

Supreme Court - State of Washington

ROBERT A. FICALORA

Petitioner

v.

CINDY ZENDER, Chief Clerk of the House of Representatives and MILT DOUMIT, Secretary of the Senate, both of the State of Washington and in their official capacities.

Respondents

ntc to: Christine O. Gregoire, Attorney General

Special Proceeding

**Answer to defendants'
motion to dismiss or
transfer**

State of Washington

Supreme Court

Case # 73731-2

MAY IT PLEASE THE COURT, Petitioner Robert A. Ficalora, appearing *in propria persona*, does herewith answer defendants' motion to dismiss or transfer this matter to the Superior Court for Thurston County as follows:

In answer to defendants item B: The cause of action clearly shown in the documents presented is whether a officer of the state has discretion to act upon ambiguous law - either within or without the workings of the government - in the face of a notice and demand to enforce it in a manner arguable according to the plain and apparent meaning of the language of the law. The language "alterative initiatives" and "alternatives to initiatives" is not defined in the law and any claim by defendants to deny a demand for action by the petitioner is clearly arbitrary.

The issue of any substantive effect of lifting the cutoff is moot and the issue of law presented is significant and should be briefed and argued before this court.

In response to defendants item C.: Setting aside the specific authorities of the defendants named herein, it is the clear duty of any officer of the state to act according to the law. The petition filed herein was for an order to compel the legislature to act according to the law.

Petitioner concedes that the defendants named herein are not be empowered to lift the cutoffs pursuant to SCR 8400, and may not be compelled to do so. He does, however, remain unsure as to who might have such authority other than the legislature itself, and it was for this reason, and the suggestion of certain states' attorneys, that the chief administrative officers of the legislature were joined as the defendants herein. In any event, Petitioner argues that this is not a fatal defect because no non-judicial officer of the state has discretion to act upon contested ambiguous law and changing the named defendants would not affect this court's ability to get to the merits of this matter.

In response to defendants item D.: At no time has petitioner moved or attempted to move this court to "tell the legislature to consider a bill" or to intrude upon the legislative decision making process. Petitioner seeks only to uphold the state Constitution and to enforce the law as represented by the intent of Article II and the language of SCR 8400. Lifting the cutoff would only allow the committees to consider the bills.

This matter raises questions outside of the "enrolled bill doctrine" shown in the law by defendants. Is a concurrent resolution of the legislature a law, or is it legislative process? If it is the former, is adjudicating it "looking behind the properly certified record", or is it within the judicial function of this court? These are legally cognizable issues requiring judgment.

Again: Petitioner has never - and is not - attempting to get this court to tell the legislature to consider pending bills.

In response to defendants item D.: The issue of whether or not the Joint Memorials are "Alternatives to Initiatives" is moot. The issues raised are if this phrase is defined anywhere in the law and who or whom has the authority to interpret ambiguous law and enforce an alternate reading of the law. Defendants have failed to

produce any such law, and demands made pursuant to an ambiguous law remain unsettled.

In claiming that an emergency alternative initiative of the people for legislation petitioner fails to see how the rules for a ballot referendum initiative can be reasonably applied:

Was the effort to obtain the subject proposed bills an initiative of the people in the common English-language understanding of the phrase? Yes, because they came from outside of the legislature from a concerted effort of the people.

Was the initiative for purposes within the intent of Article II of the state Constitution? Yes, the people sought "proposed bills" that were introduced into both the House and the Senate.

Was the initiative different than, or an alternative to, an initiative seeking a ballot referendum? Yes, the initiative had urgent needs and sought a Joint Memorial, not a law.

Conclusion

There are no triable issues of fact and the court should retain jurisdiction and enter judgment upon the substantive issues of law raised herein.

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CHRISTINE O. GREGOIRE
Attorney General
By *Christine O. Gregoire*
Assistant Attorney General

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