

SUPREME COURT OF OREGON

Nesbitt v. Myers

336 Or. 526 (2004) · Decided March 25, 2004

SUMMARY

The Oregon Supreme Court reviewed a challenge to the Attorney General’s certified ballot title for Initiative Petition 117 (2004), which would have required recurring elections concerning public-sector union representation. The court held that the ballot-title summary was materially misleading because it described a 24-month election bar as applying only after decertification elections, when the measure’s text also covered failed initial unionization elections, and referred the ballot title to the Attorney General for modification.

CASE DETAILS

|                       |                                                                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Oregon                                                                                                                              |
| WRITING FOR THE COURT | De Muniz, J.                                                                                                                                         |
| JURISDICTION          | Oregon                                                                                                                                               |
| DECIDED               | March 25, 2004                                                                                                                                       |
| DISPOSITION           | remanded                                                                                                                                             |
| PROCEDURAL POSTURE    | Petition for review of the Attorney General's certified ballot title for Initiative Petition 117 (2004) under ORS 250.085(2).                        |
| STANDARD OF REVIEW    | The court reviews an Attorney General-certified ballot title to determine whether it substantially complies with the requirements of ORS 250.035(2). |
| PRECEDENTIAL VALUE    | Published Oregon Supreme Court opinion; precedential.                                                                                                |
| PARTIES               | Nesbitt v. Myers                                                                                                                                     |

TOPICS

- ballot access
- election law
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- election law
- labor law
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether the ballot-title summary had to explain that a majority vote was initially required to attain union representation.
2. Whether the summary substantially complied with ORS 250.035(2)(d) when it stated that no election could occur within 24 months of an election discontinuing union representation, although the measure also applied the two-year bar after unsuccessful initial unionization elections.
3. Whether the ballot title's statement regarding the role of the State Labor Commissioner also required modification.

## HOLDINGS

1. The summary was not required to include a statement explaining that a majority of workers initially must vote to attain union representation because the proposed measure did not alter existing Oregon law concerning the initiation of union representation.
2. The certified ballot-title summary did not substantially comply with ORS 250.035(2)(d) because its statement that no election could occur within 24 months of an election discontinuing union representation failed to disclose that the two-year bar also followed an unsuccessful initial unionization election.
3. The ballot-title summary's statement regarding the role of the State Labor Commissioner was also inaccurate and had to be modified.

## KEY QUOTATIONS

*“The text of that subsection is not ambiguous: the proposed measure bars a subsequent unionization election for two years following “the last election at which the employees chose not to be represented by a union.””*  
(531)

*“As a result, we hold that the Attorney General’s certified ballot title for Initiative Petition 117 (2004) fails to comply substantially with the requirements of ORS 250.035(2)(d).”* (531)

## FACTUAL BACKGROUND

Initiative Petition 117 would have required the State Labor Commissioner to conduct an election before the expiration of each public-sector collective bargaining agreement to determine whether employees wished to continue union representation and, if so, which union would represent them. The certified ballot-title summary stated that no election could occur within 24 months of an election discontinuing union representation. The proposed measure's subsection (g), however, barred a subsequent unionization election for two years after any election in which employees chose not to be represented by a union, including an unsuccessful initial unionization election.

## PROCEDURAL HISTORY

The Attorney General certified a ballot title for Initiative Petition 117, a proposed measure concerning union-representation elections for public employees. Nesbitt challenged the summary portion of the certified ballot title, arguing that it inaccurately described the measure's two-year bar on subsequent unionization elections. The

Oregon Supreme Court reviewed the ballot title for substantial compliance and referred it to the Attorney General for modification.

#### DISPOSITION

remanded

#### REMAND INSTRUCTIONS

The ballot title was referred to the Attorney General for modification, including correction of the inaccurate description of the 24-month election bar and the State Labor Commissioner's role.

#### CASES CITED

- Sampson v. Roberts, 309 Or. 335, 339, 788 P.2d 421 (1990)

#### INSTRUCTIONS FOR AN AI ASSISTANT

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