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Kerr v. Polis

United States Court of Appeals, Tenth Circuit - December 13, 2021 - F.4th - 2021 WL 5873156

Political subdivisions, elected officials, educators, and citizens brought action against governor challenging constitutionality of Taxpayer's Bill of Rights (TABOR), which limited revenue-raising power of state and local governments by requiring voter approval in advance for any new tax.

The United States District Court denied governor's motion to dismiss for lack of standing and certified its order for interlocutory appeal. The Court of Appeals accepted jurisdiction and affirmed. The United States Supreme Court granted petition for writ of certiorari, vacated, and remanded. The Court of Appeals vacated and remanded. On remand, the District Court dismissed complaint, and plaintiffs appealed. Rehearing en banc was granted.

The Court of Appeals held that:

- Subdivisions had standing to bring action;
- Guarantee Clause did not confer right on political subdivisions that they could enforce against their parent state; and
- Colorado's Enabling Act did not create cause of action permitting political subdivisions to challenge TABOR.

Political subdivisions had standing to bring action challenging constitutionality of Colorado's Taxpayer's Bill of Rights (TABOR), which limited revenue-raising power of state and local governments by requiring voter approval in advance for any new tax; subdivisions incurred costs and expenses necessary to present matters to voters for their decision, those costs were fairly traceable to TABOR's requirements, and, if TABOR were struck down, their injury would be redressed.

Colorado's Enabling Act did not create cause of action permitting political subdivisions to challenge Colorado's Taxpayer's Bill of Rights (TABOR) on ground that it violated Act's guarantee of "constitution republican in form"; clause promising constitution republican in form had no clear beneficiary, and, aside from references to common schools, references to other subordinate political entities were nowhere to be found in Act.