

SUPREME COURT OF OREGON

Kendoll v. Rosenblum

358 Or. 282 (2015) · No. SC S063457 · Decided November 27, 2015

SUMMARY

The Oregon Supreme Court reviewed the Attorney General’s certified ballot title for Initiative Petition 40 (2016), concerning expanded governmental English-language requirements, protections for English-only speakers, and enforcement lawsuits. The court held that the caption and yes-result statement required modification to more clearly describe the measure’s major effects, while the summary substantially complied with statutory requirements.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Linder, J.
JURISDICTION	Oregon
DECIDED	November 27, 2015
DOCKET	SC S063457
DISPOSITION	other
PROCEDURAL POSTURE	Petition to review the Attorney General's certified ballot title for Initiative Petition 40 (2016), challenging the caption, the yes result statement, and the summary.
STANDARD OF REVIEW	The court reviews a certified ballot title to determine whether it substantially complies with the requirements of ORS 250.035.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; precedential.
PARTIES	Cynthia Kendoll v. Ellen Rosenblum, Attorney General, State of Oregon

TOPICS

- election law
- appellate procedure
- statutory interpretation
- plain meaning rule

PRACTICE AREAS

- Election law
- Appellate procedure
- Statutory interpretation

QUESTIONS PRESENTED

1. Whether the certified caption reasonably identified the subject matter and actual major effects of Initiative Petition 40 within the 15-word statutory limit.
2. Whether the caption was sufficiently understandable to the average voter.
3. Whether the yes result statement simply and understandably described the result of approving Initiative Petition 40 within the 25-word statutory limit.
4. Whether the summary substantially complied with the requirement to provide a concise and impartial statement of the measure and its major effects.

HOLDINGS

1. The caption did not substantially comply with ORS 250.035(2)(a) because the phrase that the measure would change laws regarding English and other-language use did not adequately inform voters that the measure would expand governmental requirements for exclusive use of English and correspondingly limit governmental ability to require other languages.
2. The caption was deficient because it failed to identify Initiative Petition 40's significant new affirmative guarantee that English-only speakers would be eligible to participate in governmental programs, benefits, and opportunities, including employment, subject to exceptions.
3. The caption did not substantially comply because its wording, including multiple slash marks and the phrase regarding English/other-language use, was unnecessarily difficult for the average voter to understand.
4. The yes result statement did not substantially comply with ORS 250.035(2)(b) because it failed to clearly and accurately describe the expansion of governmental exclusive-English-use requirements and the guarantee of eligibility and opportunities for English-only speakers.
5. The summary substantially complied with ORS 250.035(2)(d); it was not required to separately state that Initiative Petition 40 declared English to be Oregon's official language because it accurately summarized the measure's key components and major effects.

KEY QUOTATIONS

“Stating in a more neutral manner that IP 40 would “change” current law does not sufficiently alert voters about that major effect—that is, expanded requirements for governmental use of the English language (and a corresponding limitation on government’s ability to require the use of languages other than English in certain circumstances).” (287)

“That new, affirmative guarantee—enforceable by declaratory judgment action—is a significant component of the subject matter of IP 40 that the caption should highlight for potential voters.” (289)

“The Attorney General must modify the “yes” result statement to more clearly and accurately describe two significant components of IP 40 not already captured in that statement—that is, expansion of governmental exclusive English-use requirements and ensured eligibility and opportunities for English-only speakers.” (290)

FACTUAL BACKGROUND

Initiative Petition 40 would declare English the official language of Oregon and require official state actions and specified governmental communications to use English, subject to exceptions. It would also guarantee English-only speakers eligibility for governmental programs, benefits, opportunities, and employment, prohibit impairment of rights based solely on speaking only English, and authorize declaratory and injunctive actions. The Attorney General's certified ballot title described the measure as changing laws regarding English and other-language use, authorizing lawsuits, and making related changes.

PROCEDURAL HISTORY

The Attorney General drafted and certified a ballot title for Initiative Petition 40 after public comment. Elector Cynthia Kendoll timely challenged the certified caption, yes result statement, and summary in the Oregon Supreme Court. The court concluded that the caption and yes result statement did not substantially comply with statutory requirements, while the summary did, and referred the ballot title 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 the yes result statement. The modified caption must describe the expansion of governmental English-use requirements, the guarantee of eligibility and opportunities for English-only speakers, and the authorization of lawsuits in understandable language within the 15-word limit. The yes result statement must clearly and accurately describe the two significant components omitted or inadequately described, within the 25-word limit. The summary need not be modified.

CASES CITED

- Lavey v. Kroger, 350 Or. 559, 563, 258 P.3d 1194 (2011)
- Greenberg v. Myers, 340 Or. 65, 69, 127 P.3d 1192 (2006)
- Rasmussen v. Kroger, 350 Or. 281, 285, 253 P.3d 1031 (2011)
- Rasmussen v. Kroger, 351 Or. 358, 361, 266 P.3d 87 (2011)
- Terhune v. Myers, 342 Or. 475, 479, 154 P.3d 1284 (2007)
- Greene v. Kulongoski, 322 Or. 169, 174-175, 903 P.2d 366 (1995)
- Dixon/Frohnmayr v. Rosenblum, 355 Or. 364, 373, 327 P.3d 1160 (2014)
- Rasmussen v. Kroger, 351 Or. 195, 198, 262 P.3d 777 (2011)
- Greenberg v. Myers, 340 Or. 65, 71-72, 127 P.3d 1192 (2006)
- Mabon v. Kulongoski, 324 Or. 315, 319-320, 925 P.2d 1234 (1996)
- Fred Meyer, Inc. v. Roberts, 308 Or. 169, 173-174, 777 P.2d 406 (1989)

- Mabon v. Kulongoski, 325 Or. 121, 127, 934 P.2d 403 (1997)
- Crew/Garcia v. Myers, 336 Or. 535, 541, 87 P.3d 656 (2004)
- McCann/Harmon v. Rosenblum, 354 Or. 771, 775, 323 P.3d 264 (2014)

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