

# **Bond Case Briefs**

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## **BALLOT INITIATIVES - HAWAII**

### **City and County of Honolulu v. State**

**Supreme Court of Hawai'i - December 20, 2018 - P.3d - 2018 WL 6696791**

Counties brought action against various state election officials, seeking declaratory and injunctive relief invalidating legislation and enjoining a ballot question from being placed on the election ballot.

The Circuit Court denied counties' motion for a preliminary injunction, and certified the order for interlocutory appeal. Instead of appealing, counties petitioned for an extraordinary writ.

The Supreme Court of Hawaii held that:

- The Supreme Court would consider counties' petition for extraordinary writ;
- Ballot question was incompatible with statutory and constitutional requirement to not mislead voters; and
- Ballot question was not sufficiently clear.

Supreme Court would consider counties' petition for extraordinary writ challenging ballot question authored by state legislature proposing constitutional amendment, even though counties could have appealed trial court's denial of injunctive relief, where counties could not have obtained final resolution before general election even if they had sought to expedite appeal, and it was in public interest to resolve case prior to general election, in light of concerns inherent in after-the-fact invalidation of democratically approved ballot measure.

Ballot question that asked voters whether constitution should be amended to authorize legislature "to establish, as provided by law, a surcharge on investment real property to be used to support public education" was incompatible with statutory and constitutional requirement to not mislead voters; ballot question suggested surcharges on investment real property were not authorized under current law, and voters, to fully appreciate scope of proposed change, would have needed to know that proposed amendment would have made an exception to counties' exclusive authority to tax real property by granting State concurrent authority to tax what was presumably a subset of real property.

Ballot question that asked voters whether constitution should be amended to authorize legislature to establish "a surcharge" on investment real property was not clear, as required by statute and state constitution; if amendment would have allowed State to impose independent tax on real property, term "surcharge" did not obviously convey this meaning, and if, instead, amendment would have authorized only a dependent, supplemental charge added to existing tax imposed by counties, ballot question failed to accurately state upon what basis surcharge would have been calculated and levied.

Ballot question that asked voters whether constitution should be amended to authorize legislature to establish a surcharge on "investment real property" was not clear, as required by statute and state constitution; plain language of amendment, considered in isolation, would have allowed legislature to tax virtually any real property, but by qualifying "real property" with term "investment,"

amendment and ballot question suggested that legislature would have been empowered to impose the surcharge on only some real property.

Ballot question that asked voters whether constitution should be amended to authorize legislature to establish, “as provided by law,” a surcharge on investment real property was unclear and misleading, in violation of statute and state constitutional requirements; expression “as provided by law” had been recognized as inherently ambiguous, average lay voter did not have access to materials required to determine in what sense phrase was intended, and placement of phrase within ballot question may have led average voter to believe that legislature was already authorized by some other source of law to impose surcharge.

Ballot question that asked voters whether constitution should be amended to authorize legislature to establish a surcharge to be used “to support public education” was not clear, as required by statute and state constitution; even though funds raised through surcharge would have been required to be used to fund public education, funding provided by surcharge could have been offset by decrease from other sources, and voter would not have been unreasonable in assuming that measure would have resulted in an increase in funding for public education, when ballot question made no such guarantee.