filing system pursuant to ORAP 16:

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DATED this 27th day of May, 2014.

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