

SUPREME COURT OF OREGON

Girod v. Kroger, 351 Or. 563

273 P.3d 92 (2012) · No. SC S059996 · Decided February 16, 2012

SUMMARY

The Supreme Court of Oregon reviewed a certified ballot title for an initiative that would prohibit nontribal use of gillnets to take fish in Oregon inland waters and restrict purchases of fish caught by those means. The court held that the caption, result statements, and summary overstated or understated the measure's effects and referred the ballot title to the Attorney General for modification.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Balmer, J.
JURISDICTION	Oregon
DECIDED	February 16, 2012
DOCKET	SC S059996
DISPOSITION	remanded
PROCEDURAL POSTURE	Petitioners sought review of the Attorney General's certified ballot title for Initiative Petition 26 (2012), challenging its compliance with Oregon's ballot-title statute.
STANDARD OF REVIEW	The court reviews a certified ballot title to determine whether it substantially complies with the statutory requirements of ORS 250.035.
PRECEDENTIAL VALUE	Published, precedential Oregon Supreme Court opinion; decided en banc.
PARTIES	Fred Girod, Rod Monroe, David Schamp v. John R. Kroger, Attorney General, State of Oregon

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QUESTIONS PRESENTED

1. Whether the certified caption substantially complied with ORS 250.035(2)(a) by accurately identifying the subject matter and principal effects of Initiative Petition 26.
2. Whether the certified yes-vote and no-vote result statements substantially complied with ORS 250.035(2)(b) and (c).
3. Whether the certified summary substantially complied with ORS 250.035(2)(d).

HOLDINGS

1. The caption did not substantially comply because it overstated the measure's effect by stating that it would eliminate nontribal commercial fishing and understated the measure's scope by referring only to the Columbia River rather than all Oregon inland waters.
2. The yes-vote and no-vote result statements did not substantially comply because they repeated the caption's overbroad description of the measure as eliminating nontribal commercial fishing and its underinclusive limitation of the measure to the Columbia River.
3. The summary did not substantially comply because it inaccurately stated that the measure would eliminate nontribal Oregon commercial fishing and prohibit Oregonians from purchasing all nontribally caught fish from the Columbia River or other Oregon inland waters.

KEY QUOTATIONS

“That said, the certified caption here, in our view, both overstates and understates the effect that Initiative Petition 26 would have on existing law.” (at 94)

“The ballot title is referred to the Attorney General for modification.” (at 95)

FACTUAL BACKGROUND

Initiative Petition 26 proposed amendments concerning the commercial harvest and sale of fish caught in Oregon waters. It would prohibit the use of gillnets to take salmon, steelhead, or other fish in Oregon inland waters and prohibit certain buyers from purchasing fish taken by gillnet, while preserving tribal fishing rights. The Attorney General's certified ballot title described the measure as eliminating nontribal Oregon commercial fishing in the Columbia River and prohibiting Oregonians from purchasing nontribally caught Columbia River fish.

PROCEDURAL HISTORY

The Oregon Attorney General certified a caption, yes-vote and no-vote result statements, and summary for Initiative Petition 26. Petitioners sought review directly in the Oregon Supreme Court under Oregon's ballot-title review procedure. The court concluded that portions of the ballot title overstated or understated the initiative's effects and referred the ballot title to the Attorney General for modification.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The certified ballot title was referred to the Attorney General for modification of the caption, yes-vote and no-vote result statements, and summary to accurately describe the measure's scope and effects.

CASES CITED

- Girod v. Kroger, 351 Or. 389, 392, 268 P.3d 562 (2011)
- Terhune v. Myers, 342 Or. 475, 479-80, 154 P.3d 1284 (2007)
- Pelikan/Tauman v. Myers, 342 Or. 383, 389, 153 P.3d 117 (2007)

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