

SUPREME COURT OF OREGON

Caruthers v. Myers

344 Or. 596 (2008) · No. SC S055745 · Decided June 19, 2008

SUMMARY

The Supreme Court of Oregon reviewed a certified ballot title for an initiative concerning union membership, representation, dues, and payroll deductions. The court held that the ballot title inaccurately described the measure's effects because federal law would continue to require private-sector unions to represent bargaining-unit employees, while the measure's effect on public-sector unions was unclear. The court referred the caption, yes-vote result statement, and summary to the Attorney General for modification.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Kistler, J.
JURISDICTION	Oregon
DECIDED	June 19, 2008
DOCKET	SC S055745
DISPOSITION	remanded
PROCEDURAL POSTURE	Petitioners sought review of the Attorney General's certified ballot title for Initiative Petition 27 (2010), challenging the caption, the yes-vote result statement, and the summary.
STANDARD OF REVIEW	The court reviews a certified ballot title to determine whether it substantially complies with ORS 250.035(2).
PRECEDENTIAL VALUE	Published, en banc opinion of the Supreme Court of Oregon; precedential.
PARTIES	Jerry Caruthers, Larry Wolf v. Hardy Myers, Attorney General, State of Oregon

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the certified ballot-title caption accurately identified the subject matter of Initiative Petition 27 under ORS 250.035(2)(a).
2. Whether the yes-vote result statement accurately described the result of approving the measure under ORS 250.035(2)(b).
3. Whether the summary impartially and concisely described the measure and its major effects under ORS 250.035(2)(d).
4. Whether the Attorney General was required to account for settled federal preemption and the uncertain effect of the measure on public-sector unions when drafting the ballot title.

HOLDINGS

1. When necessary to provide voters accurate and neutral information, the Attorney General must look beyond the measure's text and describe its subject matter and effects in the context of existing law.
2. The proposed measure could not relieve a private-sector union of its federal obligation to represent all employees in a bargaining unit, regardless of union membership.
3. When a proposed measure has two or more plausible interpretations concerning its effect on existing law, the Attorney General should communicate the ambiguity to voters rather than selecting one interpretation for the ballot title.
4. The caption, yes-vote result statement, and summary did not substantially comply with ORS 250.035 because they inaccurately stated, without qualification, that unions would not be required to represent nonmember employees.

KEY QUOTATIONS

“Under settled law, the proposed measure would have no effect on a private sector union's federal obligation to represent all the employees in a bargaining unit.” (344 Or. at 603)

“when there are two or more plausible interpretations of a proposed measure, “we ordinarily have declined to choose (or to permit the Attorney General to choose) one of those interpretations for purposes of the ballot title.”” (344 Or. at 604)

“merely using terms taken from the measure itself does not necessarily meet the statutory requirements for a ballot title, and the Attorney General is required to draft a ballot title that accurately describes the subject matter of the proposed measure, the result if the measure were to pass, and the major effect of the measure.” (344 Or. at 605)

FACTUAL BACKGROUND

Initiative Petition 27 proposed changes concerning union membership, employee deductions, union representation, and collective bargaining. The Attorney General's certified ballot title stated that the measure

would prohibit requiring employees to share representation costs and would relieve unions of representing nonmembers. Petitioners argued that federal law would continue to require private-sector unions to represent all bargaining-unit employees and that the measure's effect on public-sector unions was uncertain.

PROCEDURAL HISTORY

The Oregon Attorney General certified a ballot title for Initiative Petition 27. Petitioners filed a petition for review in the Oregon Supreme Court under ORS 250.085(2). The court concluded that the caption, yes-vote result statement, and summary did not substantially comply with Oregon law and referred all three components to the Attorney General for modification.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The caption, yes-vote result statement, and summary were referred to the Attorney General for modification so that they accurately describe the measure's effect in light of federal law and the uncertainty concerning public-sector unions.

CASES CITED

- Abood v. Detroit Board of Education, 431 U.S. 209, 224, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977)
- Brown v. Hotel Employees, 468 U.S. 491, 503, 104 S. Ct. 3179, 82 L. Ed. 2d 373 (1984)
- Sizemore v. Kulongoski, 322 Or. 229, 236 n. 4, 905 P.2d 1146 (1995)
- Wolf v. Myers, 343 Or. 494, 500-02, 173 P.3d 812 (2007)
- Pelikan/Tauman v. Myers, 342 Or. 383, 389-91, 153 P.3d 117 (2007)
- Kain/Waller v. Myers, 337 Or. 36, 40-41, 93 P.3d 62 (2004)
- Sizemore v. Myers, 326 Or. 220, 231, 953 P.2d 360 (1997)
- Kain v. Myers, 336 Or. 116, 120-21, 79 P.3d 864 (2003)
- Novick/Crew v. Myers, 337 Or. 568, 574, 100 P.3d 1064 (2004)