

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

RECEIVED

FILED

In the Matter of:

18 MAY 21 P1:58

MAY 21 2018

No. 18-2-02564-34

Superior Court
Linda Myhre Enlow
Thurston County Clerk

A CHALLENGE TO THE BALLOT
TITLE -- STATEMENT OF SUBJECT,
CONCISE DESCRIPTION -- AND BALLOT
MEASURE SUMMARY FOR INITIATIVE
1639, AN INITIATIVE TO THE PEOPLE

OPENING BRIEF OF PETITIONER

I. INTRODUCTION.

This Opening Brief is delivered in satisfaction of the prescribed scheduling as dated and filed on the date of May 16, 2018 by Hon. Christopher Lanese, judge.

The Petitioner's Scheduling questionnaire was delivered separately per the scheduling requirements on the date of May 17, 2018, and per LCR40 rules, unavailable dates for hearing were attached at that time.

The Notice of Assignment and Notice of Ballot Title Challenge was also separately delivered to all necessary parties, including the Washington State Attorney General's Office, the Washington Secretary of State, together with proof of service for these deliveries. This was also provided to all identified parties in this matter.

II. FACTS.

1. Under the above cause number, a Petition was filed May 16, 2018 entitled "A Challenge to the Ballot Title -- Statement of Subject, Concise Description- And Ballot Measure Summary For Initiative 1639, An Initiative To The People."

III. AUTHORITY/ JURISDICTION

A. RCW 29A.72.080 provides, as follows:

“Any persons, including the attorney general or either or both houses of the legislature, dissatisfied with the ballot title or summary for a state initiative or referendum may, within five days from the filing of the ballot title in the office of the secretary of state, appeal to the superior court of Thurston county by petition setting forth the measure, the ballot title or summary, and their objections to the ballot title or summary and requesting amendment of the ballot title or summary by the court. Saturdays, Sundays, and legal holidays are not counted in calculating the time limits contained in this section.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the secretary of state, upon the attorney general, and upon the person proposing the measure if the appeal is initiated by someone other than that person. Upon the filing of the petition on appeal or at the time to which the hearing may be adjourned by consent of the appellant, the court shall accord first priority to examining the proposed measure, the ballot title or summary, and the objections to that ballot title or summary, may hear arguments, and shall, within five days, render its decision and file with the secretary of state a certified copy of such ballot title or summary as it determines will meet the requirements of RCW 29A.72.060. The decision of the superior court shall be final. Such appeal shall be heard without costs to either party.”

IV. OBJECTIONS and ARGUMENT

1. The Attorney General’s office issued the following ballot title statement of Subject, Concise Description, and Ballot Measure Summary:

BALLOT TITLE

Statement of Subject: Initiative Measure No. 1639 concerns firearms.

Concise Description: This measure would require enhanced background checks, training, and waiting periods for sales or delivery of semiautomatic assault rifles; criminalize certain storage and unauthorized use; impose age limitations; and enact other firearm-safety requirements.

BALLOT MEASURE SUMMARY

This measure would require enhanced background checks, firearm training, and waiting periods before semiautomatic assault rifles may be purchased or delivered. It would impose age limitations on who may purchase or possess certain firearms, including prohibiting firearm purchases by persons under age 21. It would require certain secured firearm storage or trigger-locks, and criminalize certain firearm storage if it results in unauthorized use. It would enact other firearm-related requirements, including certain warnings, recordkeeping, and fees.

2. The Statement of Subject is misleading, inaccurate and not impartial and should be changed and corrected to read: “Initiative Measure No. 1639 concerns restrictions and taxes on firearm ownership.”

3. I-1639’s proposed statement of subject is inaccurate because it does not notify voters that the measure includes a proposed new tax on firearms (see page 8 – sec7a of Exhibit A). Although initially established at less than \$25, a formula to increase this tax over time is included in the initiative.

