

# THE SUPREME COURT

STATE OF WASHINGTON

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April 18, 2008

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Re: Supreme Court No. 81287-0 - Lisa Brown v. Brad Owen

Counsel:

Enclosed please find the RULING ON ORIGINAL ACTION, signed by the Supreme Court Commissioner, Steven Goff, on April 18, 2008, in the above entitled cause.

Sincerely,



Ronald R. Carpenter  
Supreme Court Clerk

RRC:alb  
Enclosure

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

**FILED**  
APR 18 2008

CLERK OF SUPREME COURT  
STATE OF WASHINGTON

LISA BROWN, Washington State  
Senator and Majority Leader of the  
Washington State Senate,

Petitioner,

v.

BRAD OWEN, Lieutenant Governor of  
the State of Washington,

Respondent.

NO. 81287-0

RULING ON ORIGINAL ACTION

Invoking the original jurisdiction of this court, State Senate Majority Leader Lisa Brown challenges the decision by the President of the Senate, Lieutenant Governor Brad Owen, not to forward Senate Bill 6931 to the house after it received a majority vote in the senate. Petitioner Brown seeks from this court the issuance of a writ of mandamus ordering respondent Owen to forward the bill to the house.

As described by Ms. Brown, Senate Bill 6931 would have imposed a 42 cent per liter surcharge on certain liquor to fund increased DUI patrols and chemical dependency treatment. She was one of the majority of senators who voted for the measure. Our state constitution provides that no bill shall become law “unless on its final passage ... a majority of the members elected to each house be recorded thereon in its favor.” CONST. art. II, § 22. The constitution requires a supermajority of two-thirds to pass certain types of legislation; this bill does not come within any of these exceptions. But in 1993 the voters of this state passed Initiative 601. Section 4 of the initiative provided that, after July 1, 1995, the legislature could not take action to increase state revenue or shift tax burdens except by a two-thirds vote of each house,

and only then if state expenditures, including the new revenue, would not exceed the expenditure limit for that fiscal year. The current version of this provision, enacted by Initiative 960, is RCW 43.135.035(1), which says that “any action or combination of actions by the legislature that raises taxes may be taken only if approved by a two-thirds vote of each house of the legislature.”<sup>1</sup> Mr. Owen reportedly refused to send bill 6931 on to the house based on this provision. In his ruling, reported in the Journal of the Senate for February 29, 2008, Mr. Owen said the surcharge was properly characterized as a tax. Mr. Owen declined to address Ms. Brown’s argument that RCW 43.135.035(1) conflicts with article II, section 22 of the state constitution, suggesting that such a determination must be left to the courts. The roll call shows that the bill failed to pass the senate by the vote of 25 yeas, 21 nays, 1 absent, and 2 excused.

Ms. Brown seeks now to raise her constitutional challenge to RCW 43.135.035(1) by way of this original action. Mr. Owen responds that this is not a proper original action, that issuance of the requested writ would invade the province of the legislature, and that the request for a ruling on the constitutional question does not present a justiciable controversy.

The petition relies on that portion of article IV, section 4 of the Washington Constitution resting original jurisdiction in this court for mandamus against state officers, the court rule implementing that provision (RAP 16.2), and the statutes governing mandamus actions (chapter 7.16 RCW). Pursuant to this court’s March 6, 2008, order in the case, the matter is now before me for an initial determination whether the petition should be decided by this court, transferred to the superior court,

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<sup>1</sup> An original action challenging Initiative 601 was considered by this court in 1994, but the court declined to issue a writ, in part because some of the initiative’s provisions had not yet taken effect. *Walker v. Munro*, 124 Wn.2d 402, 409, 879 P.2d 920 (1994). The court more recently declined to review a pre-election challenge to the supermajority requirement of Initiative 960, ruling that it would not entertain such a claim prior to an election. *Futurewise v. Reed*, 161 Wn.2d 407, 412-13, 166 P.3d 708 (2007).

or dismissed. RAP 16.2(d). The parties agree that the action should not be transferred to the superior court: the issues presented are sufficiently important to merit exercise of this court's original jurisdiction, if such is proper, and no factual dispute requires transfer to the superior court either for a factfinding hearing or for a decision on the merits. But based on the arguments mentioned above, Mr. Owen contends that the matter must be dismissed.

Mr. Owen's arguments finds their strongest support in language from this court's decision in *Walker v. Munro*, 124 Wn.2d 402, 409, 879 P.2d 920 (1994). Ms. Brown posits that, because Senate Bill 6931 received the simple majority vote specified in article II, section 22 of the Washington Constitution, Mr. Owen was duty bound to declare the bill passed and forward it to the house. Conversely, if RCW 43.135.035(1) is constitutional, Mr. Owen had no option but to declare the bill dead. Either a simple majority or a supermajority applies, Ms. Brown suggests, and Mr. Owen has no discretion in the matter. But this court said in *Walker* that the signing of a bill is not a ministerial act, since it involves a decision regarding the number of votes required for a particular action and whether those votes have been properly cast. *Walker*, 124 Wn.2d at 410. Still, the petition in *Walker* essentially sought a ruling from this court that legislative officials should generally adhere to the constitution with regard to passage of future legislation once section 4 of Initiative 601 took effect in 1995. There was no specific, existing duty which a state officer could be said to have violated, and the court could not then compel the performance of any duty. This case presents the court with a specific bill that triggered the supermajority requirement of RCW 43.135.035(1) as it now applies: Mr. Owen determined that the bill would impose a tax, and the bill received a majority vote but not a two-thirds vote. While this court might ultimately conclude that this is not a proper original action, that issuance of the requested writ would invade the province of the legislature, or that the

request for a ruling on the constitutional question does not present a justiciable controversy, those questions deserve a decision by the court rather than its commissioner. Therefore, I will not now dismiss the action, though the court may do so after it has considered the matter. The case is retained for further consideration by this court.

There remains the question of timing the remaining steps in the proceedings, including time for filing briefs. RAP 16.2(d). The parties are confident that they can soon enter into an agreed statement of facts and have agreed to a briefing schedule proposed by Ms. Brown. The parties should observe the following schedule: The agreed statement of facts will be due April 22, Ms. Brown's revised initial brief (including citations to the agreed statement of facts as well as pertinent changes acknowledging this court's denial of accelerated review) will be due April 25, Mr. Owen's brief will be due 30 days from the date of this ruling, and Ms. Brown's reply brief will be due 14 days after receipt of Mr. Owen's brief. In addition to addressing the merits of the original action, the briefs should include argument on the grounds for dismissal raised by Mr. Owen. (The court will also have access to the various pleadings filed thus far in the case.) The clerk will schedule oral argument.

  
COMMISSIONER

April 18, 2008