

IN THE SUPREME COURT OF THE STATE OF OREGON

BECCA UHERBELAU,

Petitioner,

v.

ELLEN ROSENBLUM, Attorney  
General, State of Oregon,

Respondent.

No. S067451

**PETITIONER BECCA  
UHERBELAU’S REPLY IN  
SUPPORT OF PETITION TO  
REVIEW BALLOT TITLE  
CERTIFIED BY THE  
ATTORNEY GENERAL FOR  
INITIATIVE PETITION 57 (2020)**

**A. “Equal Number of Democrats, Republicans, Others” Is  
Inaccurate and Misleading.**

Initiative Petition 57 (2020) would create a redistricting commission disproportionately weighted to the benefit of one political party and to the detriment of all other political parties and unaffiliated voters. The redistricting process also would exclude many Oregonians, based on their age, residency, naturalization status, political activity, and the political activity of their current and past immediate family members, in-laws and “cohabitating member[s] of a household.” The initiative creates a paradigm that is far from “equal.” The word “equal” and the phrase “equal number of democrats, republicans, others” do not belong in the ballot title.

The Attorney General concedes that “equal” is commonly understood to mean “fair” or “just.” Answering Memorandum at 4. She nonetheless asserts that “in this context,” voters necessarily would understand “equal” to mean “the same.” Answering Memorandum at 4. The Attorney General’s assumption that readers would apply her chosen interpretation of “equal” rather than

another plausible definition is inconsistent with the requirement that caption (and other portions of the ballot title) be written “in terms that will not confuse or mislead potential petition signers or voters.” *Lavey v. Kroger*, 350 Or 559, 563, 258 P3d 1194 (2011). While some readers arguably could ascribe to “equal” the meaning offered by the Attorney General, others reasonably may not. The ballot title must avoid creating such confusion and ambiguity.

The Attorney General acknowledges that in the constitutional context, “equal” implicates fairness, justice and impartiality. The Attorney General even evokes the phrase “equal rights” as an example of how electors generally associate the word in relation to constitutional principles. *See Answering Memorandum at 4* (“equal can mean ‘fair, just’ as in the phrase ‘equal rights’”) (citation omitted). Given that “equal” is understood to mean “fair” in the context of the constitution, readers reasonably would conclude that for an initiative that amends the constitution, the word “equal” has a normative component. *See Fletchall v. Rosenblum*, 365 Or 98, 108, 442 P3d 193 (2019) (word in ballot title is inappropriate if it “is not neutral, but rather has a normative component”).<sup>1</sup> “Equal” should not appear in the caption, or elsewhere in the ballot title.

The Attorney General’s underlying position also is flawed. She argues that the caption would be legally sufficient if it conveyed that the commission

---

<sup>1</sup>The Attorney General properly recognizes that “[i]t would be inappropriate for the ballot title to \* \* \* say whether the allocation is fair or unfair.” *Answering Memorandum at 5*. Inconsistently, the ballot title uses the word “equal,” which is defined as “fair.”

created by initiative consists of “four members from each of the largest two political parties and four members from other parties or with no party affiliation.” Answering Memorandum at 6. But the caption must do more than just state that the commission created by the initiative has the same number of “Democrats, Republicans, others.” Consistent with *Fletchall*, the caption (and remainder of the ballot title) must inform voters that the initiative shifts reapportionment to an entity whose composition is not proportionately representative of the electorate.

In *Fletchall*, the court was explicit that it was “necessary to highlight the fact that IP 5 transfers reapportionment – a process that, by its nature, is concerned with representation – from a body whose membership is strictly apportioned in accordance with population to one that effectively inverts that population-based apportionment.” 365 Or at 108. IP 57 raises precisely the same issue. It too shifts reapportionment from a body “whose membership is strictly apportioned in accordance with population” to a body where Republicans “with fewer residents have more representatives (and, thus, more power).” *Id.*<sup>2</sup> The phrase “equal number of Democrats, Republicans, others” wholly fails to convey that significant change.<sup>3</sup>

---

<sup>2</sup>See generally Petition for Review at 7-8 (discussing disproportionate representation of Republicans on redistricting committee proposed by the initiative).

