



**DEPARTMENT OF JUSTICE**  
APPELLATE DIVISION

March 17, 2020

The Honorable Martha L. Walters  
Chief Justice, Oregon Supreme Court  
Supreme Court Building  
1163 State Street  
Salem, OR 97310

Re: *Kelly Hopkins and Kevin Starrett v. Ellen Rosenblum, Attorney General, State of Oregon*

SC S067499 (Control) S067501

Dear Chief Justice Walters:

Petitioners Keely Hopkins and Kevin Starrett have filed a ballot title challenge in the above-referenced matter. Pursuant to ORS 250.067(4), the Secretary of State is required to file with the court the written comments submitted in response to the draft ballot title. Those written comments, under the cover of Elections Division Compliance Specialist Amanda Kessel's letter, are enclosed for filing with the court. Pursuant to ORAP 11.30(7), we also have enclosed for filing with the court the draft and certified ballot titles, together with their respective cover letters.

Sincerely,

/s/ Jeff J. Payne

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JJP:mb8/10155396

IN THE SUPREME COURT OF THE STATE OF OREGON

KEELY HOPKINS and KEVIN  
STARRETT,

Petitioners,

v.

ELLEN F. ROSENBLUM, Attorney  
General, State of Oregon,

Respondent.

Supreme Court No. S067499 (Control)  
S067501

RESPONDENT'S ANSWERING  
MEMORANDUM TO PETITION TO  
REVIEW BALLOT TITLE RE:  
INITIATIVE PETITION NO. 60  
(SUPREME COURT)

Petitioners Hopkins and Starrett challenge the certified ballot title for Initiative Petition 60 (2019) (IP 60). Petitioners, who submitted comments on the draft ballot title, challenge all parts of the certified ballot title. Under ORAP 11.30(6), the Attorney General submits this Answering Memorandum to the petitions for review. This court reviews to decide only whether the Attorney General's certified ballot title is in "substantial compliance" with the statutory requirements. ORS 250.085(5). On review, this court "examine[s] the proposed ballot title against the statutory requirements \* \* \* [and is] not concerned with whether petitioners' proposed titles may be better or even whether [the court] could devise a better one[.]" *Burbidge v. Paulus*, 289 Or 35, 38, 609 P2d 815 (1980). Because the ballot title substantially complies with the requirements of ORS 250.035, this court should certify it without modification.

**A. Current law**

In general, under current law, transfers of any type of firearm are completed by a federally registered gun dealer. ORS 166.435(2). But transfers may also occur through a private owner at a gun show if the private owner transfers the firearm through a gun dealer, or requests a background check with the state police. ORS 166.438(1); 166.436(2).

Upon request for a background check by a gun dealer or a private owner, the state police must determine whether the transferee is disqualified from owning a firearm because the transferee is under 18, has been convicted of a felony, has outstanding felony warrants for arrest, is on pretrial release for a felony, or is precluded from firearm ownership due to an adjudication of mental illness. ORS 166.412(2); 166.432; 166.434; 166.436(2)-(3); 166.470.

If a gun dealer requests a background check prior to a firearm sale and the police cannot complete it before the close of the dealer's next business day, the dealer can transfer the firearm without completion of the background check. ORS 166.412(3)(c). Improperly transferring a firearm is a Class A misdemeanor. ORS 166.418.

Currently, Oregon law does not require completion of a safety training course (other than to obtain a concealed carry permit for a handgun; ORS

166.291) or a waiting period before a purchaser may obtain a firearm.

Additionally, there are no current restrictions on the possession of ammunition, except by individuals who are subject to a stalking order. ORS 166.255.

Oregon law places no restrictions on magazines of any size.

**B. IP 60's changes to current law**

IP 60 first defines terms used in the initiative. It defines “semiautomatic assault firearms” by describing their firing capabilities, their capacity to accept specified detachable magazines, and by identifying many of them by make and model. IP 60 Section 3(9).

The initiative then sets forth requirements for the purchase or transfer of semiautomatic assault firearms. Purchases or transfers can only be made through a gun dealer regardless of whether done at a gun show or privately. IP 60 Section 4(2). The measure also imposes new requirements on the gun dealer and purchaser/transferee. Specifically, the gun dealer must confirm that the purchaser/transferee is 21 or over and has completed an approved firearm safety course in the last four years that meets specified criteria. IP 60 Section 4(3).

After confirming that information, the gun dealer then must request a criminal background check from the state police, and the background check must include a search of specifically identified data bases. IP 60 Section (4)-

(5). In addition to the data bases currently required under ORS 166.432, IP 60 requires the state police to review “[a]ny other information available that may lead to the conclusion that the purchaser or transferee is otherwise prohibited by state or federal law from possessing a firearm.” IP 60 Section 4(5).

