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STATE

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Has Tim Eyman gone too far this time?



by Joe Copeland

2 Comments

If history is any indication, Tim Eyman's latest attempt to tie the legislature's hands when it comes to raising taxes could well be a big winner in next week's elections. The political entrepreneur certainly projects confidence about the effort, Initiative 1366, pointing to a series of past votes in favor of a key part of the initiative, a requirement for a two-thirds majority in the Legislature to approve tax increases.

Some aren't so sure. A recent Elway Poll found that a 13 percentage point lead for the initiative had disappeared since July. Initiative opponents, who include many moderate Republicans and business groups as well Democrats, say voters realize that it's a potentially budget-busting attempt to blackmail the Legislature into tying its own hands.

It's a complicated measure. Under Initiative 1366, the state sales tax would be cut by a percentage point, from the current 6.5 percent to 5.5 percent, unless lawmakers decided to put a constitutional amendment before voters to impose a two-thirds supermajority requirement on any tax increase enacted by the Legislature. Even under the constitutional amendment, tax increases could still be sent to the public for a majority vote - a longstanding Eyman preoccupation. In order to avoid the sales tax cut, lawmakers would also have to include a requirement in the amendment that the Legislature vote on any state fee increases.

The measure comes with a lengthy legal and political history in which the two-thirds requirement has repeatedly lost in the legal realm after winning at the ballot box. Voters have passed four

supporters include a fifth that had a little advertized two-thirds clause deep in the text). But the measures have been all been overturned by later legislative sessions or the state Supreme Court. The most recent decision, in 2013, was definitive, saying that such a change could only be made through a constitutional amendment. And, under the constitution, only the Legislature itself can initiate a constitutional amendment, which must also receive public approval at the polls.

There's no real prospect of lawmakers sending a two-thirds requirement to voters, in large part because constitutional amendments require two-thirds approval in each house of the Legislature. So Eyman came up with I-1366 as a way to pressure them to action.

The sales tax cut would reduce state revenue by nearly \$3 billion every two years, likely forcing large cuts in existing state services or other tax increases. And it would come at a time when lawmakers and the governor are already under a court order to dramatically increase school funding to provide constitutionally adequate education in public schools.

State Rep. Reuven Carlyle, a leader of House Democrats on budget issues, says the results of such a cut would be devastating, hitting hard for students in public schools, but also for just about anyone receiving basic state services, including college students, nursing home residents, and people who receive in-home health care services. Opponents also say the cuts would be particularly problematic when economic growth is bringing more people to the state. Among the opponents are the Metropolitan Seattle Chamber of Commerce.

More than just the fiscal cuts, though, opponents see a lasting, even fundamental change to democracy in the state from passage of I-1366. If voters approve the kind of punitive action on the state budget that I-1366 threatens, they say that other groups - of all political stripes - will see a new route for getting their way. "That is why we want to defeat this initiative in the court of public opinion," says Andrew Villeneuve, longtime Eyman nemesis and leader of the Northwest Progressive Institute.

Opponents say that they have no doubt that using the initiative process to force a constitutional amendment would be found unconstitutional. A judge ruled earlier this year that the opponents

welcomed the chance for voters to have their say, and he questions how actions that would otherwise be legal as initiatives - such as enacting a sales tax cut - could be tossed out.

Indeed, he refers back to previous court rulings in addressing the whole idea that he might be engaged in blackmail of the Legislature. The state Supreme Court's 2013 decision (<http://www.courts.wa.gov/index.cfm?fa=controller.managefiles&filePath=Opinions&fileName=87425-5%20opinion.pdf>) frankly said that any finding on the wisdom of the two-thirds requirement would be up to the Legislature and public opinion. Eyman takes that as an invitation to lobby the Legislature. "We've clearly found that the most effective way to lobby legislators is with a public vote," he said in an email, referring to earlier tax measures that were tossed by courts for technical reasons but then enacted by the Legislature because politicians knew what voters wanted.

Eyman and his opponents seem to be in tacit agreement on one thing: It's better not to focus on his legal troubles, in which the state attorney general is looking into Public Disclosure Commission investigation that suggests he has illegally profited from some of his earlier initiatives (his attorney has dismissed the findings, saying investigators overlooked (<http://www.spokesman.com/stories/2015/sep/29/vestal-tim-eymans-financial-deals-all-too-familiar/>) or ignored key evidence and that Eyman believes he has done nothing wrong; some of the opponents say the PDC has confirmed what they had long suspected).

With the vote underway, Eyman says that he sees a clear trend from years of working on tax limitation measures: When lawmakers and the governor restrain themselves - or are restrained by spending limits - voters are less interested in even signing his measures. But when spending and taxes rise, signature gathering rises. And, he says, that while voters will give their own judgment on I-1366, the votes are likely to be there.

Villeneuve says that Eyman seems to think "he has some sort of magical connection" with the voters. In fact, he says, they are starting to get on to Eyman and his measure. "This blackmail thing is ridiculous." Like Eyman, he stops short of predictions, but he says that, with a wide range of support and voters zeroing in on the issue, the opponents "can prevail."