<sup>3</sup>*Amici curiae* assert that the ballot title need not provide that the initiative would result in a redistricting commission untethered to population-based apportionment because “[v]oters will understand that, if the number of Democrats on the commission is *the same as* the number of Republicans, the commission will not reflect the higher number of Democrats currently registered in the state.” Memorandum of *Amici Curiae* at 5 (emphasis in

The Attorney General does not address the ambiguity in the word “others” or that the phrase “equal number of \* \* \* others” is inaccurate. To the extent “others” is intended to encompass unaffiliated voters and voters of minor political parties, the redistricting commission created by the initiative will not be “equal.” Because the initiative allocates only four commission seats to representatives of unaffiliated voters and minor political parties, it is mathematically impossible for each minor political party and unaffiliated voters to have the same number of commission seats as one another, much less the same number as Republicans and Democrats. Some minor political parties will not be represented at all. “Equal number of \* \* \* others” also is inconsistent with the initiative’s deliberate exclusion of Oregonians from commission membership based on age, residency status, past and present political activity, as well as the political activity of their past and present family members and “cohabitants.” Representation of those “others” cannot be “equal” when their participation is prohibited.<sup>4</sup>

Finally, “equal number” incorrectly conveys that Republicans, Democrats and “others” have equal voting power on the commission when they

---

original). That argument mistakenly assumes that voters are aware of elector registration statistics. Yet, there is no reason to believe that voters would have that information, and a voter’s understanding of the initiative’s major effects should not be conditioned on whether they do. The legal standard for ballot titles is not “let the voters figure it out.”

<sup>4</sup>For IP 5 (2020) the Attorney General, at the court’s suggestion, ultimately used the phrase “membership weighted toward rural areas.” Ms. Uherbelau respectfully submits that a similar phrase – “membership weighted toward Republicans” – would comply with the statutory requirements.

do not. While a redistricting plan must be approved by a majority of commissioners, a plan cannot be approved without the vote of at least one Republican, one Democrat and one “other.” IP 57, § 7(2)(d). That means that if a super-majority consisting of all four Democrats and all four “others” on the commission vote in favor of a plan, but all four Republicans oppose the plan, the plan will fail. The commission redistricting plan approval process is not one person, one vote. “Equal number” misleadingly implies otherwise.

**B. The Summary Improperly Conflates “Cohabiting Members of a Household” and “Family Members”**

The initiative excludes from commission participation individuals who are, or within the four years prior to commission appointment were, the “spouse, parent, child, sibling, in-law or cohabiting member of a household” of politically active individuals. IP 57, § 6(3)(c)(J). The short-hand phrase “family members” in the summary to describe those excluded from commission participation by association is underinclusive. “Cohabiting members of a household” are not necessarily “family members.” The phrase is not defined in the initiative and has no commonly understood legal meaning. It easily could extend to roommates, renters or unrelated tenants-in-common living under one roof. The summary should be revised to address this omission.

**CONCLUSION**

Ms. Uherbelau respectfully requests that the court certify to the Secretary of State a ballot title that complies with the requirements of ORS 250.035(2) in lieu of the ballot title certified by the Attorney General or, alternatively, refer the ballot title to the Attorney General for modification.

DATED this 10th day of March, 2020.

Respectfully submitted,

STOLL STOLL BERNE LOKTING &  
SHLACHTER, PC

By: s/ Steven C. Berman  
Steven C. Berman, OSB No. 951769

**Attorneys for Petitioner Becca Uherbelau**

**CERTIFICATE OF FILING AND PROOF OF SERVICE**

I hereby certify that on March 10, 2020, I electronically filed the original PETITIONER BECCA UHERBELAU'S REPLY IN SUPPORT OF PETITION TO REVIEW BALLOT TITLE CERTIFIED BY THE ATTORNEY GENERAL FOR INITIATIVE PETITION 57 (2020) with the Appellate Court Administrator and electronically served it upon Benjamin Gutman, Carson L. Whitehead, and Shannon T. Reel, attorneys for respondent; and Gregory Chaimov, attorney *amici curiae* C. Norman Turrill and Sharon K. Waterman.

DATED this 10th day of March, 2020.

STOLL STOLL BERNE LOKTING &  
SHLACHTER P.C.

By: s/ Steven C. Berman  
Steven C. Berman, OSB No. 951769

**Attorneys for Petitioner Becca Uherbelau**