

SUPREME COURT OF OREGON

Kain v. Myers, 333 Or. 75

38 P.3d 266 (2001) · No. SC S48796 · Decided December 13, 2001

SUMMARY

The Supreme Court of Oregon reviewed a challenge to the Attorney General's ballot title for Initiative Petition 91 (2002), which concerned public-employee union payments and representation. The court held that the ballot title's use of the terms "nonunion employees" and "nonpayers" was inaccurate and confusing and therefore did not substantially comply with Oregon law. The ballot title was referred to the Attorney General for modification.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Durham, J.
JURISDICTION	Oregon
DECIDED	December 13, 2001
DOCKET	SC S48796
DISPOSITION	remanded
PROCEDURAL POSTURE	Original proceeding under ORS 250.085(2) challenging the Attorney General's certified ballot title for Initiative Petition 91 (2002).
STANDARD OF REVIEW	The court reviews a ballot title for substantial compliance with the requirements of ORS 250.035.
PRECEDENTIAL VALUE	Published, precedential opinion of the Oregon Supreme Court
PARTIES	Kris Kain, Tricia Bosak v. Hardy Myers, Attorney General, State of Oregon

TOPICS

- election law
- election administration
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- Election law
- Oregon constitutional law
- Appellate procedure
- Statutory interpretation

QUESTIONS PRESENTED

1. Whether the Attorney General's ballot title substantially complied with ORS 250.035.
2. Whether the terms "nonunion employees" and "nonpayers" accurately and understandably described the results of approving or rejecting the proposed initiative.

HOLDINGS

1. The Attorney General's ballot title substantially complied with ORS 250.035 except for the result statements.
2. The result statements did not substantially comply with ORS 250.035(2)(b) and (c) because the term "nonunion" was inaccurate and confusing in context, and the term "nonpayers" reinforced that confusion.

KEY QUOTATIONS

"This court has stated that misstatements, even by implication, of either existing law or the law that the proposed measure would enact are not appropriate in a ballot title." (333 Or. at 267)

"We conclude that, because the term "nonunion" is incorrect and confusing in this context, the Attorney General's result statements do not state accurately "the result" if the voters approve or reject the proposed initiative." (333 Or. at 268)

FACTUAL BACKGROUND

Initiative Petition 91 proposed to amend the Oregon Constitution by restricting public employers from entering agreements requiring nonunion members to make payments to unions or authorizing certain payroll deductions. It also would relieve public employee unions of the obligation to represent or provide services to employees who are not union members or who do not pay for union services. The Attorney General certified a ballot title using the terms "nonunion employees" and "nonpayers" in the result statements.

PROCEDURAL HISTORY

The Attorney General certified a ballot title for a proposed constitutional initiative concerning public-employer labor agreements and public-employee-union representation of nonmembers. Petitioners sought review in the Oregon Supreme Court, challenging the caption, result statements, and summary. The court rejected all challenges except the challenge to the result statements and referred the ballot title to the Attorney General for modification.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The ballot title was referred to the Attorney General for modification, specifically to correct the result statements so that they accurately and understandably describe the effects of the proposed initiative.

CASES CITED

- Novick/Bosak v. Myers, 333 Or. 18, 24, 36 P.3d 464 (2001)
- Dale v. Kulongoski, 321 Or. 108, 113, 894 P.2d 462 (1995)

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