

Voters didn't know what they were doing...

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It's hard to say which is worse.

Is it the fact that private property-rights opponents think Oregon voters are stupid? After all, they argue that voters didn't know what they were doing when they passed property-rights protection (Measure 7) in 2000, by a 53-47 margin, and again in 2004 (Measure 37) by a 61-39 margin after the courts struck down the earlier measure on procedural, not substantive, grounds.

And they're asking voters this November to address property rights a third time in a legislative referral (Measure 49) that they call a rewrite but which is really a repeal of Measure 37's property-rights protections.

Or, is it the fact that opponents of property rights apparently think voters aren't stupid enough? After all, they don't want voters this year to see an impartial ballot title providing a disinterested description of what Measure 49 actually does. Contrary to standard procedure, the Democratic Legislature wrote its very own ballot title instead of leaving the job to the attorney general. In addition, legislators cut out any review by the Oregon Supreme Court.

Is this a big deal? Dean Grudzinski and Keith Cyrus think it is. Indeed, these two Oregon property owners think that not giving voters a fair and accurate ballot title is a violation of the U.S. Constitution, and they went to federal court last week to make their case.

Nor are they alone in their concern about this kind of legislative buccaneering. Here's the case in a nutshell:

"By limiting access to the courts, this . . . poses a dangerous threat to the right of Oregonians to freely and fully participate in the electoral process. . . . This means that Oregonians will completely forgo their rights to appeal this issue to the highest court in the land -- a right we all hold dear. . . . Oregon voters deserve a fair and objective description of . . . proposed ballot measures. Anything less undermines our rights as citizens. The proper place to make this determination is in a court of law, removed from the influences of the political process.

"I'm aware that the Legislature has chosen to bypass this appeal process in the past. This rare exception was invoked only when the Legislature needed to get a quick answer from the voters. It is never appropriate to avoid the appeals procedure in an effort to thwart court scrutiny and bypass citizens who may have an alternate point of view on the objectivity of the proposed ballot title."

Those are former Gov. John Kitzhaber's words in a 1995 veto letter. The Legislature had passed a bill eliminating judicial review of a ballot title for a proposed constitutional amendment relating to obscenity, and Kitzhaber, a Democrat, would have none of it. His words are no less true today, though Kitzhaber himself supports Measure 49.

His concerns -- and those of Grudzinski and Cyrus -- are not just theoretical. That's clear when you look at the Legislature's Measure 49 ballot title and the draft the attorney general's office put together for an initiative identical to it. The Legislature's reads like a campaign document; the attorney general's draft is matter of fact.

The attorney general's ballot-title caption says the measure "limits" the number of homesites permitted under the 2004 property-rights law and establishes requirements for new claims. The Legislature's caption says the measure "clarifies the right" to build homes on their own land.

Notice a difference? The attorney general would let voters know the measure limits the number of homesites they can build on their own land and sets requirements for any future property-rights claims. The Democrats who ramrodded this through the Legislature over the unanimous opposition of Republicans want voters to know their measure simply clarifies the right to build homes. Limiting property-owners rights means taking something away. Clarifying can mean that, too, but it can also mean increasing or strengthening a right to build.

Such propagandizing is why the attorney general's office is normally part of the process. And why, as Kitzhaber said, "It is never appropriate to avoid the appeals procedure in an effort to thwart court scrutiny and bypass citizens who may have an alternate point of view on the objectivity of the proposed ballot title."

Never is now.

Am I cherry-picking on the title? Well, compare the attorney general's draft for the "Result of a 'Yes' vote" section: The attorney general's office says a yes "allows" up to 10 homesites and three if they're in groundwater restricted areas, high-value farmland or forestland.

And here's the Legislature's non-reviewable version: "Yes" vote modifies Measure 37; clarifies private landowners' rights to build homes; extends rights to surviving spouses; limits large developments; protects farmland, forestlands; groundwater supplies and all we hold dear in this place we call Oregon."

OK, I added the italicized phrase, but you get an idea of the difference in approach. One's civics. The other's partisan politics. Send in the judges.

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