

I. SUMMARY OF ARGUMENT

Article I, section 21 of the Oregon Constitution prohibits the passage of a law that takes effect upon a future amendment of the constitution or a reinterpretation of the Constitution. In section 9(f) of Measure 47, voters prescribed that Measure 47 would take effect upon a future amendment of the constitution or a reinterpretation of the Constitution. Thus, Measure 47 is void. To avoid this invalidity, the trial court interpreted the prohibited term "effective" in section 9(f) to mean the permissible term "operative." However, the trial court could not interpret "effective" to mean "operative" because the two terms have different and special meanings in lawmaking.

n. ARGUMENT

Intervenors and the state agree that the question before this Court is the meaning that voters intended to convey through section (9)(f), which provides that "this Act * * * shall become effective at the time that the Oregon Constitution is found to allow, or is amended to allow, * * * limitations [on political campaign contributions or expenditures]. Did voters intend for section 9(f) to express that Measure 47 would (as section 9(f) says) become "effective" upon a change in constitutional language or interpretation? Or did voters intend to say that Measure 47 would become effective upon passage and then "operative"—as section 9(f) does not say—upon a change in constitutional language or interpretation? Intervenors and the state also appear to agree on the consequences of the distinction: If voters meant "effective," then Measure 47 is, as Intervenors contend, void, but if voters meant "operative," then Measure 47 is, as the state contends, dormant.

The state's argument is based on the premise that "[f]or over 100 years, Oregon courts have upheld laws that were enacted under similar conditions [to section 9(f)] as a valid exercise of legislative power * * * [.]" Respondents' Br., p. 7. The state's (and trial court's) conclusion that Measure 47 lies dormant like some legal

Lazarus flows from this erroneous premise. Generations ago, the Supreme Court did uphold laws the "effect[iveness]" of which had been made contingent upon a change in constitutional language or interpretation. *See, e.g., State v. Hecker*, 109 Or 520 (1923); *State v. Rathie*, 101 Or 339 (1921). In reaching its conclusions, the Supreme Court treated the term "effective" as if the Legislative Assembly intended to express the term "operative": Although Article I, section 21, does not permit a law to "take effect" upon a decision in a future election, "the Legislature [could] enact a law, and make its *operation* depend on the contingency of a popular vote[.]" *Fouts v. Hood River*, 46 Or 492, 501 (1905) (emphasis added).

If these cases had been followed over the years, with "effective" and "operative" treated as a synonyms, then there might be some force to the state's contention that voters intended the term "effective" in section 9(f) to mean "operative." But since *Rathie* and *Hecker*, "effective" and "operative" have not been treated as synonymous. There are no other court opinions treating "effective" and "operative" as synonyms because, since *Rathie* and *Hecker*, the participants in the lawmaking process—whether representatives in the Legislative Assembly or voters exercising the initiative power—have used the terms "effective" and "operative" to convey different meanings. *See* Cross-Appellants' Opening Br., pp. 15-16, 19-20.

The state's reliance on dictionaries to support the contention that voters must have understood "effective" to mean "operative" is misplaced—as is the state's reliance on the phrase "be codified." Intervenors do not contend that voters wanted to adopt a measure that was constitutionally-defective. Voters may have wanted to put into the Oregon Revised Statutes provisions that would spring to life upon the occurrence of certain events. The problem is that voters did not use the right terminology to achieve that result. When used in legislation, "effective" and "operative" are terms of legislative or legal art. A court cannot give the terms

meanings different from how they are employed in legislation any more than the court can interpret "red" to mean "green" or "up" to mean "down."

Christ V. Myers, 339 Or 494 (2005), demonstrates the point. There, petitioners submitted the forms to the Secretary of State to place Initiative Petition 41 before voters as a proposed constitutional amendment. In the text of their proposed measure, however, the petitioners referred to their proposal as an "Act." The Supreme Court, noting that the term "'act' has a special and well-recognized meaning in the area of lawmaking" that denotes a statute, not a constitutional amendment, 339 Or at 498, decided that the measure proposed a statutory change and not a constitutional amendment. Likewise, the trial court should not have interpreted "effective" to mean "operative" when the terms have "special and well-recognized meaning[s] in the area of lawmaking."

It is also not true that "applying intervenors' logic, any act which contained a suspension clause would necessarily create [the] conundrum" of the Act's never taking effect or becoming operative. Respondents' Br., p. 21. If the state's interpretation of section 9(f) is correct, then no part of *Measure 47* can ever become operative. Correctly drafted "suspension clauses" avoid the "chicken and egg" conundrum; section 9(f) was not drafted to avoid the conundrum. Under the state's interpretation of "effective," there would be no conundrum if section 9(f) read:

If, on the effective date of this Act, the Oregon Constitution does not allow limitations on political campaign contributions or expenditures, this Act shall nevertheless be codified and **sections 1 through 8,9(a) through (e), 10 and 11 of this Act** shall become effective at the time that the Oregon Constitution is found to allow, or is amended to allow, such limitations.

That language would mean that section 9(f) would be in effect now and able to render the rest of Measure 47 inoperative. By making the *entire* Act—including section 9(f)—inoperative until some future event, the petitioners created the situation

in which section 9(f) has no force and effect at all. If section (9)(f) renders "the Act" inoperative, then section (9)(f) must be inoperative, too. Thus, nothing in Measure 47 can ever be in force.

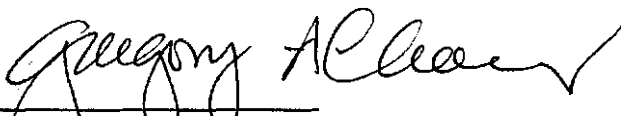
III. CONCLUSION

This Court should reverse the General Judgment in favor of the Secretary and Attorney General and remand the action to the trial court to declare that Measure 47 is void.

Dated this 21st day of November, 2008.

Respectfully submitted,

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