Unlike the process under current law, IP 60 requires the dealer to receive approval from the state police based on a completed criminal background check before transferring the firearm. Additionally, once the police have determined that there is no prohibition on the transferee receiving the firearm, the transferee must wait for either five business days from the date the background check was requested or, if the waiting period has already ended, the date upon which the background check has been completed and the transfer is approved—whichever date is later. IP 60 Section 4(8). The state police must retain an electronic record of the request for a background check. IP 60 Section 4(11).

The initiative provides exceptions for law enforcement and the armed forces from the above-described requirements for purchases or transfers. IP 60 Section 4(12). The initiative prohibits the knowing sale or transfer of a semiautomatic firearm to a person under 21, IP 60 Section 5(1); however, a person who is over 18 and under 21 may possess a semiautomatic firearm in the

person’s place of abode, fixed place of business, on real property under the person’s control, and in other specified instances, IP 60 Section 5(3).

Finally, a person—whether a gun dealer or private seller—commits the crime of improperly transferring a semiautomatic assault firearm if he or she intentionally violates any of the provisions of IP 60 Sections (4) and (5). IP 60 Section (4)(13)-(14). The crime is a Class A misdemeanor. *Id.*

The measure’s second component concerns ammunition magazines. IP 60 Section 6 defines “large-capacity magazine” as a “detachable magazine, belt, drum, feed strip, helical feeding device, or similar device” that has a capacity of “more than 10 rounds of ammunition and allows a shooter to keep firing without having to pause to reload.” IP Section 6(1)(d). The measure prohibits the “purchas[ing], import[ing], sell[ing] or otherwise transfer[ing]” of large-capacity magazines. It provides exceptions for law enforcement, the armed forces, and specified exceptions for persons who own large-capacity magazines prior to the date that the measure is enacted. IP 60 Section 6 (3). Gun dealers that have large-capacity magazines in stock on the effective date of the measure are allowed 180 days to transfer them out of state or render them incapable of accepting more than ten rounds. IP 60 Section 6(3). Violation of the magazine prohibition is a Class A misdemeanor. IP 60 Section 6(4).

**C. The caption substantially complies with ORS 250.035(2)(a)**

ORS 250.035(2)(a) requires a caption of up to 15 words that “reasonably identifies the [proposed measure’s] subject matter.” To determine if the caption reasonably identifies the measure’s subject matter this court first examines the text of IP 60 and the changes it would make to existing law, then examines the words of the caption. *Kain v. Meyers*, 337 Or 36, 41, 93 P3d 62 (2004). “Subject matter,” refers to the “actual major effect” of a measure or, if the measure has more than one major effect, all such effects (to the limit of the available words). *See, e.g., Terhune v. Myers*, 342 Or 475, 480, 154 P3d 1284 (2007) (so holding). The caption must “inform potential petition signers and voters of the sweep of the measure.” *Id.* at 479. It must identify the “principal effect” or “actual major effect” of the proposed measure, *id.*, without being inaccurate or underinclusive. *Hunnicuttt v. Myers*, 342 Or 491, 495, 155 P3d 870 (2007).

The Attorney General’s caption substantially complies with ORS 250.035(2)(a). The caption reads:

**Adds restrictions on certain semiautomatic firearm purchases/transfers; prohibits ammunition magazines over ten rounds; exceptions**

Petitioner Hopkins contends that the caption fails to identify the actual major effect of the measure, which she identifies as:

dealers and anyone desiring to purchase most semiautomatic handguns, rifles, shotguns, and their magazines must run a procedural gauntlet and be subject to criminal prosecution if they make a simple mistake in the process. Furthermore, the certified caption fails to mention the broad gun ban on 18-20 year old law-abiding adults.

As best understood, Hopkins argues that the caption does not meet the statutory standard because it fails to individually enumerate IP 60's changes within the 15-word limit. Petitioner Starrett raises similar arguments.

As set out, IP 60 would enact numerous individual changes to current law. When describing multiple individual changes of an initiative within the 15-word limit is not possible, a caption may use "more general terms in order to reasonably capture the universe of the measure's major effects." *Vaandering v. Rosenblum*, 359 Or 1, 7, 371 P3d 1194 (2016). IP 60 is such an instance where general terms must be used.

Although IP 60 imposes several new requirements, its major effect is two-fold. First, it places additional restrictions on the sale or transfer of specifically defined semiautomatic firearms. It does so by requiring that all sales or transfers go through a gun dealer, by limiting sales or transfers to those

age 21 or over, by requiring completion of an approved safety course in the last four years, by imposing a 5-day waiting period, and by requiring a completed background check.<sup>1</sup> Second, it prohibits magazines holding 10 or more rounds of ammunition.

