

Editorial: Supreme Court should quickly take up case on legality of I-1366

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The majority of Washington voters who bothered to vote shrugged off the mighty struggle to finance basic education – and balance the budget in general – and passed Initiative 1366.

Now, if the Legislature doesn't adopt a constitutional amendment that requires supermajorities to pass tax increases – a long shot – it must slash the state sales tax by a penny on the dollar. That means the state would collect \$8 billion less over the next six years, at a time when it needs an estimated \$3.8 billion to fulfill the Supreme Court's McCleary mandate to finance basic education.

How would this \$11.8 billion gap be closed? Budget cuts. Everything from mental health services, to wildfire abatement, to higher education would be on the table. Any education spending not deemed "basic" would be in jeopardy. Social services could be severely curtailed.

The last time this happened, college costs soared, the mentally ill were warehoused in violation of their legal rights and wildland firefighters were overwhelmed. We suddenly had to pay to access state parks.

There would be no money for smaller class sizes, which voters have approved – twice. Nor would cuts allow for the annual cost-of-living adjustments voters have said they want for teachers.

The tax reform needed to end the reliance on local levies to fund basic education could be impossible to achieve. Any reform – and Washington's tax system needs reform – could be frustrated by just 17 votes in the 49-person Senate.

Why would 147 legislators hand such power to a small fraction of their number?

So, what's next? The best outcome is a Supreme Court ruling that I-1366 is unconstitutional.

A legal challenge is a certainty. This creative initiative tries to achieve two ends with it's either/or proposition. That makes it subject to a challenge on the single-subject rule. And it aims to coerce the Legislature to do something voters cannot do alone: amend the constitution.

A group tried to keep the initiative off the ballot for these reasons, but the Supreme Court declined to rule on the merits. Instead, the justices said let the people vote; legality can be determined later.

Interestingly, the attorney general's office, which is investigating serious Public Disclosure Commission complaints against Tim Eyman, the initiative's author, is duty-bound to defend the initiative, as it has prior Eyman proposals.

Attorney General Bob Ferguson told the editorial board on Wednesday that the team pursuing the PDC allegations would be walled off from the attorneys working on I-1366.

The conundrum with initiatives is that voters have competing desires that don't add up when it comes to writing a budget. That's why the task is best left to lawmakers, without giving a superminority inordinate leverage.

The Supreme Court should take up the inevitable challenge as soon as possible. Would it really allow revenue to be hamstrung while at the same time expecting the McCleary decision to be followed?

Stay tuned.

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