

SUPREME COURT OF OREGON

Unger v. Rosenblum

358 Or 672 (2016) · No. S063766 · Decided March 3, 2016

SUMMARY

The Oregon Supreme Court reviewed a certified ballot title for Initiative Petition 65 (2016), which would establish and fund a High School Graduation and College and Career Readiness Fund. The court held that the caption improperly speculated that the measure would reduce funds for other services and that related language in the yes-vote statement and summary could be misleading. The court referred the ballot title to the Attorney General for modification.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Landau, J.
JURISDICTION	Oregon
DECIDED	March 3, 2016
DOCKET	S063766
DISPOSITION	other
PROCEDURAL POSTURE	Petitioners sought review of the Attorney General's certified ballot title for Initiative Petition 65 (2016).
STANDARD OF REVIEW	The court reviews a certified ballot title to determine whether it substantially complies with ORS 250.035.
PRECEDENTIAL VALUE	Published en banc opinion; precedential Oregon Supreme Court decision.
PARTIES	Ben Unger, LaToya Fick, Carmen Rubio v. Ellen F. Rosenblum, Attorney General, State of Oregon

TOPICS

- election law
- election administration
- appellate procedure
- standard of review

PRACTICE AREAS

- election law
- appellate procedure

QUESTIONS PRESENTED

1. Whether the ballot-title caption reasonably identified the subject matter of Initiative Petition 65 when it stated that the measure would reduce funds for other services.
2. Whether the ballot-title result statement and summary improperly suggested that the measure necessarily would reduce funding for other services or programs.
3. Whether the remaining challenges to the no-vote result statement and summary required modification of the certified ballot title.

HOLDINGS

1. The caption was deficient because the statement that Initiative Petition 65 reduces funds for other services speculated about a possible effect of the measure rather than reasonably identifying a necessary consequence of the measure.
2. The yes-vote result statement was strictly accurate but could be misleading because it might be understood to suggest that Initiative Petition 65 necessarily would reduce funding for other services. The Attorney General could address that issue, and the related summary issue, on referral.
3. The court rejected the remaining challenges without discussion.

KEY QUOTATIONS

*“As this court has consistently stated, it will not “speculate—or * * * permit the Attorney General to speculate—about the possible effects of a proposed measure.”” (677)*

“Strictly speaking, the assertion in the result statement is accurate: Funds required for the Graduation and Readiness Fund are not “available” for other programs or services.” (678)

FACTUAL BACKGROUND

Initiative Petition 65 would establish a High School Graduation and College and Career Readiness Fund within Oregon's General Fund. It would require the legislature to make at least \$800 per high school student per year available to the fund, with later increases tied to specified education-cost estimates, and would direct the funds toward career-technical education, college-level opportunities, and dropout-prevention strategies. The Attorney General's certified ballot title stated that the measure would reduce funds for other services and that required funds would be unavailable for other programs and services.

PROCEDURAL HISTORY

The Attorney General certified a ballot title for Initiative Petition 65, which would establish a High School Graduation and College and Career Readiness Fund. Petitioners challenged the caption, vote-result statements, and summary under ORS 250.035(2). The Oregon Supreme Court reviewed the certified ballot title and referred it to the Attorney General for modification.

DISPOSITION

other

REMAND INSTRUCTIONS

The ballot title was referred to the Attorney General for modification of the caption and, at the Attorney General's option, review and modification of similar statements in the yes-vote result statement and summary.

CASES CITED

- Novick v. Myers, 333 Or 12, 16-17, 35 P3d 1017 (2001)
- Wolf v. Myers, 343 Or 494, 500, 173 P3d 812 (2007)
- Pelikan/Tauman v. Myers, 342 Or 383, 389, 153 P3d 117 (2007)
- Kain v. Myers, 333 Or 446, 451, 41 P3d 416 (2002)