SUPREME COURT OF OREGON

Towers v. Myers, 338 Or. 542

112 P.3d 1184 (2005) · No. S52203 · Decided May 26, 2005

SUMMARY

The Supreme Court of Oregon reviews a certified ballot title for Initiative Petition 15, which would amend the Oregon Constitution to regulate the use of public employees' payroll deductions for political purposes. The court holds that the ballot-title summary fails to substantially comply with statutory requirements because it inaccurately describes current law and uses underinclusive language referring to covered entities as "anyone." The court refers the ballot title to the Attorney General for modification.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Gillette, J.
JURISDICTION	Oregon
DECIDED	May 26, 2005
DOCKET	S52203
DISPOSITION	remanded
PROCEDURAL POSTURE	An elector petitioned the Oregon Supreme Court under ORS 250.085(2) to review the Attorney General's certified ballot title for Initiative Petition 15 (2006), challenging the summary portion of the ballot title.
STANDARD OF REVIEW	The court reviews a certified ballot title to determine whether it substantially complies with ORS 250.035(2)(a) to (d).
PRECEDENTIAL VALUE	Published Oregon Supreme Court en banc opinion; precedential.
PARTIES	Art Towers v. Hardy Myers, Attorney General, State of Oregon

TOPICS

election law · appellate procedure · first amendment · standard of review · preservation of error

PRACTICE AREAS

election law · constitutional law · appellate procedure

QUESTIONS PRESENTED

1. Whether the certified ballot-title summary inaccurately described current law by stating that current law neither limited the use of public employee payroll deductions nor required segregation of deductions earmarked for political purposes.
2. Whether the summary's use of the pronoun 'anyone' was underinclusive because the initiative applied to corporations and organizations as well as individuals.
3. Whether the summary was required to state expressly that the measure's bar on receiving future payroll deductions was permanent.
4. Whether the court could consider the petitioner's argument that the summary failed to explain that the measure covered efforts to obtain or discourage the gathering of initiative-petition signatures when that argument had not been presented to the Secretary of State.

HOLDINGS

1. The summary failed to substantially comply with ORS 250.035(2)(d) because it inaccurately stated that current law neither limited the use of public employee payroll deductions nor required segregation of deductions earmarked for political purposes.
2. The summary failed to substantially comply with ORS 250.035(2)(d) because its repeated use of 'anyone' incorrectly suggested that the segregation and disqualification provisions applied only to individuals, although the initiative also covered corporations and organizations.
3. The summary was not deficient for failing to use the word 'permanent' because the word 'barred' fairly communicated the permanent nature of the consequence, and a ballot title does not fail merely because it could be worded better.
4. The court declined to consider the argument because ORS 250.085(6) generally precludes consideration of ballot-title arguments not presented in writing to the Secretary of State, and the exception for wording added or removed after the comment period did not apply.

KEY QUOTATIONS

> *“We review the Attorney General's certified ballot title to determine whether it substantially complies with the requirements of ORS 250.035(2)(a) to (d).”* (112 P.3d at 1185)

> *“Federal First Amendment jurisprudence limits the power to impose such deductions and imposes significant procedural requirements respecting the process.”* (112 P.3d at 1186)

> *“The use of that pronoun is incorrect because it is underinclusive.”* (112 P.3d at 1187)

FACTUAL BACKGROUND

Initiative Petition 15 proposed amending the Oregon Constitution to restrict how individuals and organizations could use funds obtained through public employee payroll deductions for political purposes. The proposed measure required annual written employee authorization, segregation of political-purpose funds, and imposed fines and possible disqualification from future public payroll deductions. The Attorney General's certified ballot-title summary stated that current law neither limited the use of public employee payroll deductions nor required segregation of funds, referred to affected entities as 'anyone,' and summarized the measure's restrictions and penalties.

PROCEDURAL HISTORY

The Attorney General certified a ballot title for Initiative Petition 15, a proposed Oregon constitutional amendment concerning the use and management of public employee payroll-deduction funds for political purposes. Towers timely submitted written comments to the Secretary of State and sought review of the certified title. The Oregon Supreme Court concluded that the summary did not substantially comply with ORS 250.035(2)(d) and referred the ballot title to the Attorney General for modification.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The certified ballot title was referred to the Attorney General for modification to correct the inaccurate description of current law and the underinclusive use of 'anyone'; the Attorney General was also free to make additional modifications discussed by the court.

CASES CITED

- Abood v. Detroit Board of Education, 431 U.S. 209, 234-36, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977)
- Elvin v. OPEU, 313 Or. 165, 168-70, 832 P.2d 36 (1992)
- Chicago Teachers Union v. Hudson, 475 U.S. 292, 305-07, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986)
- Phillips v. Myers, 325 Or. 221, 228, 936 P.2d 964 (1997)
- Kain v. Myers, 336 Or. 116, 123 n. 3, 79 P.3d 864 (2003)
- Mabon v. Myers, 332 Or. 633, 640, 33 P.3d 988 (2001)
- Terhune v. Myers, 338 Or. 554, 558-59, 112 P.3d 1188 (2005)