The caption reasonably identifies that two-fold subject matter. ORS 250.035(2)(a). It specifically alerts voters that IP 60 imposes restrictions on the purchase or transfers of specifically identified semiautomatic firearms, and prohibits magazines that hold more than 10 rounds of ammunition. And it alerts voters to the fact that there are exceptions to these changes.

Next, petitioners Starrett and Hopkins take issue with two of the definitions provided in IP 60. They first contend that the definition of “semiautomatic assault firearm” does not convey the range of firearms that would be affected by IP 60, and that the definition encompasses firearms that historically have not been considered semiautomatic. They also contend that the definition of “large capacity magazines” does not comport with the common understanding of that term, because magazines holding more than 10 rounds are

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<sup>1</sup> As set out, IP 60’s only change to the current background check requirement is to require the police to also review “[a]ny other information available that may lead to the conclusion that the purchaser or transferee is otherwise prohibited by state or federal law from possessing a firearm.” IP 60 Section 4(5). That addition is not an “actual major effect” of the initiative.

“standard” for many firearms. Petitioner Hopkins also contends that “semiautomatic assault firearm” and “large capacity magazine” are “deceptive and politically charged term[s.]” Thus, because the definitions do not comport with what Starrett and Hopkins contend is the general understanding of those terms, they argue that the ballot title should not use those terms or phrases.

First and foremost, the caption does not use either of those phrases. Rather, “semiautomatic firearm” and “ammunition magazines over ten rounds” are used, making Petitioners Hopkins and Starrett’s objections inapplicable to the caption.

In any event, this court considered the same issue in *Beyer v. Rosenblum*, 363 Or 157, 421 P3d 360 (2018). In that case, the initiative defined “assault weapon” and prohibited the unlawful possession or transfer of such weapons. 363 Or at 160. It also defined “large capacity magazines” and placed restrictions on the possession or transfer of those. *Id.* at 160-61.

The certified ballot title *in Beyer* used the phrase “Prohibits ‘assault weapons’ (defined), ‘large capacity magazines’ (defined).” The petitioners argued that the phrase was “impermissibly deceptive, confusing, and underinclusive.” *Id.* at 166. Specifically, there was no “common understanding” of the term and as defined in the initiative it included weapons

not commonly considered to be semiautomatic weapons. Moreover, magazines holding 10 rounds were standard for most handguns and rifles. *Id.* at 167.

Thus, the petitioners argued that the caption should have stated that the initiative would ban “virtually all” semiautomatic weapons and magazines. *Id.* at 167, 170-71.

This court agreed with petitioners that “different voters reasonably could draw different meanings” from the terms “assault weapons” and “large capacity magazines.” *Id.* at 170. And, in light of those differing understandings, placing the terms in quotation marks and noting that they were “(defined)” would not eliminate voters’ possible confusion about the reach of the definitions and, thus, the measure’s subject matter. *Id.* However, this court rejected the petitioners’ argument that the caption should state that the initiative banned “virtually all” semiautomatic weapons, because “those are factual contentions that are beyond the scope of the questions before us” in a ballot title challenge. *Id.* at 170-71.

With those directions, this court concluded that

given the particular definitions set out in [the initiative], we conclude that the caption could accurately state that the proposed measure would criminalize the possession and transfer of many semiautomatic weapons, as well as magazines holding over 10 rounds.

*Id.* at 171.

As a result, consistent with *Beyer*, the caption for IP 60 does not use the phrase “large capacity magazines.” Rather, it specifically states that IP 60, if enacted, “prohibits ammunition magazines over ten rounds,” thus eliminating any confusion over the size of the magazines at issue. Similarly, by using the phrase “certain semiautomatic firearms,” the caption for IP 60 avoids any confusion associated with using the phrase “assault weapon,” and comports with the *Beyer* holding. The certified caption substantially complies with all statutory requirements and should not be modified as the petitioners suggest.

**D. The “Yes” and “No” vote result statements substantially comply with ORS 250.035(2)(b) and ORS 250.035(2)(c).**

**1. The “Yes” statement.**

The “Yes” vote result statement substantially complies with ORS 250.035(2)(b), which requires a “simple and understandable statement of not more than 25 words that describes the result if the state measure is approved.”

The Attorney General’s “Yes” vote result statement reads:

**Result of “Yes” Vote:** “Yes” vote requires completed background check, safety training, waiting period, age 21 to purchase/transfer certain semiautomatic firearms; prohibits ammunition magazines over ten rounds; exceptions.

