

SUPREME COURT OF OREGON

Novick and Nesbitt v. Myers; Bosak and Sager v. Myers

333 Or. 490 (2002) · No. SC S48525; S48535 · Decided March 14, 2002

SUMMARY

The Oregon Supreme Court reviewed objections to a modified ballot title for Initiative Petition 39 (2002), which concerned union representation and payment for union services. The court held that the modified caption, result statements, and summary did not substantially comply with Oregon law because they failed to accurately identify the measure's effect on employees' ability to receive union representation without payment, and referred the ballot title to the Attorney General for further modification.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Durham, J.
JURISDICTION	Oregon
DECIDED	March 14, 2002
DOCKET	SC S48525; S48535
DISPOSITION	remanded
PROCEDURAL POSTURE	Petitioners Bosak and Sager objected to the Attorney General's modified ballot title for Initiative Petition 39 (2002). The Oregon Supreme Court reviewed the modified ballot title under ORS 250.085(9).
STANDARD OF REVIEW	Under ORS 250.085(9), the court determines whether the modified ballot title substantially complies with the requirements of ORS 250.035.
PRECEDENTIAL VALUE	Published, en banc opinion of the Oregon Supreme Court; precedential.
PARTIES	Steven Novick, Tim Nesbitt, Tricia Bosak, James Sager v. Hardy Myers, Attorney General, State of Oregon

TOPICS

[election law](#)[election administration](#)[appellate procedure](#)[appellate jurisdiction](#)

PRACTICE AREAS

election law

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the Attorney General's modified ballot-title caption substantially complied with ORS 250.035.
2. Whether the modified result statements and summary accurately identified the subject matter and effects of Initiative Petition 39.
3. Whether the modified ballot title should be referred to the Attorney General for additional modification under ORS 250.085(10)(b).

HOLDINGS

1. The modified caption did not substantially comply with ORS 250.035 because it failed to identify that the proposed measure would allow workers to receive union representation without paying for it unless and until they requested the representation in writing, and the caption misleadingly suggested that written acceptance was required before representation could be received.
2. The modified result statements and summary also failed to substantially comply with ORS 250.035 because they repeated the misleading written-request description and failed to identify the measure's effect of allowing employees to receive union representation without cost unless they requested it in writing.
3. The court referred the modified ballot title to the Attorney General for additional modification and further proceedings under ORS 250.085(9).

KEY QUOTATIONS

“Under the proposed measure, workers would be entitled to receive union representation services free of charge unless and until the workers requested those services in writing and thereby exposed themselves to the obligation to pay for those services.” (333 Or. 490)

“The Attorney General's ballot title caption must identify that subject matter to describe accurately the subject matter of the proposed measure to the voters.” (333 Or. 490)

FACTUAL BACKGROUND

Initiative Petition 39 proposed constitutional changes concerning employees' ability to bargain directly with employers and their obligation to pay for union representation or other services. The Attorney General's modified ballot title stated that acceptance of or payment for union representation was contingent on an employee's written request. Petitioners argued that the modified title misleadingly suggested that an employee could receive union representation only after making a written request, while the proposal would permit workers to receive representation without charge unless and until they requested it in writing.

PROCEDURAL HISTORY

In an earlier decision, the Oregon Supreme Court sustained in part challenges to the certified ballot title and referred it to the Attorney General for modification. The Attorney General filed a modified ballot title, and Bosak and Sager objected to it. The Supreme Court concluded that the modified caption, result statements, and summary did not substantially comply with Oregon's ballot-title requirements and referred the title back to the Attorney General for additional modification.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The modified ballot title was referred to the Attorney General for additional modification and further proceedings under ORS 250.085(9).

CASES CITED

- Novick/Bosak v. Myers, 333 Or. 18, 36 P.3d 464 (2001)
- Dale v. Kulongoski, 321 Or. 108, 114, 894 P.2d 462 (1995)