4. I-1639 proposes a variety of new and unprecedented restrictions on firearm ownership and this should be represented in the statement of subject, even if only barely referenced as “restrictions.” For example, the prohibition of firearm ownership for 18-21 year old residents is a radical change in Washington State firearm laws and should be recognized as such in the statement of subject. The initiative intent language itself presents a dangerous argument that 18-21 year old citizens of Washington State shouldn’t be allowed to own firearms because, “...the brain does not fully mature until a later age.” (see page 2, Exhibit A). This argument can be made to deny the right to vote at these ages as well. This is still considered the typical age Washingtonian citizens are accepted into military service and provided with control over

weaponry with destructive potential far in excess of any firearms possessed by non-military citizens in Washington State. These same Washington citizens are allowed to vote and run for public office – both actions which arguably have the potential to cause even greater harm to the community if exercised inappropriately. This is a major legal and practical impact on the rights of a whole class of citizens in Washington State, discriminated against solely by age alone, who will lose their historic franchise and Constitutionally guaranteed rights of firearm ownership. It should be reflected as such in the statement of subject due to the significance of this radical change to existing law.

5. Petitioner submits that the Statement of Subject should be changed to be as accurate and impartial as possible as follows: “Initiative Measure No. 1639 concerns restrictions and taxes on firearm ownership.” Alternatively, and even more accurately, it should read, “Initiative Measure No. 1639 concerns restrictions, taxes on firearms and criminalization of certain firearm storage.” Please note that both proposed Statement of Subjects are within the 10-word limitations allowed by statute.

6. The Concise Description filed by the Attorney General fails on three grounds which the Secretary of State’s Initiative and Referenda Handbook describe as requirements for a Concise Description (relevant page attached as Exhibit C):

- (a) It is not a true and impartial description of the measure’s essential content;
- (b) It is not phrased to clearly identify the measure to be voted on;
- (c) It is not phrased without prejudice for or against the measure.

7. The Attorney General’s Concise Description is not a true and impartial description of the measure’s essential content because it conceals from or does not inform voters that they are being asked to consider a new tax on firearm ownership (see page 8, Exhibit A)

12. The Attorney General's Concise Description is not a true and impartial description of the measure's essential content because it conceals from or does not inform voters accurately about the categorical denial of firearm ownership to a broad population of citizens discriminated and excluded from their Constitutionally guaranteed 2nd Amendment right to common firearm ownership exclusively due to age discrimination. This is despite the fact that these same citizens can vote, hold elected office, join the military, and fight to defend our nation in war with far deadlier weapons than those banned by this initiative. Furthermore, this ban is even justified by the sponsors of the initiative because their "brain is not fully mature" (see page 2, Exhibit A). This is concerning because beyond the odd eugenics origin of this justification to deny the right to keep and bear arms, this may also become the foundation of denying other rights to this category of citizen like the right to vote. It is not the purpose of this ballot title challenge process to argue for or against the merits of this initiative. Rather, it is imperative to distinguish the significant impacts to fundamental rights drafted in the proposed initiative and ensuring that the most significant elements are properly and fairly represented in the title of the proposed ballot title. In this case, the seriousness and significance of these proposals are not accurately represented in the Concise Description.

13. The Attorney General's Concise Description is not a true and impartial description of the measure's essential content because it uses multiple political terms of art like "assault rifles" which is emotionally biased and language conjured and crafted to create a negative term to promote the legislation desired by the sponsors of I-1639. It should be noted that the history of misusing this language to refer to "scary looking" rifles and other firearms is long and colorful. The first time the term "assault rifle" was used was by the Germans in World War II in 1944 as propaganda to promote their new fully automatic rifles. Although not commonly used in

