

THE SUPREME COURT OF WASHINGTON

TIM EYMAN,

Respondent,

v.

ROBERT FERGUSON, in his official capacity as the
Attorney General of the State of Washington; and
STEVE HOBBS, in his official capacity as the
Secretary of State for the State of Washington,

Petitioners.

ORDER

No. 101153-9

In this action for declaratory and injunctive relief filed in Thurston County Superior Court, respondent Tim Eyman asserts that E2SSB 5126, the Washington Climate Commitment Act, passed by the legislature and signed into law by the governor on May 17, 2021, is a measure “raising taxes,” requiring that it be submitted to the voters of the state for an advisory vote at “the next general election” pursuant to RCW 43.135.041(1)(a). The attorney general in 2021 had notified the secretary of state of all tax measures subject to an advisory vote pursuant to RCW 43.135.041(2) and did not list E2SSB 5126 as such a measure. Neither the respondent nor anyone else challenged that decision in 2021. After the attorney general provided a similar notification of tax measures in 2022, respondent filed the present action seeking to have E2SSB 5126 placed on the November 2022 general election ballot for an advisory vote. Rejecting the

claim that this action is untimely and finding that respondent is likely to prevail on the merits, the superior court issued a temporary restraining order prohibiting the secretary of state from printing voters' pamphlets without including an advisory vote on E2SSB 5126. The attorney general and the secretary of state (petitioners) immediately sought this court's emergency direct discretionary review.

The Court concludes, by majority, Johnson J., Owens, J. disagreeing (Justice Whitener did not sit) that the superior court erred in determining that respondent's action is timely. The requirement in RCW 43.135.041(1)(a) that a measure raising taxes be "placed on the next general election ballot" for an advisory vote contemplates a timely vote in the general election occurring the year the measure was passed, in this instance 2021. Respondent in 2021 did not challenge the attorney general's failure to refer E2SSB 5126 for placement on the 2021 general election ballot for an advisory vote, and respondent's action first seeking a declaratory judgment requiring placement of the measure on the 2022 general election ballot is untimely. Though the measure was amended in 2022, those amendments do not affect the provisions respondent contends constitute a tax in order to provide a basis for now submitting the measure to an advisory vote.

Now, therefore, it is hereby

ORDERED:

That the Petitioner's emergency motion for discretionary and expedited review is granted, the superior court's order issuing a temporary restraining order is reversed, and the cause is remanded to the superior court for entry of an order dismissing the action for declaratory judgment as untimely.

DATED at Olympia, Washington this 17th day of August, 2022.

For the Court


CHIEF JUSTICE