Molera v. Reagan

Full Citation: Molera v. Reagan, 428 P.3d 490 (Ariz. 2018).
Date Filed: October 28, 2018
Opinion's Author: Per Curiam
Joined By: Vice Chief Justice Brutinel, Justices Pelander, Bolick, Gould, and Lopez.

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: The Invest in Education Act is a proposed initiative to raise funding for K–12 education by raising certain income tax rates. To get the initiative on the ballot, the proponents prepared petitions to get signatures to qualify the initiative for the ballot. In accordance with A.R.S. section 19-102(A), the proponents included this description on the petition sheets, with the accompanying notice.

> The Invest in Education Act increases the classroom site fund by raising the income tax rate by 3.46% on individual incomes over a quarter million dollars (or household incomes over half a million dollars), and by 4.46% on individual incomes over half a million dollars (or household incomes over a million dollars); designates 60% of new funds for teacher salaries and 40% for operations; adds full day kindergarten and pay raises for student support services personnel as permitted fund uses; requires governing boards seek teacher and personnel input on fund use plans; defines teacher and student support services personnel.

> Notice: This is only a description of the proposed measure (or constitutional amendment) prepared by the sponsor of the measure. It may not include every provision contained in the measure. Before signing, make sure the title and text of the measure are attached. You have the right to read or examine the title and text before signing.

The Invest in Education Committee submitted 270,000 signatures to the Secretary of State, some of which were invalidated.

Procedural History: This case is before the Arizona Supreme Court. At the superior court level, a few areas of validity were at issue. The Petitioners, Jamie Molera and Jennifer Henricks, challenged the validity of the description, as well as the fact that a third party pre-marked one of the boxes on most of the petition sheets.[1] The superior court held that the initiative was eligible for the ballot. It ruled that A.R.S. section 19-102(A) is unconstitutional, the description satisfied statutory requirements, and that some of the petition sheets were erroneously excluded by the Secretary of State.[2]

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[1] This box indicated whether the signer was paid to fill out the petition or not. The superior court ruled that the circulator boxes met the statutory requirements. The Arizona Supreme Court's opinion does not address this issue.

[2] The Arizona Supreme Court's opinion does not address the ballots invalidated by the Secretary of State, but upheld by the superior court, because the Petitioners did not contest this portion of the ruling.

The Arizona Supreme Court took an expedited appeal under A.R.S. section 19-122(C).[3] The Arizona Supreme Court issued an order disqualifying the Invest in Education Act initiative from the November 2018 general election ballot, and subsequently issued this opinion with the reasoning for the order.

Issue: A.R.S. section 19-102(A) requires that a description of an initiative on a ballot be 100 words or less and describe the principal provisions of the initiative such that a signor has adequate notice and is not subjected to a significant danger of confusion or unfairness. Does a description that purports to only change wealthy taxpayers tax rates, when in reality would likely, as analyzed by the court, increase most taxpayers tax rates, sufficiently give notice to signers of the petition sheet under section 19-102(A)?

Holding: No, the description of the initiative on the petition sheets to place the initiative on the ballot failed to provide adequate notice of the principal provisions under the Arizona Constitution and A.R.S. section 19-102(A) because it omitted material provisions and ambiguously described some principal provisions, which created a significant danger of confusion or unfairness to those who signed petitions to place the measure on the ballot.

Disposition: The superior court's decision upholding the petition for ballot is reversed.

Rule: Principal provisions of an initiative must be included in the 100-word or less description, and any ambiguities must not result in significant danger of confusion or unfairness to the signors.

Reasoning:

- **Arizona Constitution.** The court began its discussion with the Arizona Constitution. It explained that legislation by voters, similar to legislation by the legislative branch, must remain in the bounds of the initiative process laid out in the Arizona Constitution.[4] Moreover, the Arizona Constitution in article 7, section 12 gives the Arizona legislature the power under the Arizona Constitution to put forth Arizona statutes that ensure the purity of the electoral process.[5]

- **Statutory requirements.** Both the initiative proponents and challengers must comply with Arizona statutes to succeed.[6] In this case, the proponents failed to comply with A.R.S. section 19-102(A).[7] The court outlined the requirements that an initiative must meet to comply. The statute requires a description of 100 words or less that sufficiently outlines the principle provisions of the initiative.[8] The

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[3] Molera v. Reagan, 428 P.3d 490, 492 (Ariz. 2018).
[4] *Id.* at 493.
[5] *Id.*; ARIZ. CONST. art. VII, § 12.
[6] *Id.* at 494.
[7] *Id.*
[8] *Id.* (citing ARIZ. REV. STAT. ANN. § 19-102(A)).

description is insufficient if "it is fraudulent or creates a significant danger or confusion of unfairness," but need not be impartial or outline every detail.[9]

- **The affected taxpayers.** The court first addressed petitioners' argument that the description was deceptive because it led signers to believe only wealthy citizens would be impacted by the tax increase, when instead almost all taxpayers would be impacted because of a change in indexing. In addressing this argument, the court relied on some of the analysis done by the Legislative Council's and Joint Legislative Budget Committee's reviews of the initiative.[10] Both of these bodies' reviews revealed that the proposed initiative would change tax brackets, and these new tax brackets would not be subject to the inflation adjustments that current tax brackets are safeguarded by.[11]   In sum, according to these two bodies, the proposed legislation would result in an increase for most taxpayers.[12] The Arizona Supreme Court agreed that the language would eliminate indexing and that this elimination is a "principal provision" because it was primary and consequential to signors.[13] The court held that the elimination of indexing should have been included in the initiative description, and further held that eliminating this principal provision renders the initiative invalid.[14] Because the provision implied that only some people's taxes would be raised (and not the taxes of those most likely to be signing the petition), the omission had a serious risk of confusion.[15] Finally, the court noted that the proper remedy is removal from the ballot.[16]

- **The percentage increase.** Secondly, the court addressed petitioners' argument that the description was misleading and confusing because tax rates would actually increase by 66% and 98% (instead of, 3.46% and 4.46% noted in the description, respectively).[17] The court held that this difference was significant because it would materially alter whether someone would sign the petition.[18] While the court recognized that the word limit does prevent lengthy descriptions, the descriptions that are used must not be deceptive. The court suggests that they should have used the phrase "percentage points" to eliminate ambiguity.[19] Moreover, while the full description cleared up this ambiguity, the court held that the description on the petition must be unambiguous without required reference to the full description.[20]

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[9] *Id.* at 494 (*quoting* Save Our Vote, Opposing C-03-2012 v. Bennett, 291 P.3d 342, 349 (Ariz. 2013)).
[10] *Id.* at 495.
[11] *Id.*
[12] *Id.*
[13] *Id.* at 496.
[14] *Id.*
[15] *Id.* at 497.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*