

SUPREME COURT OF OREGON

Mabon/Pulvers v. Myers

333 Or. 252 (2002) · No. SC S48950 (control); S48951 · Decided January 17, 2002

SUMMARY

The Oregon Supreme Court reviewed consolidated challenges to the Attorney General's ballot title for Initiative Petition 107 (2002), which proposed a new constitutional oath for Oregon judges. The court held that the caption, result statements, and part of the summary required modification and referred the ballot title to the Attorney General.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Leeson, J.; Gillette, J.; Riggs, J.; De Muniz, J.; Balmer, J.
JURISDICTION	Oregon
DECIDED	January 17, 2002
DOCKET	SC S48950 (control); S48951
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated petitions for Supreme Court review of the Attorney General's certified ballot title for a proposed Oregon constitutional initiative measure.
STANDARD OF REVIEW	The court reviews the Attorney General's ballot title for substantial compliance with the requirements of ORS 250.035.
PRECEDENTIAL VALUE	Published precedential Oregon Supreme Court opinion
PARTIES	Lon T. Mabon, Roy Pulvers v. Hardy Myers, Attorney General, State of Oregon

TOPICS

- ballot access
- election law
- appellate procedure
- constitutional law
- separation of powers

PRACTICE AREAS

- Election law
- Constitutional law
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the Attorney General's ballot-title caption substantially complied with ORS 250.035 by reasonably identifying the subject matter of the proposed measure.
2. Whether the yes and no vote-result statements adequately described the measure's effect.
3. Whether the summary substantially complied with ORS 250.035(2)(d), including whether it accurately and impartially summarized the measure and its major effect.

HOLDINGS

1. The caption did not substantially comply with ORS 250.035 because it failed to reasonably identify that the measure would create a new oath replacing or subsuming existing judicial oaths and would commit judges to the framers' intent regarding constitutional law.
2. The yes and no vote-result statements had to be modified to conform to the required changes in the caption.
3. The summary required correction because it incorrectly stated that the proposed oath would require adherence to the intent of the framers of the common law; the court rejected the remaining summary challenges.

KEY QUOTATIONS

"The subject matter of the proposed measure is the creation of a new oath for Oregon judges, the crux of which is to commit judges to the framers' intent regarding the Oregon and federal constitutions and to the legislature's intent regarding statutes."

"For the foregoing reasons, we hold that the Attorney General must modify the caption, the "yes" and "no" vote result statements, and the reference to the "common law" in the summary."

FACTUAL BACKGROUND

Initiative Petition 107 (2002) proposed amending the Oregon Constitution to require Oregon judges to take a new oath. The proposed oath would require judges to adhere to the framers' intent concerning constitutional provisions, defer to the legislative branch when intent could not be discerned, honor separation of powers, and refrain from creating law from the bench. The Attorney General's certified ballot title described the proposal, but its caption did not adequately identify that the measure would create a new oath replacing or subsuming existing judicial oaths or that it would bind judges to framers' intent regarding constitutional law.

PROCEDURAL HISTORY

The Secretary of State denominated the proposal Initiative Petition 107 (2002). The Attorney General certified a ballot title, and Mabon and Pulvers separately petitioned for review, challenging the caption, vote-result statements, and summary. The Oregon Supreme Court rejected Mabon's challenges, sustained portions of Pulvers's challenges, 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, the yes and no vote-result statements, and the reference to common law in the summary.

CASES CITED

- Flanagan v. Myers, 332 Or. 318, 323-24, 30 P.3d 408 (2001)
- Carson v. Myers, 326 Or. 248, 253, 951 P.2d 700 (1998)

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