America, this term was only applied to fully automatic, military weapons which have long been restricted at the Federal level since 1934 with the passage of the National Firearms Act (NFA). This term only became common lexicon by anti-gun activists similar to the sponsors of this initiative as an inaccurate artful derogatory term of political language in the 1980s to promote certain specific types of firearm prohibitions. Use of more accurate and less biased language should be made here like “semi-automatic firearms” or “commonly owned semi-automatic firearms” would be more appropriate. It should be noted that one of the most popular and widely sold firearms impacted by this proposed initiative is the AR-15, which is a commonly owned semi-automatic firearm, but is certainly not the “assault rifle” conjured by artfully drafted language inspired by the sponsors of the initiative. The AG’s office should not be influenced by such poll-tested biased language and be more accurate in replacing any reference to “assault weapons” in the concise statement or the ballot summary with “semi-automatic firearms” or “commonly owned semi-automatic firearms,” even if the court decides to reject the petitioner’s proposed language, accepting this neutral and more accurate language to replace the biased and misleading term “assault rifle.”

14. By acquiescing in the misleading and artful language of the sponsors of I-1639 who wish their proposed initiative to have the poll-tested artful terms “assault rifles” the Attorney General has not phrased the Concise Description without prejudice favoring the measure. Rather, the proposed language advances the deceptive political campaign strategy of the initiative’s proponents to conceal from voters that they are being asked to consider imposing a new, significant, far-reaching restrictions and a tax on commonly found firearms which many owners and prospective owners would accurately never consider “assault rifles.”

15. The Attorney General's Concise Description is not a true and impartial description of the measure's essential content because it uses the term "enhanced" before background checks when in-fact there is no such thing as an "enhanced" background check. The initiative simply is requiring the local law enforcement check the same databases as the National Instant Criminal Background Check System (**NICS**) which is a United States system for determining if prospective firearms or explosives buyers' name and birth year match those of a person who is not eligible to buy. There is nothing "enhanced" by this requirement in the initiative, and this is once-again a poll-tested term of art that refers to nothing new with the current background system. Once again, the Attorney General has not phrased the Concise Description without prejudice favoring the measure. Rather, the proposed language advances the deceptive political campaign strategy of the initiative's proponents to conceal from voters that they are being asked to consider imposing a new, significant, far-reaching restrictions and a tax on commonly found firearms and deceive the public by claiming this includes "enhanced" background checks when no such thing exists. This should just be background checks. Even if the court decides to reject the petitioner's proposed language, accepting this neutral and more accurate language to remove the biased and misleading term "enhanced" before background checks.

16. The Attorney General's Concise Description is not a true and impartial description of the measure's essential content because it downplays the significance of I-1639's creation of new felony-level crimes based on firearm storage violations (see section 5, page 10-11, Exhibit A). This is also a very radical departure from current law, which addresses negligence already, and it should be emphasized as such in the Concise Description in a way that clearly communicates this fact and the significance of this change in the law. This is particularly true because the way Initiative I-1639 is written, criminals who successfully invade and steal firearms

from a citizen's home can, by committing this crime, turn the victimized citizen into a criminal themselves. This radical change in the law is also downplayed in the concise description. Increasing the variety of new ways citizens can be instantly turned into felons and criminals through no action of their own should be considered carefully and communicated appropriately by the concise statement. However, it is given very limited treatment by the proposed concise statement. Petitioner will further argue that creating a whole new category of felony-level crime despite the fact that the proposed "felony" would not be a purposeful or willful violation of the law by otherwise law-abiding citizens is a major, substantial and radical departure from current law. As such, this aspect of the proposed initiative should be reflected in the Concise Description in a more prominent sequential place in the description. Even if the court decides to reject the petitioner's proposed language, shifting the order in which these changes to existing state law based on the potential to radically impact a citizen's life should be considered.

