

SUPREME COURT OF OREGON

Crew/Garcia v. Myers

336 Or. 635 (2004) · No. SC S51148, S51150 · Decided May 6, 2004

SUMMARY

The Oregon Supreme Court reconsidered its earlier decision concerning the Attorney General's certified ballot title for Initiative Petition 128 (2004). The court held that it had improperly addressed the unpreserved “scope of license” issue, but that the “negotiation” issue had been properly raised, and referred the ballot title to the Attorney General for further consideration.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Gillette, J.
JURISDICTION	Oregon
DECIDED	May 6, 2004
DOCKET	SC S51148, S51150
DISPOSITION	remanded
PROCEDURAL POSTURE	Consolidated petitions for reconsideration and review of a modified ballot title prepared by the Attorney General for Initiative Petition 128 (2004).
STANDARD OF REVIEW	The Supreme Court reviews ballot titles under the statutory requirements of ORS 250.035(2) and may not consider arguments not presented in writing to the Secretary of State, subject to the statutory exception in ORS 250.085(6).
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Michael D. Crew, Lori Garcia v. Hardy Myers, Attorney General, State of Oregon

TOPICS

- election law
- ballot access
- preservation of error
- appellate procedure
- statutory interpretation

PRACTICE AREAS

- election law
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether Garcia's objections to the Attorney General's modified ballot title were well taken.
2. Whether Crew preserved the scope-of-license and negotiation issues by presenting them during the Secretary of State's statutory comment period.
3. What remedy was appropriate after the court determined that it had improperly addressed the unpreserved scope-of-license issue.

HOLDINGS

1. Under ORS 250.085(6), the Supreme Court may not consider a ballot-title argument that was not presented in writing to the Secretary of State, unless the argument concerns language added to or removed from the draft title after the statutory comment period.
2. The scope-of-license issue was not preserved, and the court erred in addressing it and referring it to the Attorney General for modification.
3. The negotiation issue was properly before the court because Crew raised it in various forms during the Secretary of State's comment stage, even though Crew's position later changed substantially.
4. Because the court had improperly referred the scope-of-license issue to the Attorney General, the ballot title had to be referred again to the Attorney General for further consideration.

KEY QUOTATIONS

“When reviewing a title prepared by the Attorney General, the Supreme Court shall not consider arguments concerning the ballot title not presented in writing to the Secretary of State unless the court determines that the argument concerns language added to or removed from the draft title after expiration of the comment period provided in ORS 250.067.”

“Whatever any party may assert or fail to assert, it is this court's obligation to assure itself in each case that it in fact has the authority to proceed.”

FACTUAL BACKGROUND

The Attorney General certified a ballot title for Initiative Petition 128 (2004). In the original review, the Supreme Court identified several deficiencies and referred the title for modification. On reconsideration, the court examined whether Crew had raised the negotiation and scope-of-license issues during the Secretary of State's comment period.

PROCEDURAL HISTORY

In the original proceeding, the Oregon Supreme Court held that the Attorney General's certified ballot title failed in several respects to comply substantially with ORS 250.035(2) and referred the ballot title to the Attorney General for modification. After the Attorney General filed a modified ballot title, Garcia timely objected and also sought reconsideration of the original decision, arguing that Crew had not preserved two issues addressed by the court. The court granted reconsideration as to the unpreserved scope-of-license issue, upheld its prior consideration of the negotiation issue, and again referred the ballot title to the Attorney General.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The ballot title was referred to the Attorney General for further consideration and any modification he deemed appropriate. The Attorney General was permitted, but not required, to address the scope-of-license topic and could determine whether other information about the proposed measure should be included instead.

CASES CITED

- Crew/Garcia v. Myers, 336 Or. 535, 87 P.3d 656 (2004)
- Nelson v. Myers, 330 Or. 92, 97, 996 P.2d 975 (2000)
- Sizemore v. Myers, 326 Or. 220, 225, 953 P.2d 360 (1997)