

SUPREME COURT OF WASHINGTON

Kreidler v. Eikenberry, 111 Wash. 2d 828

766 P.2d 438 (1989) · No. Nos. 55238-0, 55398-0 · Decided January 6, 1989

SUMMARY

The Washington Supreme Court held that the Thurston County Superior Court had jurisdiction to review a ballot-title challenge involving a legislatively enacted alternative measure. It further held that the superior court's ballot-title decision was final and generally not appealable, and declined to exercise extraordinary review because the decision was not arbitrary, capricious, or contrary to law. The court affirmed denial of intervention and denied the requested writ; a dissent argued that the ballot title was misleading and should be corrected.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Utter, J.; Callow, C.J.; Dolliver, J.; Dore, J.; Pearson, J.; Durham, J.; Smith, J.; Andersen, J.; Brachtenbach, J.
JURISDICTION	Washington
DECIDED	January 6, 1989
DOCKET	Nos. 55238-0, 55398-0
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated direct appeal from denial of intervention in a ballot-title challenge and original action seeking a writ of prohibition based on an alleged lack of superior-court jurisdiction.
STANDARD OF REVIEW	Abuse of discretion for the trial court's timeliness determination on intervention; inherent review only for arbitrary, capricious, or unlawful action; writ of prohibition requires absence or excess of jurisdiction and absence of a plain, speedy, and adequate legal remedy.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	Mike Kreidler, et al., Legislators and Yes 97B Committee v. Kenneth O. Eikenberry, as Attorney General, et al., State, Fuller, Citizens' Toxic Cleanup Campaign, et al.

TOPICS

election law

appellate jurisdiction

intervention

writ of certiorari

statutory interpretation

PRACTICE AREAS

election law

appellate procedure

statutory interpretation

civil procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the superior court abused its discretion by denying the legislators' and Yes 97B Committee's motion to intervene.
2. Whether the Washington Supreme Court could review the superior court's ballot-title decision by direct appeal, discretionary review, or inherent authority.
3. Whether the superior court had subject-matter jurisdiction to review the ballot title for a legislatively enacted measure.
4. Whether respondents were entitled to attorney fees.

HOLDINGS

1. The superior court did not abuse its discretion by denying the petitioners' untimely motion to intervene because the petitioners had notice of the proceeding, failed to intervene before judgment, and showed no extraordinary circumstances justifying delay.
2. A superior court's decision on a ballot-title challenge is final and not subject to direct appeal or discretionary review under the governing statute and appellate rules.
3. The Supreme Court may exercise inherent review in unusual circumstances to determine whether a superior court's ballot-title decision was arbitrary, capricious, or contrary to law, but the circumstances here did not warrant review.
4. The Thurston County Superior Court has jurisdiction to hear ballot-title challenges to legislatively enacted measures.
5. The petitioners were not entitled to a writ of prohibition because the superior court had jurisdiction and the petitioners had an adequate legal remedy that they failed to use timely.
6. Citizens' request for attorney fees was dismissed because Citizens failed to file the affidavit required by RAP 18.1.

KEY QUOTATIONS

“RCW 29.79.060 states that the superior court's decision on review of the Attorney General's ballot title “shall be final.”” (at 834)

“The Superior Court for Thurston County has jurisdiction to hear appeals for both popular initiatives and legislatively enacted measures.” (at 840)

“The decision of the Superior Court is final and not appealable.” (at 841)

FACTUAL BACKGROUND

Citizens Toxic Cleanup Campaign filed Initiative 97 proposing a statewide hazardous-waste cleanup program. The Legislature enacted a different cleanup program, which was presented to voters as Alternative Measure 97B. After the Attorney General issued a ballot title for 97B, Citizens challenged it, and the superior court approved a revised title stating that the program had a hazardous-substance tax raising less money and less petroleum coverage. Legislators and the Yes 97B Committee, despite notice of the challenge, sought intervention only after the revised title had been approved.

PROCEDURAL HISTORY

Citizens challenged the Attorney General's ballot title for Alternative Measure 97B in Thurston County Superior Court. The superior court approved a revised ballot title, denied the later intervention motion of legislators and the Yes 97B Committee, and denied reconsideration. The petitioners appealed the intervention ruling and filed an original action in the Washington Supreme Court challenging the superior court's jurisdiction and seeking review of the ballot title.

DISPOSITION

other

CASES CITED

- United States v. Oregon, 745 F.2d 550, 552 (9th Cir. 1984)
- Board of Regents v. Seattle, 108 Wash. 2d 545, 557, 741 P.2d 11 (1987)
- Griggs v. Averbeck Realty, Inc., 92 Wash. 2d 576, 584, 599 P.2d 1289 (1979)
- Martin v. Pickering, 85 Wash. 2d 241, 243-44, 533 P.2d 380 (1975)
- Rains v. Lewis, 20 Wash. App. 117, 125, 579 P.2d 980 (1978)
- Hatfield v. Greco, 87 Wash. 2d 780, 557 P.2d 340 (1976)
- State ex rel. Seymour v. Superior Court, 168 Wash. 361, 12 P.2d 394 (1932)
- In re Ballot Title for Initiative 333, 88 Wash. 2d 192, 558 P.2d 248, 559 P.2d 562 (1977)
- State ex rel. Cosmopolis Consol. Sch. Dist. 99 v. Bruno, 59 Wash. 2d 366, 369, 367 P.2d 995 (1962)
- Bishop v. Illman, 9 Wash. 2d 360, 361, 115 P.2d 151 (1941)
- Robison v. LaForge, 170 Wash. 678, 17 P.2d 843 (1932)
- Adkins v. Aluminum Co. of Am., 110 Wash. 2d 128, 750 P.2d 1257, 756 P.2d 142 (1988)
- Marino Property Co. v. Port Commissioners of Port of Seattle, 97 Wash. 2d 307, 644 P.2d 1181 (1982)
- Equitable Shipyards, Inc. v. State, 93 Wash. 2d 465, 474, 611 P.2d 396 (1980)
- DuPont-Fort Lewis Sch. Dist. 7 v. Bruno, 79 Wash. 2d 736, 739, 489 P.2d 171 (1971)
- Ecumenical Ministries v. Paulus, 298 Or. 62, 688 P.2d 1339 (1984)
- GTECH Corp. v. Roberts, 300 Or. 539, 714 P.2d 610 (1986)
- McKibben v. Paulus, 292 Or. 729, 642 P.2d 1155 (1982)
- State ex rel. Ernst v. Superior Court, 198 Wash. 133, 137, 87 P.2d 294 (1939)
- Blue Sky Advocates v. State, 107 Wash. 2d 112, 727 P.2d 644 (1986)

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