

Bond Case Briefs

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Colorado Union of Taxpayers Foundation v. City of Aspen

Supreme Court of Colorado - May 21, 2018 - P.3d - 2018 WL 2295585 - 2018 CO 36

Taxpayers foundation brought declaratory judgment action against city, alleging enactment of city ordinance that required grocers to charge customers a \$0.20 “waste reduction fee” on disposable paper bags, passed without first obtaining voter approval, violated the Taxpayer’s Bill of Rights (TABOR).

The District Court granted summary judgment in favor of city. Foundation appealed. The Court of Appeals affirmed. City petitioned for writ of certiorari, which was granted.

The Supreme Court of Colorado held that:

- Foundation had associational standing, and
- Purpose of ordinance was not to raise revenue for the general expenses of government, and thus waste reduction fee was not a tax to which TABOR applied.

Taxpayers foundation had associational standing to bring declaratory judgment action against city, alleging enactment of city ordinance that required grocers to charge customers a \$0.20 “waste reduction fee” on disposable paper bags, passed without first obtaining voter approval, violated the Taxpayer’s Bill of Rights (TABOR), where two of foundation’s members were city residents who paid required bag charge, foundation was formed to educate the public as to the dangers of excessive taxation, regulation, and government spending, and the relief requested in the action, which was a court order that bag charge was unconstitutional, did not require participation of individual members.

Primary purpose of home rule city’s ordinance that required grocers to charge customers a \$0.20 “waste reduction fee” on disposable paper bags was not to raise revenue for the general expenses of government, and thus fee was not a “tax” to which the Taxpayer’s Bill of Rights (TABOR) applied, in action alleging that ordinance, which was passed without first obtaining voter approval, violated TABOR; city council determined that single-use shopping bags contributed to greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation, charge was assessed on consumers who chose to purchase non-reusable paper bags and grocery store remitted a majority of charge to city, which used it to defray the cost of specific waste reduction programs, and city determined charge was reasonable based on a waste-reduction study, city council’s own analysis of its recycling costs, and input from community.