Petitioner Hopkins contends that it is insufficient because “it blatantly ignores existing rights.” But the purpose of the “yes” statement is to alert

voters to changes that would be enacted. In contrast, the purpose of the “no” statement is to alert voters of the existing state of the law. *See Lavey v. Kroger*, 350 Or 559, 564, 258 P3d 1194 (2011) (“yes” statements requires an accurate description of the “change in the law” if initiative is enacted); *cf. Vaandering*, 359 Or at 10 (“no” statement should describe the “status quo”). Thus, the “no” statement is the proper place for clarifying existing rights to voters. As discussed below, the “no” statement accurately sets forth the *status quo*.

Petitioner Starrett contends that the “yes” statement is insufficient because it does not specifically mention the requirement that all sales or transfers must go through a gun dealer. But as discussed above, given the number of changes IP 60 would enact it is not possible to individually identify all of them within the specified word limits. The “yes” statement alerts voters to the fact that IP 60 imposes numerous restrictions on the sale or transfer of firearms and lists the major effects that would occur if the state measure were approved. The statement substantially complies with ORS 250.035(2)(b).

## **2. The “No” statement**

Likewise, the Attorney General’s certified “No” vote result statement substantially complies with ORS 250.035(2)(c), which requires a “simple and

understandable statement of not more than 25 words that describes the result if the state measure is rejected.” The “No” vote result statement reads:

**Result of “No” Vote:** “No” vote retains current law: minimum age 18 (some handgun purchases 21); background check request; safety course, waiting period not required; no magazine capacity restrictions.

Petitioner Starrett does not identify any specific shortcomings in the “no” statement, but offers his own version. Even if Starrett’s proposed substitute is deemed to be written “better,” that does not mean that the certified statement fails to meet statutory requirements. *See Priestley v. Paulus*, 287 Or 141, 145, 597 P2d 829 (1979) (the court’s role is to determine whether title complies with statute; it does not determine whether petitioner’s proposed title is better).

Petitioner Hopkins contends that the “no” statement “fails to convey what all firearm transfers must generally go through.” As best understood, Hopkins contends that the “no” statement does not set out the current requirements for purchasing a semiautomatic firearm. To the contrary, it makes clear that the current age for firearm purchases is 18 (21 for some handguns), and that a background check request is currently in place. It also makes clear that, if IP 60 is not enacted, a safety course and waiting period are not required. Finally, it makes clear that no limitations on magazines will be imposed because there are

no magazine capacity restrictions under current law. Accordingly, the “no” statement substantially complies with ORS 250.035(2)(c).

**E. The summary substantially complies with ORS 250.035(2)(d).**

The Attorney General’s summary substantially complies with ORS 250.035(2)(d), which requires “[a] concise and impartial statement of not more than 125 words summarizing the measure and its major effect.” The certified summary states:

Oregon law currently requires minimum age 18 for firearm purchase/transfer (federal law requires age 21 for some handgun purchases), seller/transferor to request criminal background check. No safety course or waiting period required; no limits on capacity of ammunition magazines. Measure adds purchase/transfer restrictions on certain semiautomatic firearms (some covered firearms identified by model, others by design features). Measure requires all purchases/transfers of semiautomatic firearms to occur through “gun dealer” (defined); purchaser/transferee minimum age 21; completed approved safety training; completed criminal background check; 5-business-day waiting period. Measure prohibits magazines that can contain more than 10 rounds of ammunition. Exceptions for law enforcement, armed forces, and magazines owned on or before measure’s effective date. Other provisions.

Petitioner Starrett does not argue that the summary fails to summarize the measure and its major effect, but instead takes issue with the use of the phrase “certain semiautomatic firearms.” He contends that the phrase “various firearms” is more accurate and should be used instead. As explained above, the

phrase “certain semiautomatic firearms” correctly describes the firearms at issue in IP 60 and is consistent with this court’s holding in *Beyer*.

Petitioner Starrett contends that the summary is non-compliant because it does not specifically state that gun dealers would be required to do transfers for “police, gun buy-backs, family member, [and] estate distribution[.]” First, IP 60 Section 4(12) exempts law enforcement from that requirement. Thus, petitioner’s contention in that respect is incorrect. As for the remaining transfers, the summary accurately states that “all” transfers would be covered.

Petitioner Hopkins does not identify specific shortcomings in the summary, but contends that it “carries forward all the problems of the caption, the yes statement, and the no statement.” In other words, Hopkins argues that the summary does not properly identify the subject matter and does not properly explain existing rights. However, for the reasons discussed above with respect to the caption and the results statements, the summary correctly and accurately identifies the subject matter of IP 60, and sets out the state of current law.

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**F. Conclusion**

This court should certify the ballot title without modification.

Respectfully submitted,

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/s/ Jeff J. Payne

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