

IN THE SUPREME COURT OF THE
STATE OF OREGON

KEELY HOPKINS
Petitioner,

v.

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

S067499 (Control)

KEVIN STARRETT,
Petitioner,

v.

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

S067501

PETITIONER KEVIN STARRETT'S REPLY MEMORANDUM

Respondent's Answering Memorandum contains a narrative description of the changes IP 60 would introduce to Oregon firearm laws that is generally accurate with a few noteworthy exceptions. Petitioner's Reply takes issue with respondent's following positions:

- 1) That IP 60's definition of "semiautomatic assault firearms" is based upon "their firing capabilities", restricts only "specifically defined [or identified]

semiautomatic firearms” and that the “phrase ‘certain semiautomatic firearms’ correctly describes the firearms at issue in IP 60.”¹

- 2) That Petitioner Starrett raised erroneous objections to IP 60’s phrase “semiautomatic assault firearms” that was not included in the ballot title making his “objections inapplicable to the caption.” (Answer, p 9).
- 3) That including firearms without semiautomatic functionality within the phrase “certain semiautomatic firearms” substantially complies under *Beyer v. Rosenblum*, 363 Or 157, 421 P.3d 360 (Or. 2018). Answer, pp 10, 13.
- 4) That petitioner Starrett did not “identify any shortcomings in the ‘no’ statement” so his alternative “no” statement should be disregarded.
- 5) That IP 60 “exempts law enforcement” from the provisions of Sec. 4(2).
- 6) That several firearm transfer methods that are expressly permitted under Oregon law but banned under IP 60 do not need to be described within the ballot title. Answer, p15.

IP 60 would define a new class of firearms that would be subject to heightened regulation and restrictions. Respondent has chosen to label this class “certain semiautomatic firearms” even though it covers firearms that are not “semiautomatic” and unspecified models that may be manufactured at some point in the future. Respondent does not deny that this label does not apply to type of

¹ See Respondent’s Answer, pp 3, 7-8, 10 and 13.

firearm covered within its sweeping definition, instead, respondent relies this Court's ruling in *Beyer* certain "factual contentions" are "beyond the scope of the questions before us." (*Beyer* at 170-171) This dictum from *Beyer* was used to refute an argument that IP43 (2018) should be described within the ballot title as applying to "virtually all" semiautomatic weapons. It reflects the commonsense understanding that neither the requirements of ORS 250.035, nor the certification timeframe allotted for certifying a ballot title, require the Attorney General to conduct an exhaustive study of a measure's applicability to the mechanics of every firearm model. Petitioner did not ask respondent to embark upon such a study, rather, the objection was based upon respondent including firearms that are not semiautomatic (neither in IP 60's facial description nor in an examination of its mechanical action) within a class of firearms that respondent nevertheless describes as "semiautomatic".

IP 60 specifically covers existing models without semiautomatic functionality (revolving cylinder shotguns) and "any type, series or model of a firearm that is a variation" of such models. It is misleading to describe such firearms as "certain semiautomatic firearms". Respondent would not have had to conduct an exhaustive study of firearms mechanics to recognize this.² IP 60's definition of

² To the contrary, respondent should have had to engage in a documented study of the mechanics of revolver-type shotgun models in order to support including revolving cylinder shotguns fit within the "semiautomatic" classification. The

“semiautomatic assault firearms” can be found in Section 3(9)(a-1). The firearms covered in subsections (a-i) are specifically described as “semiautomatic” within each subsection definition. The firearms covered in subsections (j-k) do not use “semiautomatic” to describe covered firearms. Respondent did not have to study firearm mechanics to discover this, it was part of IP 60’s language and it was directly addressed in petitioner’s comment letter. The ballot title should not describe the class of covered firearms as “semiautomatic” without also mentioning the non-semiautomatic firearms it also covers. To improve accuracy and conserve wordspace, proponents suggest “various firearms” to describe the class of covered firearms in the caption and “yes” statement.

Respondent alleges two procedural errors in Petitioner’s memorandum, both are without merit. First, petitioner did not raise an objection to the phrase used by IP 60 for its class of covered firearms even though not used with in the CBT (“semiautomatic assault firearms”). Petitioner described IP 60’s use of that phrase as a “catch-all definition” within the overview of the measure (Petitioner’s memorandum, p. 3) but referred to the specific language (“certain semiautomatic” or “automatic”) as being misleading throughout the remainder of the memorandum. Secondly petitioner did identify flaws in respondent’s description of

Beyer dictum should be a shield against demanding exhaustive outside research, rather than a sword for using facially underinclusive descriptive terms.

the effect of IP 60 upon current firearm laws while laying out the deficiencies of the “yes” statement. The analysis of the effects of IP 60 on current Oregon firearms law was described on page 9 of Petitioner’s memorandum. The alternative “no” statement was based on that analysis and referenced to apply to both statements (without repetition to preserve space).³

Respondent asserts that one of the several types of firearm transfers banned by IP 60 (directly to law enforcement) would be exempted under Section 4(12). This does not appear to be accurate. That subsection only creates exemptions for transfers that are not “expressly set forth in this 2020 Act.” Section 4(2) expressly requires “[a]ll sales or transfers of a semiautomatic assault firearm...shall be completed through a gun dealer.” It is very hard to read the term “all” as referring to something less than an entirety without a qualifier (e.g., “almost all”). The effect upon transfers to law enforcement should be included.

Finally, the respondent’s decision not to include any description of the type of legal firearm transfers (expressly permitted by current law) that would be banned by IP 60 is a disservice to voters. The summary of a ballot measure should always make room to describe legal activities that will be expressly outlawed. A voter might otherwise assume that transfers within families continue to be

³ See Petitioner’s Memorandum P.9 “For this reason, the involvement of “gun dealers” in transfers is an important effect warranting note in the results *statements.*” (emphasis added).

permissible without a gun dealer. Given that the CBT caption and “yes” statement both announce that IP 60 contains “exceptions” and the summary ambiguously indicates that IP 60 has “other provisions”, it seems quite possible that a firearm owner who planned to directly gift a covered firearm to a spouse would not understand that IP 60 would make that a misdemeanor. The summary can make that clear.

Respectfully Submitted,

Eric Winters
Eric Winters, OSB #983790
Attorney for Petitioner

CERTIFICATE OF FILING AND SERVICE

I certify that on March 24, 2020 I served a copy of **Petitioner Kevin Starrett's Reply Memorandum** upon the Attorney General of the State of Oregon, Office of the Solicitor General, Shawn M. Lindsay Attorney for Petitioner Keely Hopkins and Margaret S. Olney, Attorney for Amicus Curiae Chief Petitioners by electronic filing of all such parties through the Appellate E-filing system: <https://appellate-efile.ojd.state.or.us/filing/> .

I also certify that on March 6, 2020, I served a copy of the forgoing **Petitioner Kevin Starrett's Reply Memorandum** upon the chief petitioners by mailing a paper copy to:

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DATED this 24th day of March, 2020.

Eric Winters

Eric C. Winters, Attorney for Petitioner