

SUPREME COURT OF OREGON

Towers v. Myers

341 Or. 487 (2006) · No. SC S53873 · Decided October 19, 2006

SUMMARY

The Oregon Supreme Court reviewed the Attorney General’s certified ballot title for Initiative Petition 28 (2008), which would impose deadlines and procedural requirements for challenges to initiative measures. The court held that the caption and yes-vote result statement were misleading because they referred to eliminating challenges concerning an initiative’s “lawful placement on ballot,” and referred the ballot title to the Attorney General for modification.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Carson, J.; De Muniz, Chief Justice; Carson, Justice; Gillette, Justice; Durham, Justice; Balmer, Justice; Kistler, Justice
JURISDICTION	Oregon
DECIDED	October 19, 2006
DOCKET	SC S53873
DISPOSITION	other
PROCEDURAL POSTURE	Petition to review the Attorney General's certified ballot title for Initiative Petition 28 (2008) under ORS 250.085(2).
STANDARD OF REVIEW	The court reviewed the Attorney General's certified ballot title to determine whether it substantially complied with the requirements of ORS 250.035.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Oregon.
PARTIES	Arthur Towers v. Hardy Myers, Attorney General, State of Oregon

TOPICS

- ballot access
- election law
- appellate procedure
- preservation of error
- election administration

PRACTICE AREAS

- Election law
- Appellate procedure
- Constitutional law

QUESTIONS PRESENTED

1. Whether the phrase "lawful placement on ballot" in the ballot-title caption and yes-vote result statement misleadingly described the proposed measure.
2. Whether the petitioner preserved an objection that hyphenated phrases were improperly counted as single words under the statutory word limits.
3. Whether the certified ballot title substantially complied with ORS 250.035(2)(a) and (b).

HOLDINGS

1. An objection that hyphenated phrases in the caption and yes-vote result statement exceeded the statutory word limits was not preserved because the petitioner did not raise it in written comments to the Secretary of State.
2. The caption and yes-vote result statement did not substantially comply with ORS 250.035 because the phrase "lawful placement on ballot" inaccurately suggested that the proposed measure eliminated only challenges to initiatives lawfully placed on the ballot, when the measure would prohibit certain procedural challenges after the specified deadline regardless of whether the initiative was lawfully or unlawfully placed on the ballot.

KEY QUOTATIONS

"The proposed measure purports to prohibit a certain class of "procedural" challenges that are not filed within "60 days after the date the Secretary of State approve[s] the petition for circulation." Thus, the practical effect of the proposed measure would be to prohibit any of those kinds of challenges from being brought after an election, whether or not the initiative being challenged was "lawfully" or "unlawfully" placed on the ballot."

"In conclusion, we hold that the caption and the "yes" vote result statement of the Attorney General's certified ballot title do not substantially comply with the requirements set out in ORS 250.035(2)(a) and (b)."

FACTUAL BACKGROUND

Initiative Petition 28 proposed to restrict the time and manner in which certain procedural challenges to initiative measures could be brought. The proposed measure would require specified challenges to be filed within 60 days after the Secretary of State approved the petition for circulation, filed directly with the Oregon Supreme Court, and resolved within 90 days, while limiting the effect of challenges to ballot-title-related defects. The Attorney General's certified ballot title stated that the measure eliminated post-election challenges to an initiative's lawful placement on the ballot and provided direct, expedited Supreme Court review.

PROCEDURAL HISTORY

Arthur Towers, an elector who had timely submitted written comments concerning the Attorney General's draft ballot title, petitioned the Oregon Supreme Court for review of the certified ballot title. He challenged the caption and the yes-vote result statement as misleading and also argued that they exceeded the statutory word limits. The court declined to consider the word-count argument because it was not preserved in the written

comments, but held that the caption and yes-vote result statement were misleading and referred the ballot title to the Attorney General for modification.

DISPOSITION

other

REMAND INSTRUCTIONS

The certified ballot title was referred to the Attorney General for modification so that the caption and yes-vote result statement accurately describe the proposed measure.

CASES CITED

- Mabon v. Myers, 332 Or. 633, 637, 33 P.3d 988 (2001)
- Kain/Waller v. Myers, 337 Or. 36, 40, 93 P.3d 62 (2004)
- Carley/Towers v. Myers, 340 Or. 222, 230 n. 4, 132 P.3d 651 (2006)