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TAX - WASHINGTON

Eyman v. Ferguson

Court of Appeals of Washington, Division 2 - January 23, 2019 - P.3d - 2019 WL 299767

Tax protester sought declaration that separate advisory votes were required for each tax increase in tax legislation.

The Superior Court dismissed the action. Protester appealed.

The Court of Appeals held that:

- Protester's appeal was moot;
- Public interest exception to mootness doctrine applied;
- Phrase "not subject to appeal" applied only to short description to be placed on ballot for advisory vote; and
- Protester's petition for declaratory judgment was untimely.

Tax protester's appeal from trial court's denial of his petition seeking declaration that a separate advisory vote was required for each tax increase enacted by tax legislation was moot, where the legislation had been voted on in a single advisory vote in which a majority of voters advised its repeal, so that the Court of Appeals could no longer provide effective relief.

Exception to mootness doctrine for matters of continuing and substantial public interest applied to tax protester's appeal from trial court's denial of his petition for declaratory judgment as untimely, in protester's action claiming that a separate advisory vote was required for each tax increase enacted by tax legislation; the content of a ballot and issues of statutory interpretation were generally matters of substantial public interest, the timeliness and appealability issues did not depend on the nature of the tax increases at issue, and whether separate advisory votes were required was an issue that would likely recur with each package of legislative tax increases.

Phrase "not subject to appeal," as used in statute governing the short description to be placed on a ballot for an advisory vote on tax legislation, applied only to the Attorney General's formulation of the short description and not to other matters such as a decision to consolidate multiple tax increases in a single advisory vote; the phrase was placed in the middle of a clause requiring the Attorney General to prepare a short description for an advisory vote, and the phrase only appeared in the short description statute and was not found in sections addressing other steps in the preparation of advisory votes.

Tax protester's petition seeking declaration that a separate advisory vote was required for each tax increase enacted by tax legislation was untimely after the Attorney General transmitted the short description for the advisory vote to the Secretary of State; statutes governing short descriptions and their filing and transmittal established that the transmitted description would be used in upcoming ballots, and any challenge necessarily affected the description and how it appeared in a ballot, so that allowing challenges after transmittal would have injected self-contradiction into the statutory scheme and potentially jeopardized timely preparation of ballots.

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