

HAWAII

Court Kills Property Tax Ballot Measure

by Paul Jones

A ballot measure to amend Hawaii's constitution to allow a statewide property tax surcharge has been invalidated by the state supreme court for being unclear and misleading.

The ballot question, which was specified under S.B. 2922, would have amended the Hawaii Constitution and authorized the Legislature to pass a statewide tax on "investment real property" to fund public schools. Hawaii counties currently have the sole authority to levy property taxes.

The petition for extraordinary writ seeking preelection relief was filed September 26 with the Supreme Court of the State of Hawaii by the counties of Honolulu, Hawaii, Maui, and Kauai after they failed to secure a preliminary injunction against the ballot measure in the First Circuit Court of Hawaii. The court agreed to hear the case October 4, and issued the ruling invalidating the measure on October 19.

"The ballot question as written does not comply with the requirements of [Hawaii Revised Statutes] section 11-118.5 that the language and meaning of the ballot question be clear and not misleading," according to the order.

Since the ballots have already been printed and distributed, the court further ordered the state's chief election officer, Scott T. Nago, to issue a public proclamation declaring that the measure is moot and votes for or against it "will not be counted." The decision didn't detail the reasons for the justices' position, but the court said a more complete opinion will be published at a later date. The ballot question would have asked voters, "Shall the legislature be authorized to establish, as provided by law, a surcharge on investment real property to be used to support public education?"

Nago posted the proclamation ordered by the court on October 19.

The counties, which warned that a statewide property tax surcharge could harm their ability to raise revenue from property taxes in the future, argued that the ballot question omitted a clear reference to taxes, saying that the term "surcharge" is unfamiliar to many voters. Critics

also contended that it wasn't clear what would count as "investment real property," and that there was no guarantee the surcharge's revenue wouldn't be diverted to non-education-related spending.

The state countered that surcharge is a common term that voters could easily comprehend, that the Legislature would define the phrase "investment real property," and that the constitutional amendment contained language requiring the revenue to be used to "support public education."

Backers also claimed that the tax would target wealthy investors and nonresidents who own second homes, condos, and other residential properties in the state worth over \$1 million, making the total property tax rate on those homes roughly equal to the national average for mainland residential properties. But while such provisions were included in previous drafts of S.B. 2922, none of those specifics were in the final version.

'While we are sad about the ruling, there is still an urgent need that students have a qualified teacher and sufficient school funding,' Rosenlee said.

The Hawaii State Teachers Association, one of the invalidated measure's main proponents, vowed to continue fighting for additional funding for schools, which are operated and funded at the state level.

"While we are sad about the ruling, there is still an urgent need that students have a qualified teacher and sufficient school funding," said association President Corey Rosenlee in a statement. "The fight for our schools does not end with the Supreme Court ruling; all of Hawaii must ask that our elected leaders work to ensure that our schools are properly funded."

Gov. David Ige (D), another supporter, said the ruling "means we must keep searching for a way to support the dedicated teachers and staff who make a difference every day in classrooms around the state."

However, Tom Yamachika of the Tax Foundation of Hawaii, which filed an amicus brief in support of the counties' petition to strike the

ballot question, told *Tax Notes* that “a Hail Mary pass was thrown, and the ball got caught. . . . It’s very exciting when it does happen, but we didn’t expect that the question would be decided so quickly and so decisively.”

Yamachika said the foundation’s primary concern was that voters don’t fully understand what the measure would do. He said it appears that supporters’ likeliest option for resurrecting the proposal is to go back and pass new legislation to create a clearer ballot question for the 2020 election.

“There’s of course nothing to prevent them from asking the Legislature to repropose the question with more descriptive wording,” Yamachika said. ■

KENTUCKY

Louisville Files Notice of Appeal Challenging Release of HQ2 Plan

by Lauren Loricchio

Louisville, Kentucky, has filed a notice of appeal to challenge an order requiring the city to release its full, unredacted Amazon HQ2 proposal.

The October 22 notice is the latest court filing in a lawsuit seeking to require the Louisville metro area to disclose what it offered Amazon for its second headquarters project. The case stems from an open records request for a copy of the proposal, filed by a *Courier-Journal* reporter after Amazon announced that Louisville was not among 20 locations selected for the project’s shortlist.

Louisville provided a redacted proposal, and the newspaper filed a complaint under the Open Records Act to obtain the unredacted proposal.

The notice of appeal follows an October 8 stay ordered by Jefferson County Circuit Court Judge Susan Schultz Gibson to give Louisville time to appeal a September order requiring it to disclose the proposal. *The Courier-Journal* agreed to the stay in exchange for Louisville’s agreement to an expedited briefing process in the court of appeals, according to the order.

‘We think the public absolutely has the right to know how much the city offered to Amazon for this,’ Abate said.

“As we’ve said, our interest is keeping our economic playbook out of the hands of our competitor cities,” Louisville mayor’s office spokeswoman Jean Porter said in a statement. “It’s just bad business to share highly sensitive details like potential sites for new development with cities like Indianapolis, Cincinnati, and Nashville.”

“The Amazon proposal was a starting point for potential negotiations; there was never an agreement on any incentives, which generally would require Metro Council approval after public discussion,” Porter added.