17. The Attorney General's office has created a substantial reasonable suspicion in the eyes of the general public and this petitioner that the language used in this Concise Description has been drafted for maximum bias and support of the sponsors of the initiative by his unprecedented and very public statement of support for this initiative. As can be seen from the article attached to this petitioner's original petition (Exhibit D), Attorney General Bob Ferguson went public on NPR radio with this support of I-1639 on April 23, which was two weeks before the ballot title had even been drafted by AG employees and has been perceived as undue influence on the AG's staff and their effort to be impartial in the drafting of this Concise Statement. It should also be noted that Washington State Attorney General Bob Ferguson also aggressively lobbied and used AG staff to request and lobby for a variety of similarly restrictive bills (SB 5050 and HB 1387, see Exhibit E). This very public endorsement and support for this

initiative and these similar policies should influence the court to weigh carefully the almost certain bias these public pronouncements and actions have created in AG staff when crafting this Concise Description. (This is certainly true despite any claims of a “firewall” which supposedly exists in the department – it isn’t like AG staff have been sequestered from outside influence like jurors during this time). It defies logic and common sense to pretend that these public, aggressive, and well-known actions by the AG would not have an influence, and as this petition to challenge the ballot title indicates, the language has been written in a way most favorable to the initiative sponsors and to the Washington State Attorney General’s stated policy goals. Because of this public perception of bias and Attorney General Bob Ferguson’s own public statements on the subject, the AG’s office must, to avoid the appearance of improper and unethical influence over the process, error on the side of maximum transparency and unbiased representation of the language reflected in the concise statement, and the summary.

18. Petitioner requests that the following be substituted for the Attorney General’s proposed Concise Statement for I-1639:

Concise Description: This measure would criminalize uncompliant firearms storage, increase age restrictions for firearm ownership, created new extended waiting periods, and impose new taxes for sales and delivery of certain common firearms

Or, alternatively:

Concise Description: This measure would criminalize uncompliant firearms storage, invent new age restrictions for certain firearm ownership, created new extended waiting periods, and impose new taxes for sales and delivery of certain common firearms

Please note that the order of the proposed Concise Descriptions (both versions listed above), prioritize the most significant and radical departure from current law in their order of significance. Creating new ways for people to become criminals is the most impactful, therefore it is first. Denying 2nd Amendment rights to certain categories of citizens based on age discrimination is the second most impactful (although an argument can be made that it might be the most impactful). The new proposed waiting periods are probably the next biggest impact,

and the new firearm taxes would be the least impactful within the limited space allowed by the Concise Statement.

19. The Attorney General's proposed Ballot Measure Summary is inaccurate, misleading and otherwise inadequate because (a) it repeats use of the misleading, artful marketing term "assault rifles" as described above. (b) it misleadingly calls the new proposed firearm tax a "fee." (c) it inaccurately calls the background checks "enhanced" which is a poll-tested term of art, (d) it downplays the significantly new creation of a new felony and other overcriminalization of improper firearm storage, and (e) it downplays the significance of firearm restrictions discriminating based on perceived "brain development" of younger citizens who are nevertheless allowed to vote, join the military, and run for public office, all actions which can represent great risk and present the potential to cause great damage as well.

23. Petitioner requests that the following be substituted for the Ballot Measure Summary:

Ballot Measure Summary:

This measure would criminalize certain firearm storage choices by citizens who have otherwise committed no crime. It would prohibit 18, 19, and 20 year old adults from possessing and purchasing certain common firearms, due, in part to "insufficient brain maturity." It would enact other firearm-related restrictions included certain new taxes, new background checks, waiting periods, warnings, and additional recordkeeping requirements.

V. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that this court grant the following relief:


(A) that the court, pursuant to RCW 29A.72.080, file with the Secretary of State a certified copy of the Statement of Subject meeting the above objections, in the amended form recommended in this petition;

(B) that the court, pursuant to RCW 29A.72.080, file with the Secretary of State a certified copy of the Concise Description meeting the above objections, in the amended form recommended in this petition;

(C) that the court, pursuant to RCW 29A.72.080, file with the Secretary of State a certified copy of the Ballot Measure Summary meeting the above objections, in the amended form recommended in this petition;

(D) such other legal and equitable relief as the court deems just.

Respectfully submitted this 21st day of May, 2018.



Glen Morgan, Pro Se

Petitioner